



582890

CHAMBER ACTION

| <u>Senate</u> | . | <u>House</u> |
|---------------|---|--------------|
| Comm: RCS     | . |              |
| 4/22/2008     | . |              |
|               | . |              |
|               | . |              |

---

---

1 The Committee on Transportation and Economic Development  
2 Appropriations (Webster) recommended the following **amendment**:

3  
4 **Senate Amendment (with title amendment)**

5 Between lines 52-53

6 and insert:

7 Section 1. Section 212.0606, Florida Statutes, is amended  
8 to read:

9 212.0606 Rental car surcharge; discretionary local rental  
10 car surcharge.--

11 (1) A surcharge of \$2 ~~\$2.00~~ per day or any part of a day is  
12 imposed upon the lease or rental of a motor vehicle licensed for  
13 hire and designed to carry fewer ~~less~~ than nine passengers,  
14 regardless of whether such motor vehicle is licensed in Florida.  
15 The surcharge applies to only the first 30 days of the term of  
16 any lease or rental and. ~~The surcharge~~ is subject to all  
17 applicable taxes imposed by this chapter.



582890

18           (2) (a) Notwithstanding ~~the provisions of~~ section 212.20,  
19 and less costs of administration, 80 percent of the proceeds of  
20 the this surcharge imposed under subsection (1) shall be  
21 deposited in the State Transportation Trust Fund, 15.75 percent  
22 of the proceeds of this surcharge shall be deposited in the  
23 Tourism Promotional Trust Fund created in s. 288.122, and 4.25  
24 percent of the proceeds of this surcharge shall be deposited in  
25 the Florida International Trade and Promotion Trust Fund. As used  
26 in~~For the purposes of~~ this subsection, "proceeds" of the  
27 surcharge means all funds collected and received by the  
28 department under subsection (1)~~this section~~, including interest  
29 and penalties on delinquent surcharges. The department shall  
30 provide the Department of Transportation rental car surcharge  
31 revenue information for the previous state fiscal year by  
32 September 1 of each year.

33           (b) Notwithstanding any other provision of law, in fiscal  
34 year 2007-2008 and each year thereafter, the proceeds deposited  
35 in the State Transportation Trust Fund shall be allocated on an  
36 annual basis in the Department of Transportation's work program  
37 to each department district, except the Turnpike District. The  
38 amount allocated for each district shall be based upon the amount  
39 of proceeds attributed to the counties within each respective  
40 district.

41           (3) (a) In addition to the surcharge imposed under  
42 subsection (1), each county containing an international airport  
43 may levy a discretionary local surcharge pursuant to county  
44 ordinance and subject to approval by a majority vote of the  
45 electorate of the county voting in a referendum on the local  
46 surcharge of \$2 per day, or any part of a day, upon the lease or  
47 rental of a motor vehicle licensed for hire and designed to carry



582890

48 fewer than nine passengers, regardless of whether such motor  
49 vehicle is licensed in this state. The surcharge may be applied  
50 to only the first 30 days of the term of the lease or rental and  
51 is subject to all applicable taxes imposed by this chapter.

52 (b) If the ordinance authorizing the imposition of the  
53 surcharge is approved by such referendum, a certified copy of the  
54 ordinance shall be furnished by the county to the department  
55 within 10 days after such approval, but no later than November 16  
56 prior to the effective date. The notice must specify the time  
57 period during which the surcharge will be in effect and must  
58 include a copy of the ordinance and such other information as the  
59 department requires by rule. Failure to timely provide such  
60 notification to the department shall result in delay of the  
61 effective date for a period of 1 year. The effective date for any  
62 county to impose the surcharge shall be January 1 following the  
63 year in which the ordinance was approved by referendum. A local  
64 surcharge may not terminate on a date other than December 31.

65 (c) Any dealer that collects the local surcharge but fails  
66 to report surcharge collections by county, as required by  
67 paragraph (4) (b), shall have the surcharge proceeds deposited  
68 into the Solid Waste Management Trust Fund and then transferred  
69 to the Local Option Fuel Tax Trust Fund, which is separate from  
70 the county surcharge collection accounts. The department shall  
71 distribute funds in this account, less the cost of  
72 administration, using a distribution factor determined for each  
73 county that levies a surcharge based on the county's latest  
74 official population determined pursuant to s. 186.901 and  
75 multiplied by the amount of funds in the account and available  
76 for distribution.



582890

77        (d) Notwithstanding s. 212.20, and less the costs of  
78 administration, the proceeds of the local surcharge imposed under  
79 paragraph (a) shall be transferred to the Local Option Fuel Tax  
80 Trust Fund and distributed monthly by the department under s.  
81 336.025(3)(a)1. or (4)(a). and used solely for costs associated  
82 with the construction, reconstruction, operation, maintenance,  
83 and repair of facilities under a commuter rail service program  
84 provided by the state or other governmental entity. As used in  
85 this subsection, "proceeds" of the local surcharge means all  
86 funds collected and received by the department under this  
87 subsection, including interest and penalties on delinquent  
88 surcharges.

89        (4) ~~(3)~~(a) Except as provided in this section, the  
90 department shall administer, collect, and enforce the surcharge  
91 and local surcharge as provided in this chapter.

92        (b) The department shall require dealers to report  
93 surcharge collections according to the county to which the  
94 surcharge and local surcharge was attributed. For purposes of  
95 this section, the surcharge and local surcharge shall be  
96 attributed to the county where the rental agreement was entered  
97 into.

98        (c) Dealers who collect a ~~the~~ rental car surcharge shall  
99 report to the department all surcharge and local surcharge  
100 revenues attributed to the county where the rental agreement was  
101 entered into on a timely filed return for each required reporting  
102 period. The provisions of this chapter which apply to interest  
103 and penalties on delinquent taxes shall apply to the surcharge  
104 and local surcharge. The surcharge and local surcharge shall not  
105 be included in the calculation of estimated taxes pursuant to s.



582890

106 212.11. The dealer's credit provided in s. 212.12 shall not apply  
107 to any amount collected under this section.

108 (5)-(4) The surcharge and any local surcharge imposed by  
109 this section does not apply to a motor vehicle provided at no  
110 charge to a person whose motor vehicle is being repaired,  
111 adjusted, or serviced by the entity providing the replacement  
112 motor vehicle.

113 Section 2. Subsections (8), (9), (10), (11), (12), (13),  
114 and (14) are added to section 341.301, Florida Statutes, to read:

115 341.301 Definitions; ss. 341.302 and 341.303.--As used in  
116 ss. 341.302 and 341.303, the term:

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

120 (a) On board trains, locomotives, rail cars, or rail  
121 equipment employed in commuter rail service or entraining and  
122 detraining therefrom;

123 (b) On or about the rail corridor for any purpose related  
124 to the commuter rail service, including, without limitation,  
125 parking, inquiring about commuter rail service or purchasing  
126 tickets therefor and coming to, waiting for, leaving from, or  
127 observing trains, locomotives, rail cars, or rail equipment; or

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

130 (9) "Commuter rail service" means the transportation of  
131 commuter rail passengers and other passengers by rail pursuant to  
132 a rail program provided by the department or any other  
133 governmental entities.

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



582890

136 (a) For any purpose related to any ancillary development  
137 thereon; or

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

140 (11) "Rail corridor" means a linear contiguous strip of  
141 real property that is used for rail service. The term includes  
142 the corridor and structures essential to the operation of a  
143 railroad, including the land, structures, improvements, rights-  
144 of-way, easements, rail lines, rail beds, guideway structures,  
145 switches, yards, parking facilities, power relays, switching  
146 houses, rail stations, ancillary development, and any other  
147 facilities or equipment used for the purposes of construction,  
148 operation, or maintenance of a railroad that provides rail  
149 service.

150 (12) "Railroad operations" means the use of the rail  
151 corridor to conduct commuter rail service, intercity rail  
152 passenger service, or freight rail service.

153 (13) "Ancillary development" includes any lessee or  
154 licensee of the department, including, but not limited to, other  
155 governmental entities, vendors, retailers, restaurateurs, or  
156 contract service providers, within a department-owned rail  
157 corridor, except for providers of commuter rail service,  
158 intercity rail passenger service, or freight rail service.

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

161 Section 3. Present subsection (17) of Section 341.302,  
162 Florida Statutes, is redesignated as subsection (19) and new  
163 subsections (17) and (18) are added to that section, to read:

164 341.302 Rail program, duties and responsibilities of the  
165 department.--The department, in conjunction with other



582890

166 governmental entities ~~units~~ and the private sector, shall develop  
167 and implement a rail program of statewide application designed to  
168 ensure the proper maintenance, safety, revitalization, and  
169 expansion of the rail system to assure its continued and  
170 increased availability to respond to statewide mobility needs.  
171 Within the resources provided pursuant to chapter 216, and as  
172 authorized under federal law Title 49 C.F.R. part 212, the  
173 department shall:

174 (17) The department is hereby authorized to purchase the  
175 required right-of-way, improvements and appurtenances of the A-  
176 Line rail corridor from CSX Transportation, Inc. for a maximum  
177 purchase price of \$450 million for the primary purpose of  
178 implementing commuter rail service in what is commonly identified  
179 as the Central Florida Rail Corridor, and consisting of an  
180 approximately 61.5 mile section of the existing A-Line rail  
181 corridor running from a point at or near Deland, Florida to a  
182 point at or near Poinciana, Florida.

183 (18) In conjunction with the acquisition, ownership,  
184 construction, operation, maintenance, and management of a rail  
185 corridor, have the authority to:

186 (a) Assume the obligation by contract to forever protect,  
187 defend, and indemnify and hold harmless the freight rail  
188 operator, or its successors, from whom the department has  
189 acquired a real property interest in the rail corridor, and that  
190 freight rail operator's officers, agents, and employees, from and  
191 against any liability, cost, and expense including, but not  
192 limited to, commuter rail passengers, rail corridor invitees, and  
193 trespassers in the rail corridor, regardless of whether the loss,  
194 damage, destruction, injury, or death giving rise to any such  
195 liability, cost, or expense is caused in whole or in part and to



582890

196 whatever nature or degree by the fault, failure, negligence,  
197 misconduct, nonfeasance, or misfeasance of such freight rail  
198 operator, its successors, or its officers, agents, and employees,  
199 or any other person or persons whomsoever, provided that such  
200 assumption of liability of the department by contract shall not  
201 in any instance exceed the following parameters of allocation of  
202 risk:

203 1. The department may be solely responsible for any loss,  
204 injury, or damage to commuter rail passengers, rail corridor  
205 invitees, or trespassers, regardless of circumstances or cause,  
206 subject to subparagraphs 2., 3., and 4.

207 2. When only one train is involved in an incident, the  
208 department may be solely responsible for any loss, injury, or  
209 damage if the train is a department train or other train pursuant  
210 to paragraph 3., but only if in an instance when only a freight  
211 rail operator train is involved the freight rail operator is  
212 solely responsible for any loss, injury, or damage, except for  
213 commuter rail passengers, rail corridor invitees, and  
214 trespassers; and, the freight rail operator is solely responsible  
215 for its property and all of its people in any instance when its  
216 train is involved in an incident.

217 3. For the purposes of this subsection any train involved  
218 in an incident that is neither the department's train nor the  
219 freight rail operator's train, hereinafter referred to in this  
220 subsection as an "other train," may be treated as a department  
221 train, solely for purposes of any allocation of liability between  
222 the department and the freight rail operator only, but only if  
223 the department and the freight rail operator share responsibility  
224 equally as to third parties outside the rail corridor who incur  
225 loss, injury, or damage as a result of any incident involving





582890

226 both a department train and a freight rail operator train; and,  
227 the allocation as between the department and the freight rail  
228 operator, regardless of whether the other train is treated as a  
229 department train, shall remain one-half each as to third parties  
230 outside the rail corridor who incur loss, injury, or damage as a  
231 result of the incident, and the involvement of any other train  
232 shall not alter the sharing of equal responsibility as to third  
233 parties outside the rail corridor who incur loss, injury, or  
234 damage as a result of the incident.

235 4. When more than one train is involved in an incident:

236 a. If only a department train and a freight rail operator's  
237 train, or only another train as described in subparagraph 3. and  
238 a freight rail operator's train, are involved in an incident, the  
239 department may be responsible for its property and all of its  
240 people, all commuter rail passengers, rail corridor invitees, and  
241 trespassers, but only if the freight rail operator is responsible  
242 for its property and all of its people; and the department and  
243 the freight rail operator share responsibility one-half each as  
244 to third parties outside the rail corridor who incur loss,  
245 injury, or damage as a result of the incident.

246 b. If a department train, a freight rail operator train,  
247 and any other train are involved in an incident, the allocation  
248 of liability as between the department and the freight rail  
249 operator, regardless of whether the other train is treated as a  
250 department train, shall remain one-half each as to third parties  
251 outside the rail corridor who incur loss, injury, or damage as a  
252 result of the incident; the involvement of any other train shall  
253 not alter the sharing of equal responsibility as to third parties  
254 outside the rail corridor who incur loss, injury, or damage as a  
255 result of the incident; and, if the owner, operator, or insurer



582890

256 of the other train makes any payment to injured third parties  
257 outside the rail corridor who incur loss, injury, or damage as a  
258 result of the incident, the allocation of credit between the  
259 department and the freight rail operator as to such payment shall  
260 not in any case reduce the freight rail operator's third party  
261 sharing allocation of one-half under this paragraph to less than  
262 one-third of the total third party liability.

263 5. Any such contractual duty to protect, defend, indemnify,  
264 and hold harmless such a freight rail operator shall expressly:  
265 include a specific cap on the amount of the contractual duty,  
266 which amount shall not exceed \$200 million without prior  
267 legislative approval; require the department to purchase  
268 liability insurance and establish a self-insurance retention fund  
269 in the amount of the specific cap established under this  
270 paragraph; provide that no such contractual duty shall in any  
271 case be effective nor otherwise extend the department's liability  
272 in scope and effect beyond the contractual liability insurance  
273 and self-insurance retention fund required pursuant to this  
274 paragraph; and provide that the freight rail operator's  
275 compensation to the department for future use of the department's  
276 rail corridor shall include a monetary contribution to the cost  
277 of such liability coverage for the sole benefit of the freight  
278 rail operator.

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



582890

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

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

296  
297 Neither the assumption by contract to protect, defend, indemnify,  
298 and hold harmless; the purchase of insurance; nor the  
299 establishment of a self-insurance retention fund shall be deemed  
300 to be a waiver of any defense of sovereign immunity for torts nor  
301 deemed to increase the limits of the department's or the  
302 governmental entity's liability for torts as provided in s.  
303 768.28. The requirements of s. 287.022(1) shall not apply to the  
304 purchase of any insurance hereunder. The provisions of this  
305 subsection shall apply and inure fully as to any other  
306 governmental entity providing commuter rail service and  
307 constructing, operating, maintaining, or managing a rail corridor  
308 on publicly owned right-of-way under contract by the governmental  
309 entity with the department or a governmental entity designated by  
310 the department.

311 (19)-(17) Exercise such other functions, powers, and duties  
312 in connection with the rail system plan as are necessary to  
313 develop a safe, efficient, and effective statewide transportation  
314 system.



582890

315 Section 4. Paragraph (d) of subsection (10) of section  
316 768.28, Florida Statutes, is amended to read:

317 768.28 Waiver of sovereign immunity in tort actions;  
318 recovery limits; limitation on attorney fees; statute of  
319 limitations; exclusions; indemnification; risk management  
320 programs.--

321 (10)

322 (d) For the purposes of this section, operators,  
323 dispatchers, and providers of security for rail services and rail  
324 facility maintenance providers in the South Florida Rail Corridor  
325 or the Central Florida Rail Corridor, or any of their employees  
326 or agents, performing such services under contract with and on  
327 behalf of the ~~South Florida Regional Transportation Authority or~~  
328 ~~the~~ Department of Transportation shall be considered agents of  
329 the state while acting within the scope of and pursuant to  
330 guidelines established in the said contract or by rule; provided,  
331 however, that the state, for itself, the Department of  
332 Transportation and such agents, hereby waives sovereign immunity  
333 for liability for torts within the limits of insurance and self  
334 insurance coverage provided for each rail corridor, which  
335 coverage shall not be less than 250 million dollars per year  
336 aggregate coverage per corridor with limits of not less than  
337 \$250,000 dollars per person and \$500,000 dollars per incident.

338  
339  
340 ===== T I T L E A M E N D M E N T =====

341 And the title is amended as follows:

342 Delete line(s) 2-3

343 and insert:



582890

344 | amending s. 212.0606, F.S.; providing for the imposition  
345 | by countywide referendum of an additional surcharge on the  
346 | lease or rental of a motor vehicle; providing the proceeds  
347 | of the surcharge to be transferred to the Local Option  
348 | Fuel Tax Trust Fund and used for the construction and  
349 | maintenance of commuter rail service facilities; providing  
350 | definitions relating to commuter rail service, rail  
351 | corridors, and railroad operation for purposes of the rail  
352 | program within the department; amending s. 341.302, F.S.;  
353 | authorizing the department to purchase specified property  
354 | for the purpose of implementing commuter rail  
355 | service; authorizing the department to assume certain  
356 | liability on a rail corridor; authorizing the department  
357 | to indemnify and hold harmless a railroad company when the  
358 | department acquires a rail corridor from the company;  
359 | providing allocation of risk; providing a specific cap on  
360 | the amount of the contractual duty for such  
361 | indemnification; authorizing the department to purchase  
362 | and provide insurance in relation to rail corridors;  
363 | authorizing marketing and promotional expenses; extending  
364 | provisions to other governmental entities providing  
365 | commuter rail service on public right-of-way; amending s.  
366 | 768.28, F.S.; expanding the list of entities considered  
367 | agents of the state; providing for construction in  
368 | relation to certain federal laws;