

By Senator Baker

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1 A bill to be entitled

2 An act relating to rail corridors; amending s. 341.301,
3 F.S.; defining the terms "commuter rail service" and "rail
4 corridor" for purposes of the rail program within the
5 Department of Transportation; amending s. 341.302, F.S.;
6 authorizing the department to purchase and provide
7 insurance in relation to rail corridors; authorizing the
8 department to assume all liability on a rail corridor;
9 authorizing the department to indemnify and hold harmless
10 a railroad company when the department acquires a rail
11 corridor from the company; extending provisions to other
12 governmental entities providing commuter rail service on
13 public right-of-way; amending s. 768.28, F.S.; expanding
14 the list of entities considered agents of the state;
15 providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Subsections (8) and (9) are added to section
20 341.301, Florida Statutes, to read:

21 341.301 Definitions; ss. 341.302 and 341.303.--As used in
22 ss. 341.302 and 341.303, the term:

23 (8) "Commuter rail service" means the transportation of
24 commuters and other passengers by rail pursuant to a rail program
25 provided by the state or other governmental entity.

26 (9) "Rail corridor" means a linear contiguous strip of real
27 estate that is used for rail service. The term includes the
28 corridor and structures essential to the operation of a railroad,
29 including the land, structures, improvements, rights-of-way,

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30 easements, rail lines, rail beds, guideway structures, switches,
31 yards, parking facilities, power relays, switching houses, rail
32 stations, and any other facilities or equipment used for the
33 purposes of construction, operation, or maintenance of a railroad
34 that provides rail service.

35 Section 2. Section 341.302, Florida Statutes, is amended to
36 read:

37 341.302 Rail program, duties and responsibilities of the
38 department.--The department, in conjunction with other
39 governmental units and the private sector, shall develop and
40 implement a rail program of statewide application designed to
41 ensure the proper maintenance, safety, revitalization, and
42 expansion of the rail system to assure its continued and
43 increased availability to respond to statewide mobility needs.
44 Within the resources provided pursuant to chapter 216, and as
45 authorized under federal law ~~Title 49 C.F.R. part 212~~, the
46 department shall:

47 (1) Provide the overall leadership, coordination, and
48 financial and technical assistance necessary to assure the
49 effective responses of the state's rail system to current and
50 anticipated mobility needs.

51 (2) Promote and facilitate the implementation of advanced
52 rail systems, including high-speed rail and magnetic levitation
53 systems.

54 (3) Develop and periodically update the rail system plan,
55 on the basis of an analysis of statewide transportation needs.
56 The plan shall be consistent with the Florida Transportation Plan
57 developed pursuant to s. 339.155. The rail system plan shall
58 include an identification of priorities, programs, and funding

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59 | levels required to meet statewide needs. The rail system plan
60 | shall be developed in a manner that will assure the maximum use
61 | of existing facilities and the optimum integration and
62 | coordination of the various modes of transportation, public and
63 | private, in the most cost-effective manner possible. The rail
64 | system plan shall be updated at least every 2 years and include
65 | plans for both passenger rail service and freight rail service.

66 | (4) As part of the work program of the department,
67 | formulate a specific program of projects and financing to respond
68 | to identified railroad needs.

69 | (5) Provide technical and financial assistance to units of
70 | local government to address identified rail transportation needs.

71 | (6) Secure and administer federal grants, loans, and
72 | apportionments for rail projects within this state when necessary
73 | to further the statewide program.

74 | (7) Develop and administer state standards concerning the
75 | safety and performance of rail systems, hazardous material
76 | handling, and operations. Such standards shall be developed
77 | jointly with representatives of affected rail systems, with full
78 | consideration given to nationwide industry norms, and shall
79 | define the minimum acceptable standards for safety and
80 | performance.

81 | (8) Conduct, at a minimum, inspections of track and rolling
82 | stock; train signals and related equipment; hazardous materials
83 | transportation, including the loading, unloading, and labeling of
84 | hazardous materials at shippers', receivers', and transfer
85 | points; and train operating practices to determine adherence to
86 | state and federal standards. Department personnel may enforce any

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87 safety regulation issued under the Federal Government's
88 preemptive authority over interstate commerce.

89 (9) Assess penalties, in accordance with the applicable
90 federal regulations, for the failure to adhere to the state
91 standards.

92 (10) Administer rail operating and construction programs,
93 which programs shall include the regulation of maximum train
94 operating speeds, the opening and closing of public grade
95 crossings, the construction and rehabilitation of public grade
96 crossings, and the installation of traffic control devices at
97 public grade crossings, the administering of the programs by the
98 department including participation in the cost of the programs.

99 (11) Coordinate and facilitate the relocation of railroads
100 from congested urban areas to nonurban areas when relocation has
101 been determined feasible and desirable from the standpoint of
102 safety, operational efficiency, and economics.

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

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

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

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

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

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

121 (14) Furnish required emergency rail transportation service
122 if no other private or public rail transportation operation is
123 available to supply the required service and such service is
124 clearly in the best interest of the people in the communities
125 being served. Such emergency service may be furnished through
126 contractual arrangement, actual operation of state-owned
127 equipment and facilities, or any other means determined
128 appropriate by the secretary.

129 (15) Assist in the development and implementation of
130 marketing programs for rail services and of information systems
131 directed toward assisting rail systems users.

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

135 (17) In conjunction with the acquisition, ownership,
136 construction, operation, maintenance, and management of a rail
137 corridor, have the authority to:

138 (a) Purchase liability insurance that the department may be
139 contractually obligated to provide as to uses of the rail
140 corridor or that the department determines to be in the public
141 interest and necessary, and establish a self-insurance retention
142 fund for the purpose of paying the deductible limit established
143 in its insurance policies. Such insurance and self-insurance
144 retention fund may provide coverage for all damages, including,

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145 but not limited to, compensatory, special, and exemplary, and may
146 be maintained to provide an adequate fund to cover claims and
147 liabilities for loss, damage, injury, or death arising out of or
148 connected with the ownership, operation, maintenance, or
149 management of a rail corridor. Neither the purchase of insurance
150 nor the establishment of a self-insurance retention fund shall be
151 deemed to be a waiver of any defense of sovereign immunity for
152 torts nor deemed to increase the limits of the department's
153 liability for torts. The requirements of s. 287.022(1) do not
154 apply to the purchase of any insurance under this paragraph.

155 (b) Assume by contract any or all liability for the death,
156 injury, or loss to any person resulting from fault, failure,
157 negligence, misconduct, nonfeasance, or misfeasance, whether in
158 whole or in part and to whatever nature or degree caused by the
159 department or by others, and to allocate by contract other
160 liabilities within the rail corridor resulting from fault,
161 failure, negligence, misconduct, nonfeasance, or misfeasance,
162 whether in whole or in part and to whatever nature or degree
163 caused by the department or by others, in lieu of a determination
164 of comparative fault on an incident-by-incident basis. Entering
165 into such contractual agreement does not waive the sovereign
166 immunity for torts of the department or otherwise alter the
167 requirements of s. 768.28.

168 (c) Assume by contract to forever protect, defend,
169 indemnify, and hold harmless a railroad company, or its
170 successors, from whom the department has acquired a rail
171 corridor, and its officers, agents, and employees, from and
172 against any liability, cost, or expense contractually assumed by
173 the department or contractually apportioned to it, regardless of

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174 whether the loss, damage, destruction, injury, or death giving
175 rise to any such liability, cost, or expense is caused in whole
176 or in part and to whatever nature or degree by the fault,
177 failure, negligence, misconduct, nonfeasance, or misfeasance of
178 such railroad company, or its successors, or its or their
179 officers, agents, and employees, or any other person or persons
180 whomsoever.

181 1. However, any such contractual duty to protect, defend,
182 indemnify, and hold harmless shall:

183 a. Include a specific cap on the amount of such duty;

184 b. Require the department to purchase liability insurance
185 and establish a self-insurance retention fund as authorized under
186 paragraph (a); and

187 c. Expressly provide that any such contractually assumed
188 duty shall in no case be effective or otherwise extend in scope
189 and effect beyond the contractually required liability insurance
190 and self-insurance retention fund.

191 2. In no event shall the liability of the department to
192 forever protect, defend, indemnify, and hold harmless such
193 railroad company, or its successors, and its officers, agents,
194 and employees pursuant to this paragraph extend beyond the
195 contractually required liability insurance purchased and self-
196 insurance retention fund established for that purpose, and any
197 contractual agreement otherwise is void and unenforceable except
198 as expressly authorized in this subsection. In addition, any
199 agreement pursuant to this paragraph does not waive or modify the
200 sovereign immunity of the department for tort, does not alter the
201 requirements of s. 768.28, may not be deemed a waiver of any
202 defense of sovereign immunity for tort on account of the

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203 department having purchased insurance or established a self-
204 retention fund, does not increase the limits of the department's
205 tort liability as a result of purchasing insurance or
206 establishing a self-insurance retention fund, and does not create
207 any third-party rights whatsoever.

208 (d) Incur expenses for the purchase of advertisements,
209 marketing, and promotional items.

210
211 This subsection applies and inures fully to any other
212 governmental entity providing commuter rail service and
213 constructing, operating, maintaining, or managing a rail corridor
214 on publicly owned right-of-way under contract with the department
215 or by designation from the department.

216 (18)-(17) Exercise such other functions, powers, and duties
217 in connection with the rail system plan as are necessary to
218 develop a safe, efficient, and effective statewide transportation
219 system.

220 Section 3. Paragraph (d) of subsection (10) of section
221 768.28, Florida Statutes, is amended to read:

222 768.28 Waiver of sovereign immunity in tort actions;
223 recovery limits; limitation on attorney fees; statute of
224 limitations; exclusions; indemnification; risk management
225 programs.--

226 (10)

227 (d) For the purposes of this section, operators,
228 dispatchers, and providers of security for rail services and rail
229 facility maintenance providers in the South Florida Rail
230 Corridor, the Central Florida Rail Corridor, or any publicly
231 owned rail corridor, or any of their employees or agents,

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232 performing such services under contract with and on behalf of the
233 same, ~~South Florida Regional Transportation Authority~~ or the
234 Department of Transportation, or any other governmental entity
235 under contract with or designated by the Department of
236 Transportation shall be considered agents of the state while
237 acting within the scope of and pursuant to guidelines established
238 in the ~~said~~ contract or by rule.

239 Section 4. This act shall take effect July 1, 2008.