

By Senator Dockery

15-03582E-08

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1                   A bill to be entitled  
2           An act relating to railroads; amending s. 335.141, F.S.;  
3           requiring public railroad-highway grade crossings opened  
4           after a certain date to be maintained by the railroad  
5           company at its own expense; providing that certain  
6           responsibilities of a railroad company to maintain and  
7           inspect public railroad-highway grade signal crossings  
8           shall not be abrogated, transferred, or nullified by  
9           contract or administrative rule; directing the Department  
10          of Transportation to amend specified rules to delete the  
11          provision for department participation in the cost of  
12          maintaining grade crossing traffic control devices located  
13          on the State Highway System; creating s. 351.31, F.S.;  
14          providing authorization for governmental entities to  
15          access railroad real property adjoining public property as  
16          necessary to plan, facilitate, and complete road or  
17          highway construction, improvement, or repair projects,  
18          subject to specified procedures; prohibiting a railroad  
19          company from refusing such access; providing that entry  
20          pursuant to such authorization is not trespass; requiring  
21          the governmental entity or its agent to comply with laws  
22          and rules; limiting liability of the railroad company for  
23          conduct of the agent; providing procedures to be followed  
24          by the governmental entity prior to entry onto the  
25          railroad property; requiring notification; providing  
26          procedures for the railroad company to object; providing  
27          for filing of the objection in court; providing  
28          specifications for court review and findings; providing  
29          for compensation if the court finds that granting access

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30 would result in a taking; authorizing the court to order  
31 such conditions on granting access and certain limitations  
32 on activities as it deems necessary; providing that the  
33 railroad company may not condition access on the use of  
34 services provided by railroad company employees by  
35 contract, agreement, or otherwise; providing for  
36 applicability; providing an effective date.  
37

38 Be It Enacted by the Legislature of the State of Florida:  
39

40 Section 1. Subsection (2) of section 335.141, Florida  
41 Statutes, is amended to read:

42 335.141 Regulation of public railroad-highway grade  
43 crossings; reduction of hazards.--

44 (2) (a) The department, in cooperation with the several  
45 railroad companies operating in the state, shall develop and  
46 adopt a program for the expenditure of funds available for the  
47 construction of projects for the reduction of the hazards at  
48 public railroad-highway grade crossings. The department and the  
49 railroad companies are not liable for any action or omission in  
50 the development of such program or for the priority given to any  
51 crossing improvement.

52 (b) Every railroad company maintaining a public railroad-  
53 highway grade crossing shall, upon reasonable notice from the  
54 department, install, maintain, and operate at such grade crossing  
55 traffic control devices to provide motorists with warning of the  
56 approach of trains. The department shall base its notice on its  
57 adopted program for the reduction of hazards at such crossings  
58 and on construction efficiency considerations relating to the

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59 | geographical proximity of crossings included in such program. The  
60 | design of the grade crossing traffic control devices must be  
61 | approved by the department, and the cost of their purchase and  
62 | installation must be paid from the funds described in paragraph  
63 | (a).

64 |       (c) Any public railroad-highway grade crossing opened on or  
65 | after July 1, 1972, shall be maintained by the railroad company  
66 | at its own expense. Any public railroad-highway grade ~~railroad~~  
67 | crossing opened prior to July 1, 1972, shall be maintained by the  
68 | railroad company at its own expense, unless the maintenance has  
69 | been provided for in another manner by contractual agreement  
70 | entered into prior to October 1, 1982. If the railroad company  
71 | fails to maintain the crossing, the unit of government with  
72 | jurisdiction over the public road that is crossed, after  
73 | notifying the railroad company of the needed repairs and after  
74 | giving the company 30 days after the date of receipt of the  
75 | notice to make the repairs, shall proceed to make the repairs.  
76 | The cost of repairs shall thereupon become a lien upon the  
77 | railroad and its rolling stock, which lien shall be enforceable  
78 | by an ordinary suit at law. Any judgment rendered under this  
79 | paragraph shall include a reasonable attorney's fee. The  
80 | responsibility of a railroad company to comply with federal  
81 | requirements of maintenance and inspection of public railroad-  
82 | highway grade signal crossings and the public policy of the state  
83 | that such responsibility be carried out by the railroad company  
84 | at its own expense shall not be abrogated, transferred, or  
85 | nullified by contract or administrative rule.

86 |       (d) Prior to commencing the construction, rehabilitation,  
87 | or maintenance of the railroad grade or highway approaches at a

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88 public railroad-highway grade crossing, the railroad company or  
89 governmental entity initiating the work shall notify the other  
90 party in order to promote the coordination of activities and to  
91 ensure a safe crossing with smooth pavement transitions from the  
92 grade of the railroad to the highway approaches.

93 (e) The department shall amend rule 14-57.011(3)(a),  
94 Florida Administrative Code, to delete the provision for  
95 department participation in the cost of maintaining grade  
96 crossing traffic control devices located on the State Highway  
97 System.

98 Section 2. Section 351.31, Florida Statutes, is created to  
99 read:

100 351.31 Access to railroad property by government officials;  
101 conditions of access prohibited.--

102 (1) Subject to the procedure provided in subsection (5),  
103 access to railroad real property that is adjacent to, abutting,  
104 or intersecting public lands, roadways, or highways is authorized  
105 for governmental entities and their agents for all purposes  
106 necessary to plan, facilitate, and complete road or highway  
107 construction, improvement, or repair projects. The access  
108 authorized under this section shall apply during the period of  
109 time that the road or highway construction, improvement or repair  
110 project undertaken by or on behalf of the jurisdictional  
111 governmental entity is in progress. Access authorized under this  
112 section does not give authority to any governmental entity or its  
113 agent to destroy, injure, damage, or remove any private property  
114 belonging to the railroad or to make any physical improvements to  
115 or conduct any excavation of any real property belonging to the

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116 railroad without first obtaining written permission of the  
117 railroad company.

118 (2) No railroad company or railroad company representative  
119 shall refuse access to railroad real property authorized under  
120 subsection (1). Entry onto railroad property authorized by this  
121 section does not constitute trespass and neither governmental  
122 entities nor their agents shall be liable to arrest or to a civil  
123 action for trespass by reason of such entry.

124 (3) A governmental entity or its agent authorized to enter  
125 railroad property under this section shall do so in compliance  
126 with all federal, state, and local laws, as well as agency rules  
127 pertaining to premises security and other health and safety  
128 requirements applicable to such property.

129 (4) A railroad company is not liable to any third party for  
130 civil or criminal acts or damages that result from the negligent  
131 or intentional conduct of any agent of a governmental entity who  
132 is on railroad property under the authority granted under this  
133 section.

134 (5) (a) Prior to entry onto railroad property by a  
135 governmental entity or its agent pursuant to this section, the  
136 governmental entity must deliver to the railroad company written  
137 notice of its intended entry not less than 5 days before the date  
138 of entry. The notice must include:

139 1. The full name of each individual who is authorized to  
140 enter railroad property on its behalf as well as the name of his  
141 or her employer and immediate supervisor.

142 2. The name of the governmental entity on whose behalf the  
143 entering agents are acting.

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144       3. The location, size, and area of the property to which  
145 access will be required.

146       4. The name of the work project for which access is  
147 required.

148       5. The estimated time required for access.

149       6. A description of the work or other activity to be  
150 performed which makes access to railroad property necessary.

151       (b) Within 72 hours after delivery of the written notice, a  
152 railroad company may file an action stating its objection in the  
153 circuit court of the jurisdiction in which the railroad property  
154 to be accessed is located. If no objection is filed by the  
155 railroad company within 72 hours after delivery of the written  
156 notice, access as specified in the written notice is authorized.  
157 Upon receipt of an objection, the circuit court shall set a  
158 hearing to determine the basis for the objection. A timely filed  
159 objection shall suspend authority to access railroad property  
160 granted under this section for 10 days unless, before the end of  
161 the 10-day period, a hearing has been scheduled and a stay has  
162 been issued in which event authority to access the railroad  
163 property shall remain suspended pending resolution by order of  
164 the circuit court.

165       (c) At the hearing, the circuit court shall have for review  
166 the following issues:

167       1. Whether or not the access to railroad property is  
168 necessary in scope, duration, and purpose for the planning,  
169 facilitation, and completion of a road or highway construction,  
170 improvement, or repair project;

171       2. Whether or not the location of the property or the  
172 purpose for which entry is sought is of such a nature that denial

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173 of access is necessary to avoid a substantial risk of physical  
174 harm to persons or railroad property;

175 3. Whether or not, based on the description of the work or  
176 activity to be done on the property, access to the property for  
177 the work or activity described would be in violation of federal,  
178 state, or local laws or agency rules pertaining to premises  
179 security or other health and safety requirements applicable to  
180 such property;

181 4. Whether or not, based on the description of the work or  
182 activity to be done on the property, there is a reasonable  
183 probability that railroad property would be damaged, destroyed,  
184 injured, or removed or real property excavated without permission  
185 of the railroad company.

186 5. Whether or not, based on the description of the work or  
187 activity to be done on the property, the activity to be done  
188 would cause a substantial impairment of railroad operations. For  
189 purposes of this section "substantial impairment of railroad  
190 operations" means that it has been established by clear and  
191 convincing evidence that the granting of access for the purpose  
192 or activity intended would significantly delay or prevent the  
193 scheduled operation of any train, as defined in s. 341.301.

194 6. Whether or not granting the access requested would  
195 constitute a taking of property under the Fifth Amendment to the  
196 United States Constitution or s. 6, Art. X of the State  
197 Constitution.

198 a. In determining whether or not granting access to the  
199 property constitutes a taking, the court shall consider to what  
200 extent, if any, granting the requested access would:

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201       (I) Prevent the railroad from using the property for the  
202 purpose or in the manner in which it is ordinarily used; or

203       (II) Deprive the railroad of its beneficial use of the  
204 property at issue for the period of time access is granted.

205       b. If the court finds that granting access would result in  
206 a taking, the amount of compensation shall be limited to cover  
207 only the period of time for which access is authorized.

208       (d) At the hearing, the court may order such conditions on  
209 granting access to railroad property as it determines necessary  
210 to mitigate the risk of harm to persons or property, except that  
211 this section shall not be construed to authorize the court to  
212 require the governmental entity or its agent to procure the  
213 services of railroad employees as a condition of authorizing  
214 entry onto such property. In issuing its order, the court may  
215 limit the number of persons granted access and the duration of  
216 such access authorized under this section. In addition, the court  
217 may limit the activities which may be conducted on the railroad  
218 property as well as the time, place, and manner in which those  
219 activities are conducted.

220       (6) A railroad company may not compel or require the use of  
221 flagging or other services provided by railroad company employees  
222 by contract, agreement, or otherwise as a condition of allowing  
223 access to their property as authorized in subsection (1).

224       (7) This section does not authorize access to railroad  
225 property in violation of the requirements of federal law or to an  
226 employee of a railroad or a contractor to a railroad who is  
227 performing work within the definition of roadway worker as  
228 defined in 49 C.F.R. s. 214.7.



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229       (8) For purposes of this section "jurisdictional  
230 governmental entity" means any public body vested with the power  
231 to exercise eminent domain over the property for which access is  
232 sought.

233       Section 3. This act shall take effect July 1, 2008.