

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Homan offered the following:

2
3 **Amendment**

4 Remove lines 2354-2637 and insert:

5 Section 38. Subsections (8) through (15) are added to
6 section 341.301, Florida Statutes, to read:

7 341.301 Definitions; ss. 341.302 and 341.303.--As used in
8 ss. 341.302 and 341.303, the term:

9 (8) "Commuter rail passenger or passengers" means and
10 includes any and all persons, ticketed or unticketed, using the
11 commuter rail service on a department-owned rail corridor:

12 (a) On board trains, locomotives, rail cars, or rail
13 equipment employed in commuter rail service or entraining and
14 detraining therefrom;

15 (b) On or about the rail corridor for any purpose related
16 to the commuter rail service, including, without limitation,

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17 parking, inquiring about commuter rail service or purchasing
18 tickets therefor and coming to, waiting for, leaving from, or
19 observing trains, locomotives, rail cars, or rail equipment; or

20 (c) Meeting, assisting, or in the company of any person
21 described in paragraph (a) or paragraph (b).

22 (9) "Commuter rail service" means the transportation of
23 commuter rail passengers and other passengers by rail pursuant
24 to a rail program provided by the department or any other
25 governmental entities.

26 (10) "Rail corridor invitee" means and includes any and
27 all persons who are on or about a department-owned rail
28 corridor:

29 (a) For any purpose related to any ancillary development
30 thereon; or

31 (b) Meeting, assisting, or in the company of any person
32 described in paragraph (a).

33 (11) "Rail corridor" means a linear contiguous strip of
34 real property that is used for rail service. The term includes
35 the corridor and structures essential to the operation of a
36 railroad, including the land, structures, improvements, rights-
37 of-way, easements, rail lines, rail beds, guideway structures,
38 switches, yards, parking facilities, power relays, switching
39 houses, rail stations, ancillary development, and any other
40 facilities or equipment used for the purposes of construction,
41 operation, or maintenance of a railroad that provides rail
42 service.

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43 (12) "Railroad operations" means the use of the rail
44 corridor to conduct commuter rail service, intercity rail
45 passenger service, or freight rail service.

46 (13) "Ancillary development" includes any lessee or
47 licensee of the department, including, but not limited to, other
48 governmental entities, vendors, retailers, restaurateurs, or
49 contract service providers, within a department-owned rail
50 corridor, except for providers of commuter rail service,
51 intercity rail passenger service, or freight rail service.

52 (14) "Governmental entity or entities" means as defined in
53 s. 11.45, including a "public agency" as defined in s. 163.01.

54 (15) "Private party train" means any train involved in an
55 incident that is neither the department's train nor the freight
56 rail operator's train.

57 Section 39. Section 341.302, Florida Statutes, is amended
58 to read:

59 341.302 Rail program, duties and responsibilities of the
60 department.--The department, in conjunction with other
61 governmental entities ~~units~~ and the private sector, shall
62 develop and implement a rail program of statewide application
63 designed to ensure the proper maintenance, safety,
64 revitalization, and expansion of the rail system to assure its
65 continued and increased availability to respond to statewide
66 mobility needs. Within the resources provided pursuant to
67 chapter 216, and as authorized under federal law Title 49 C.F.R.
68 ~~part 212~~, the department shall:

69 (1) Provide the overall leadership, coordination, and
70 financial and technical assistance necessary to assure the
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71 effective responses of the state's rail system to current and
72 anticipated mobility needs.

73 (2) Promote and facilitate the implementation of advanced
74 rail systems, including high-speed rail and magnetic levitation
75 systems.

76 (3) Develop and periodically update the rail system plan,
77 on the basis of an analysis of statewide transportation needs.
78 The plan shall be consistent with the Florida Transportation
79 Plan developed pursuant to s. 339.155. The rail system plan
80 shall include an identification of priorities, programs, and
81 funding levels required to meet statewide needs. The rail system
82 plan shall be developed in a manner that will assure the maximum
83 use of existing facilities and the optimum integration and
84 coordination of the various modes of transportation, public and
85 private, in the most cost-effective manner possible. The rail
86 system plan shall be updated at least every 2 years and include
87 plans for both passenger rail service and freight rail service.

88 (4) As part of the work program of the department,
89 formulate a specific program of projects and financing to
90 respond to identified railroad needs.

91 (5) Provide technical and financial assistance to units of
92 local government to address identified rail transportation
93 needs.

94 (6) Secure and administer federal grants, loans, and
95 apportionments for rail projects within this state when
96 necessary to further the statewide program.

97 (7) Develop and administer state standards concerning the
98 safety and performance of rail systems, hazardous material

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99 handling, and operations. Such standards shall be developed
100 jointly with representatives of affected rail systems, with full
101 consideration given to nationwide industry norms, and shall
102 define the minimum acceptable standards for safety and
103 performance.

104 (8) Conduct, at a minimum, inspections of track and
105 rolling stock; train signals and related equipment; hazardous
106 materials transportation, including the loading, unloading, and
107 labeling of hazardous materials at shippers', receivers', and
108 transfer points; and train operating practices to determine
109 adherence to state and federal standards. Department personnel
110 may enforce any safety regulation issued under the Federal
111 Government's preemptive authority over interstate commerce.

112 (9) Assess penalties, in accordance with the applicable
113 federal regulations, for the failure to adhere to the state
114 standards.

115 (10) Administer rail operating and construction programs,
116 which programs shall include the regulation of maximum train
117 operating speeds, the opening and closing of public grade
118 crossings, the construction and rehabilitation of public grade
119 crossings, and the installation of traffic control devices at
120 public grade crossings, the administering of the programs by the
121 department including participation in the cost of the programs.

122 (11) Coordinate and facilitate the relocation of railroads
123 from congested urban areas to nonurban areas when relocation has
124 been determined feasible and desirable from the standpoint of
125 safety, operational efficiency, and economics.

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126 (12) Implement a program of branch line continuance
127 projects when an analysis of the industrial and economic
128 potential of the line indicates that public involvement is
129 required to preserve essential rail service and facilities.

130 (13) Provide new rail service and equipment when:

131 (a) Pursuant to the transportation planning process, a
132 public need has been determined to exist;

133 (b) The cost of providing such service does not exceed the
134 sum of revenues from fares charged to users, services purchased
135 by other public agencies, local fund participation, and specific
136 legislative appropriation for this purpose; and

137 (c) Service cannot be reasonably provided by other
138 governmental or privately owned rail systems.

139

140 The department may own, lease, and otherwise encumber
141 facilities, equipment, and appurtenances thereto, as necessary
142 to provide new rail services; or the department may provide such
143 service by contracts with privately owned service providers.

144 (14) Furnish required emergency rail transportation
145 service if no other private or public rail transportation
146 operation is available to supply the required service and such
147 service is clearly in the best interest of the people in the
148 communities being served. Such emergency service may be
149 furnished through contractual arrangement, actual operation of
150 state-owned equipment and facilities, or any other means
151 determined appropriate by the secretary.

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152 (15) Assist in the development and implementation of
153 marketing programs for rail services and of information systems
154 directed toward assisting rail systems users.

155 (16) Conduct research into innovative or potentially
156 effective rail technologies and methods and maintain expertise
157 in state-of-the-art rail developments.

158 (17) In conjunction with the acquisition, ownership,
159 construction, operation, maintenance, and management of a rail
160 corridor, have the authority to:

161 (a) Assume the obligation by contract to forever protect,
162 defend, and indemnify and hold harmless the freight rail
163 operator, or its successors, from whom the department has
164 acquired a real property interest in the rail corridor, and that
165 freight rail operator's officers, agents, and employees, from
166 and against any liability, cost, and expense including, but not
167 limited to, claims arising from an action brought by or on
168 behalf of commuter rail passengers, rail corridor invitees, and
169 trespassers in the rail corridor, regardless of whether the
170 loss, damage, destruction, injury, or death giving rise to any
171 such liability, cost, or expense is caused in whole or in part
172 by the fault, misconduct, nonfeasance, or misfeasance of such
173 freight rail operator, its successors, or its officers, agents,
174 and employees, or any other persons according to the following
175 parameters establishing the of allocation of risk:

176 1. General department liability.--The department may be
177 solely responsible for any loss, injury, or damage to commuter
178 rail passengers, rail corridor invitees, or trespassers,

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179 regardless of circumstances or cause, subject to subparagraphs
180 2. and 3.

181 a. Private party train.--A private party train may be
182 treated as a department train, solely for purposes of any
183 allocation of liability between the department and the freight
184 rail operator only, if in return for the department's agreement
185 to assume such allocation of liability, the following terms are
186 agreed to:

187 2. Allocation of liability.--

188 a. Private party train.--A private party train may be
189 treated as a department train, solely for purposes of any
190 allocation of liability between the department and the freight
191 rail operator only, if, in return for the department's agreement
192 to assume such allocation of liability, the following terms are
193 agreed to:

194 (I) The freight rail operator and the department share
195 responsibility equally as to third parties outside the rail
196 corridor who incur loss, injury, or damage as a result of any
197 incident involving both a department train and a freight rail
198 operator train; and

199 (II) Regardless of whether a private party train is
200 treated as a department train, the allocation of liability as
201 between the department and the freight rail operator remains
202 one-half each as to third parties outside the rail corridor who
203 incur loss, injury, or damage as a result of the incident; and

204 b. Incidents involving a single train.--

205 (I) For incidents involving a single train that is a
206 department train, the department may be solely responsible for

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207 any loss, injury, or damage if, in return for the department's
208 agreement to assume such responsibility, the freight rail
209 operator agrees to be solely responsible for any loss, injury,
210 or damage to its property and all of its people in any instance
211 when its train is involved in a single train incident.

212 (II) For incidents involving a single train that is a
213 private party train, the department may be solely responsible
214 for any loss, injury, or damage if, in return for the
215 department's agreement to assume such responsibility, the
216 freight rail operator agrees to be solely responsible for any
217 loss, injury, or damage to its property and all of its people in
218 any instance when its train is involved in a single train
219 incident.

220 c. Incidents involving two or more trains.--

221 (I) For incidents involving a department train and the
222 freight rail operator's train or incidents involving a private
223 party train and the freight rail operator's train, the
224 department may be responsible for its property and all of its
225 people, all commuter rail passengers, rail corridor invitees,
226 and trespassers, if, in return for the department's agreement to
227 assume such responsibility, the following terms are agreed to
228 apply in the case of such incidents:

229 (A) The freight rail operator is to be solely responsible
230 for any loss, injury, or damage to its property and all of its
231 people; and

232 (B) The department and the freight rail operator share
233 responsibility one-half each as to third parties outside the

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234 rail corridor who incur loss, injury, or damage as a result of
235 the incident.

236 (II) For incidents when a department train, a freight rail
237 operator train ,and any private party train are all involved in
238 an incident, the department may be responsible for its property
239 and all of its people, all commuter rail passengers, rail
240 corridor invitees, and trespassers, if, in return for the
241 department's agreement to assume such responsibility, the
242 following terms are agreed to apply in such incidents:

243 (A) The freight rail operator is to be solely responsible
244 for any loss, injury, or damage to its property and all of its
245 people;

246 (B) The allocation of liability between the department and
247 the freight rail operator, regardless of whether the private
248 party train is treated as a department train, shall remain one-
249 half each as to third parties outside the rail corridor who
250 incur loss, injury, or damage as a result of the incident;

251 (C) The involvement of any private party train shall not
252 alter the sharing of equal responsibility as to third parties
253 outside the rail corridor who incur loss, injury, or damage as a
254 result of the incident; and

255 (D) In any case in which the owner, operator, or insurer
256 of the private party train makes any payment to injured third
257 parties outside the rail corridor who incur loss, injury, or
258 damage as a result of the incident, the allocation of credit
259 between the department and the freight rail operator as to such
260 payment shall not in any case reduce the freight rail operator's

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261 third party sharing allocation of one-half under this paragraph
262 to less than one-third of the total third party liability.

263 3. Contracts.--Any contract to protect, defend, indemnify,
264 and hold harmless a freight rail operator as provided in this
265 subsection shall expressly provide:

266 a. For the inclusion of a specific cap on the amount of
267 the contractual duty, which amount shall not exceed \$200 million
268 without prior legislative approval;

269 b. That the department must purchase liability insurance
270 and establish a self-insurance retention fund in the amount of
271 the specific cap established under sub-subparagraph a.;

272 c. That no contractual duty shall in any case be effective
273 nor otherwise extend the department's liability in scope and
274 effect beyond the contractual liability insurance and self-
275 insurance retention fund required pursuant to this subsection;
276 and

277 d. That the freight rail operator's compensation to the
278 department for future use of the department's rail corridor must
279 include a monetary contribution to the cost of such liability
280 coverage for the sole benefit of the freight rail operator.

281 (b) Purchase liability insurance which amount shall not
282 exceed \$200 million and establish a self-insurance retention
283 fund for the purpose of paying the deductible limit established
284 in the insurance policies it may obtain, including coverage for
285 the department, any freight rail operator as described in
286 paragraph (a), commuter rail service providers, governmental
287 entities, or ancillary development; however, the insureds shall
288 pay a reasonable monetary contribution to the cost of such

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289 liability coverage for the sole benefit of the insured. Such
290 insurance and self-insurance retention fund may provide coverage
291 for all damages, including, but not limited to, compensatory,
292 special, and exemplary, and be maintained to provide an adequate
293 fund to cover claims and liabilities for loss, injury, or damage
294 arising out of or connected with the ownership, operation,
295 maintenance, and management of a rail corridor.

296 (c) Incur expenses for the purchase of advertisements,
297 marketing, and promotional items.

298
299 Neither the assumption by contract to protect, defend,
300 indemnify, and hold harmless; the purchase of insurance; nor the
301 establishment of a self-insurance retention fund shall be deemed
302 to be a waiver of any defense of sovereign immunity for torts
303 nor deemed to increase the limits of the department's or the
304 governmental entity's liability for torts as provided in s.
305 768.28. The requirements of s. 287.022(1) shall not apply to the
306 purchase of any insurance under this subsection. The provisions
307 of this subsection shall apply and inure fully as to any other
308 governmental entity providing commuter rail service and
309 constructing, operating, maintaining, or managing a rail
310 corridor on publicly owned right-of-way under contract by the
311 governmental entity with the department or a governmental entity
312 designated by the department.

313 (18)-(17) Exercise such other functions, powers, and duties
314 in connection with the rail system plan as are necessary to
315 develop a safe, efficient, and effective statewide
316 transportation system.

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