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LEGISLATIVE ACTION

Senate

.

House

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Floor: WD/3R

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05/01/2009 11:38 AM

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Senators Constantine and Ring moved the following:

1 **Senate Amendment to Amendment (728458) (with title**
2 **amendment)**

3
4 Delete line 1311

5 and insert:

6 Section 27. Effective upon this act becoming a law, section
7 341.301, Florida Statutes, is amended to read:

8 341.301 Definitions; ss. 341.302-341.303 ~~ss. 341.302 and~~
9 ~~341.303.~~—As used in ss. 341.302-341.303 ~~ss. 341.302 and 341.303,~~
10 the term:

11 (1) "Branch line continuance project" means a project that
12 involves branch line rehabilitation, new connecting track, rail



881550

13 banking, and other similar types of projects, including those
14 specifically identified in the federal Railroad Revitalization
15 and Regulatory Reform Act of 1976, and subsequent amendments to
16 that act.

17 (2) "Intercity rail transportation system" means the
18 network of railroad facilities used or available for interstate
19 and intrastate passenger and freight operations by railroads,
20 whether or not on a schedule or whether or not restricted.

21 (3) "Rail programs" means those programs administered by
22 the state or other governmental entities which involve projects
23 affecting the movement of people or goods by rail lines that
24 have been or will be constructed to serve freight or passenger
25 markets within a city or between cities.

26 (4) "Rail service development project" means a project
27 undertaken by a public agency to determine whether a new or
28 innovative technique or measure can be utilized to improve or
29 expand rail service. The duration of the project funding shall
30 be limited according to the type of project and in no case shall
31 exceed 3 years. Rail service development projects include those
32 projects and other actions undertaken to enhance railroad
33 operating efficiency or increased rail service, including
34 measures that result in improved speed profiles, operations, or
35 technological applications that lead to reductions in operating
36 costs and increases in productivity or service.

37 (5) "Railroad" or "rail system" means any common carrier
38 fixed-guideway transportation system such as the conventional
39 steel rail-supported, steel-wheeled system. The term does not
40 include a high-speed rail line developed by the Department of
41 Transportation pursuant to ss. 341.8201-341.842.



881550

42 (6) "Railroad capital improvement project" means a project
43 identified by the rail component of the Florida Transportation
44 Plan, which project involves the leasing, acquisition, design,
45 construction, reconstruction, or improvement to the existing
46 intercity rail transportation system or future segments thereof,
47 including such items as locomotives and other rolling stock,
48 tracks, terminals, and rights-of-way for the continuance or
49 expansion of rail service as necessary to ensure the continued
50 effectiveness of the state's rail facilities and systems in
51 meeting mobility and industrial development needs.

52 (7) "Train" means any locomotive engine that is powered by
53 diesel fuel, electricity, or other means, with or without cars
54 coupled thereto, and operated upon a railroad track or any other
55 form of fixed guideway, except that the term does not include a
56 light rail vehicle such as a streetcar or people mover.

57 (8) "Commuter rail passenger" or "passengers" means all
58 persons, ticketed or unticketed, using the commuter rail service
59 on a department-owned rail corridor:

60 (a) On board trains, locomotives, rail cars, or rail
61 equipment employed in commuter rail service or entraining and
62 detraining therefrom;

63 (b) On or about the rail corridor for any purpose related
64 to the commuter rail service, including, parking, inquiring
65 about commuter rail service, or purchasing tickets therefor, and
66 coming to, waiting for, leaving from, or observing trains,
67 locomotives, rail cars, or rail equipment; or

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

70 (9) "Commuter rail service" means the transportation of



881550

71 commuter rail passengers and other passengers by rail pursuant
72 to a rail program provided by the department or any other
73 governmental entities.

74 (10) "Rail corridor invitee" means all persons who are on
75 or about a department-owned rail corridor:

76 (a) For any purpose related to any ancillary development
77 thereon; or

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

80 (11) "Rail corridor" means a linear contiguous strip of
81 real property that is used for rail service. The term includes
82 the corridor and structures essential to railroad operations,
83 including the land, structures, improvements, rights-of-way,
84 easements, rail lines, rail beds, guideway structures, switches,
85 yards, parking facilities, power relays, switching houses, rail
86 stations, ancillary development, and any other facilities or
87 equipment used for the purposes of construction, operation, or
88 maintenance of a railroad that provides rail service.

89 (12) "Railroad operations" means the use of the rail
90 corridor to conduct commuter rail service, intercity rail
91 passenger service, or freight rail service.

92 (13) "Ancillary development" includes any lessee or
93 licensee of the department, including other governmental
94 entities, vendors, retailers, restaurateurs, or contract service
95 providers, within a department-owned rail corridor, except for
96 providers of commuter rail service, intercity rail passenger
97 service, or freight rail service.

98 (14) "Governmental entity" or "entities" has the same
99 meaning as provided in s. 11.45, including a "public agency" as



881550

100 defined in s. 163.01.

101 Section 28. Effective upon this act becoming a law, section
102 341.302, Florida Statutes, is amended to read:

103 341.302 Rail program, duties and responsibilities of the
104 department.—The department, in conjunction with other
105 governmental entities ~~units~~ and the private sector, shall
106 develop and implement a rail program of statewide application
107 designed to ensure the proper maintenance, safety,
108 revitalization, and expansion of the rail system to assure its
109 continued and increased availability to respond to statewide
110 mobility needs. Within the resources provided pursuant to
111 chapter 216, and as authorized under federal law Title 49 C.F.R.
112 ~~part 212~~, the department shall:

113 (1) Provide the overall leadership, coordination, and
114 financial and technical assistance necessary to assure the
115 effective responses of the state's rail system to current and
116 anticipated mobility needs.

117 (2) Promote and facilitate the implementation of advanced
118 rail systems, including high-speed rail and magnetic levitation
119 systems.

120 (3) Develop and periodically update the rail system plan,
121 on the basis of an analysis of statewide transportation needs.

122 (a) The plan may contain detailed regional components,
123 consistent with regional transportation plans, as needed to
124 ensure connectivity within the state's regions, and it shall be
125 consistent with the Florida Transportation Plan developed
126 pursuant to s. 339.155. The rail system plan shall include an
127 identification of priorities, programs, and funding levels
128 required to meet statewide and regional needs. The rail system



881550

129 plan shall be developed in a manner that will assure the maximum
130 use of existing facilities and the optimum integration and
131 coordination of the various modes of transportation, public and
132 private, in the most cost-effective manner possible. The rail
133 system plan shall be updated at least every 5 2 years and
134 include plans for both passenger rail service and freight rail
135 service, accompanied by a report to the Legislature regarding
136 the status of the plan.

137 (b) In recognition of the department's role in the
138 enhancement of the state's rail system to improve freight and
139 passenger mobility, the department shall:

140 1. Continue to work closely with all affected communities,
141 including, but not limited to, the City of Lakeland, the City of
142 Plant City, and Polk County, to identify and address anticipated
143 impacts associated with an increase in freight rail traffic;

144 2. In coordination with the affected local governments and
145 CSX Transportation, Inc., finalize all viable alternatives from
146 the department's Rail Traffic Evaluation Study to identify and
147 develop an alternative route for through-freight rail traffic
148 moving through Central Florida, including Polk and Hillsborough
149 Counties. Following the completion of the department's
150 alternative rail traffic evaluation, the department shall begin
151 a project development and environmental study that must be
152 reviewed and approved by appropriate federal agencies so that a
153 preferred alternative can be identified which minimizes the
154 impacts associated with freight rail movements along the
155 corridor. This preferred alternative shall become the basis for
156 future development of this freight rail corridor and, with a
157 priority ranking from the Polk Transportation Planning



881550

158 Organization, or its successor, shall be programmed for funding
159 in the department's work program in a fiscal year no later than
160 10 years from commencement of construction of the CSX Integrated
161 Logistics Center; and

162 3. Provide technical assistance to a coalition of local
163 governments in Central Florida, including the counties of
164 Brevard, Citrus, Hernando, Hillsborough, Lake, Marion, Orange,
165 Osceola, Pasco, Pinellas, Polk, Manatee, Sarasota, Seminole,
166 Sumter, and Volusia, and the municipalities within those
167 counties, to develop a regional rail system plan that addresses
168 passenger and freight opportunities in the region, is consistent
169 with the Florida Rail System Plan, and incorporates appropriate
170 elements of the Tampa Bay Area Regional Authority Master Plan,
171 the Metroplan Orlando Regional Transit System Concept Plan,
172 including the Sunrail project, and the Florida Department of
173 Transportation Alternate Rail Traffic Evaluation.

174 (4) As part of the work program of the department,
175 formulate a specific program of projects and financing to
176 respond to identified railroad needs.

177 (5) Provide technical and financial assistance to units of
178 local government to address identified rail transportation
179 needs.

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

183 (7) Develop and administer state standards concerning the
184 safety and performance of rail systems, hazardous material
185 handling, and operations. Such standards shall be developed
186 jointly with representatives of affected rail systems, with full



881550

187 consideration given to nationwide industry norms, and shall
188 define the minimum acceptable standards for safety and
189 performance.

190 (8) Conduct, at a minimum, inspections of track and rolling
191 stock; train signals and related equipment; hazardous materials
192 transportation, including the loading, unloading, and labeling
193 of hazardous materials at shippers', receivers', and transfer
194 points; and train operating practices to determine adherence to
195 state and federal standards. Department personnel may enforce
196 any safety regulation issued under the Federal Government's
197 preemptive authority over interstate commerce.

198 (9) Assess penalties, in accordance with the applicable
199 federal regulations, for the failure to adhere to the state
200 standards.

201 (10) Administer rail operating and construction programs,
202 which programs shall include the regulation of maximum train
203 operating speeds, the opening and closing of public grade
204 crossings, the construction and rehabilitation of public grade
205 crossings, and the installation of traffic control devices at
206 public grade crossings, the administering of the programs by the
207 department including participation in the cost of the programs.

208 (11) Coordinate and facilitate the relocation of railroads
209 from congested urban areas to nonurban areas when relocation has
210 been determined feasible and desirable from the standpoint of
211 safety, operational efficiency, and economics.

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



881550

- 216 (13) Provide new rail service and equipment when:
217 (a) Pursuant to the transportation planning process, a
218 public need has been determined to exist;
219 (b) The cost of providing such service does not exceed the
220 sum of revenues from fares charged to users, services purchased
221 by other public agencies, local fund participation, and specific
222 legislative appropriation for this purpose; and
223 (c) Service cannot be reasonably provided by other
224 governmental or privately owned rail systems.
225
226 The department may own, lease, and otherwise encumber
227 facilities, equipment, and appurtenances thereto, as necessary
228 to provide new rail services; or the department may provide such
229 service by contracts with privately owned service providers.
230 (14) Furnish required emergency rail transportation service
231 if no other private or public rail transportation operation is
232 available to supply the required service and such service is
233 clearly in the best interest of the people in the communities
234 being served. Such emergency service may be furnished through
235 contractual arrangement, actual operation of state-owned
236 equipment and facilities, or any other means determined
237 appropriate by the secretary.
238 (15) Assist in the development and implementation of
239 marketing programs for rail services and of information systems
240 directed toward assisting rail systems users.
241 (16) Conduct research into innovative or potentially
242 effective rail technologies and methods and maintain expertise
243 in state-of-the-art rail developments.
244 (17) In conjunction with the acquisition, ownership,



881550

245 construction, operation, maintenance, and management of a rail
246 corridor, have the authority to:

247 (a) Assume the obligation by contract to forever protect,
248 defend, indemnify, and hold harmless the freight rail operator,
249 or its successors, from whom the department has acquired a real
250 property interest in the rail corridor, and that freight rail
251 operator's officers, agents, and employees, from and against any
252 liability, cost, and expense, including, but not limited to,
253 commuter rail passengers, rail corridor invitees, and
254 trespassers in the rail corridor, regardless of whether the
255 loss, damage, destruction, injury, or death giving rise to any
256 such liability, cost, or expense is caused in whole or in part,
257 and to whatever nature or degree, by the fault, failure,
258 negligence, misconduct, nonfeasance, or misfeasance of such
259 freight rail operator, its successors, or its officers, agents,
260 and employees, or any other person or persons whomsoever,
261 provided that such assumption of liability of the department by
262 contract shall not in any instance exceed the following
263 parameters of allocation of risk:

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

268 2. When only one train is involved in an incident, the
269 department may be solely responsible for any loss, injury, or
270 damage if the train is a department train or other train
271 pursuant to subparagraph 3., but only if in an instance when
272 only a freight rail operator train is involved, the freight rail
273 operator is solely responsible for any loss, injury, or damage,



881550

274 except for commuter rail passengers, rail corridor invitees, and
275 trespassers, and the freight rail operator is solely responsible
276 for its property and all of its people in any instance when its
277 train is involved in an incident.

278 3. For the purposes of this subsection, any train involved
279 in an incident that is neither the department's train nor the
280 freight rail operator's train, hereinafter referred to in this
281 subsection as an "other train," may be treated as a department
282 train, solely for purposes of any allocation of liability
283 between the department and the freight rail operator only, but
284 only if the department and the freight rail operator share
285 responsibility equally as to third parties outside the rail
286 corridor who incur loss, injury, or damage as a result of any
287 incident involving both a department train and a freight rail
288 operator train, and the allocation as between the department and
289 the freight rail operator, regardless of whether the other train
290 is treated as a department train, shall remain one-half each as
291 to third parties outside the rail corridor who incur loss,
292 injury, or damage as a result of the incident. The involvement
293 of any other train shall not alter the sharing of equal
294 responsibility as to third parties outside the rail corridor who
295 incur loss, injury, or damage as a result of the incident.

296 4. When more than one train is involved in an incident:
297 a. If only a department train and freight rail operator's
298 train, or only another train as described in subparagraph 3. and
299 a freight rail operator's train, are involved in an incident,
300 the department may be responsible for its property and all of
301 its people, all commuter rail passengers, rail corridor
302 invitees, and trespassers, but only if the freight rail operator



881550

303 is responsible for its property and all of its people, and the
304 department and the freight rail operator each share one-half
305 responsibility as to third parties outside the rail corridor who
306 incur loss, injury, or damage as a result of the incident.

307 b. If a department train, a freight rail operator train,
308 and any other train are involved in an incident, the allocation
309 of liability between the department and the freight rail
310 operator, regardless of whether the other train is treated as a
311 department train, shall remain one-half each as to third parties
312 outside the rail corridor who incur loss, injury, or damage as a
313 result of the incident. The involvement of any other train shall
314 not alter the sharing of equal responsibility as to third
315 parties outside the rail corridor who incur loss, injury, or
316 damage as a result of the incident, and, if the owner, operator,
317 or insurer of the other train makes any payment to injured third
318 parties outside the rail corridor who incur loss, injury, or
319 damage as a result of the incident, the allocation of credit
320 between the department and the freight rail operator as to such
321 payment shall not in any case reduce the freight rail operator's
322 third-party-sharing allocation of one-half under this paragraph
323 to less than one-third of the total third-party liability.

324 5. Any such contractual duty to protect, defend, indemnify,
325 and hold harmless such a freight rail operator shall expressly
326 include a specific cap on the amount of the contractual duty,
327 which amount shall not exceed \$200 million without prior
328 legislative approval, and the department shall purchase
329 liability insurance and establish a self-insurance retention
330 fund in the amount of the specific cap established under this
331 subparagraph, provided that:



881550

332 a. No such contractual duty shall in any case be effective
333 or otherwise extend the department's liability in scope and
334 effect beyond the contractual liability insurance and self-
335 insurance retention fund required pursuant to this paragraph;
336 and

337 b. The freight rail operator's compensation to the
338 department for future use of the department's rail corridor
339 shall include a monetary contribution to the cost of such
340 liability coverage for the sole benefit of the freight rail
341 operator.

342 (b) Purchase liability insurance, which amount shall not
343 exceed \$200 million, and establish a self-insurance retention
344 fund for the purpose of paying the deductible limit established
345 in the insurance policies it may obtain, including coverage for
346 the department, any freight rail operator as described in
347 paragraph (a), commuter rail service providers, governmental
348 entities, or ancillary development. The insureds shall pay a
349 reasonable monetary contribution to the cost of such liability
350 coverage for the sole benefit of the insured. Such insurance and
351 self-insurance retention fund may provide coverage for all
352 damages, including, but not limited to, compensatory, special,
353 and exemplary, and be maintained to provide an adequate fund to
354 cover claims and liabilities for loss, injury, or damage arising
355 out of or connected with the ownership, operation, maintenance,
356 and management of a rail corridor.

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

359
360 Neither the assumption by contract to protect, defend,



881550

361 indemnify, and hold harmless; the purchase of insurance; nor the
362 establishment of a self-insurance retention fund shall be deemed
363 to be a waiver of any defense of sovereign immunity for torts
364 nor deemed to increase the limits of the department's or the
365 governmental entity's liability for torts as provided in s.
366 768.28. The requirements of s. 287.022(1) shall not apply to the
367 purchase of any insurance hereunder. The provisions of this
368 subsection shall apply and inure fully as to any other
369 governmental entity providing commuter rail service and
370 constructing, operating, maintaining, or managing a rail
371 corridor on publicly owned right-of-way under contract by the
372 governmental entity with the department or a governmental entity
373 designated by the department. Notwithstanding any law to the
374 contrary, procurement for the construction, operation,
375 maintenance, and management of any rail corridor described in
376 this subsection, whether by the department, a governmental
377 entity under contract with the department, or a governmental
378 entity designated by the department, shall be pursuant to s.
379 287.057 and shall include, but not be limited to, criteria for
380 the consideration of qualifications, technical aspects of the
381 proposal, and price. Further, any such contract for design-build
382 shall be procured pursuant to the criteria in s. 337.11(7).

383 (18)-(17) Exercise such other functions, powers, and duties
384 in connection with the rail system plan as are necessary to
385 develop a safe, efficient, and effective statewide
386 transportation system.

387 Section 29. Effective upon this act becoming a law, the
388 Department of Transportation may complete an escrowed closing on
389 the pending Central Florida Rail Corridor acquisition; however,



881550

390 the drawdown of such escrowed closing shall not occur unless and
391 until final Federal Transit Administration full-funding grant
392 agreement approval is obtained for the proposed Central Florida
393 Commuter Rail Transit Project Initial Operating Segment.

394 Section 30. Effective upon this act becoming a law,
395 subsection (1) of section 212.0606, Florida Statutes, is amended
396 to read:

397 212.0606 Rental car surcharge.—

398 (1) (a) A surcharge of \$2.00 per day or any part of a day is
399 imposed upon the lease or rental of a motor vehicle licensed for
400 hire and designed to carry less than nine passengers regardless
401 of whether such motor vehicle is licensed in Florida. The
402 surcharge applies to only the first 30 days of the term of any
403 lease or rental. The surcharge is subject to all applicable
404 taxes imposed by this chapter.

405 (b) A county with a population of at least 1,250,000 and at
406 least 25 municipalities may impose a county surcharge of \$2 per
407 day or any part of a day upon the lease or rental of a motor
408 vehicle licensed for hire and designed to carry fewer than nine
409 passengers, regardless of whether such motor vehicle is licensed
410 in Florida. The county surcharge applies to only the first 30
411 days of the term of any lease or rental. The county surcharge is
412 subject to all applicable taxes imposed by this chapter. The
413 county surcharge is subject to the following conditions:

414 1. The county surcharge may be used solely to fund the
415 transportation needs of the county as determined by the county
416 commission.

417 2. The county surcharge may be imposed only by a super
418 majority vote of the county commission.



881550

419 3. The county commission shall, by a super majority vote at
420 the same meeting at which the county surcharge was authorized,
421 also designate the account or fund into which the proceeds from
422 the county surcharge shall be deposited.

423 4. All funds collected from the county surcharge shall be
424 deposited into the designated account or fund, subject to the
425 applicable taxes imposed by this chapter.

426 5. Funds deposited into the account or fund must be used
427 solely for the purpose of funding transportation needs as
428 determined by the county commission.

429 6. After the county commission votes to impose a county
430 surcharge, the county surcharge shall be applied on the first
431 day of the month following the vote.

432 7. The authority to impose the county surcharge approved by
433 the county commission is effective immediately after the vote
434 and is valid until the next business day following the 2014
435 general election.

436 8. The county commission that approved the county surcharge
437 shall cause the question to be placed on the ballot for a vote
438 by the electors of that county on or before the 2014 general
439 election.

440 9. If a majority of the voters of the county vote in favor
441 of the referendum approving the continuation of the county
442 surcharge, the surcharge continues to be valid.

443 10. If a majority of the voters of the county vote against
444 the referendum approving the continuation of the county
445 surcharge, the county surcharge shall cease to be effective on
446 the next business day following the election.

447 Section 31. Except as otherwise expressly provided in this



881550

448 act and except for this section, which shall take effect upon
449 becoming a law, this act shall take effect July 1, 2009.

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451

452 ===== T I T L E A M E N D M E N T =====

453 And the title is amended as follows:

454 Delete line 1428

455 and insert:

456 Regional Transportation Authority; amending s.
457 341.301, F.S.; providing definitions relating to
458 commuter rail service, rail corridors, and railroad
459 operation for purposes of the rail program within the
460 Department of Transportation; amending s. 341.302,
461 F.S.; revising certain citations; revising the time
462 period within which the department must revise the
463 rail system plan and requiring a report; providing
464 additional duties for the department relating to a
465 regional rail system plan; authorizing the department
466 to assume certain liability on a rail corridor;
467 authorizing the department to indemnify and hold
468 harmless a railroad company when the department
469 acquires a rail corridor from the company; providing
470 allocation of risk; providing a specific cap on the
471 amount of the contractual duty for such
472 indemnification; authorizing the department to
473 purchase and provide insurance in relation to rail
474 corridors; authorizing marketing and promotional
475 expenses; extending provisions to other governmental
476 entities providing commuter rail service on public



881550

477 right-of-way; prescribing procurement requirements and
478 criteria related to a rail corridor; authorizing an
479 escrowed closing of the pending Central Florida Rail
480 Corridor acquisition; amending s. 212.0606, F.S.;
481 authorizing certain counties to impose a county
482 surcharge upon the lease or rental of a motor vehicle
483 licensed for hire; requiring that the county surcharge
484 be used solely to fund the transportation needs of the
485 county as determined by the county commission;
486 requiring the county commission to place the county
487 surcharge on the ballot for a vote by the electors;
488 providing effective dates.