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LEGISLATIVE ACTION

Senate

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House

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Senator Bullard moved the following:

1           **Senate Substitute for Amendment (337392) to Amendment (with**  
2 **title 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



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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.



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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



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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



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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



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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



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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



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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.





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- 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,



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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,



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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



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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:



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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,



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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.

374 (18)-(17) Exercise such other functions, powers, and duties  
375 in connection with the rail system plan as are necessary to  
376 develop a safe, efficient, and effective statewide  
377 transportation system.

378 Section 29. Effective upon this act becoming a law, the  
379 Department of Transportation may complete an escrowed closing on  
380 the pending Central Florida Rail Corridor acquisition; however,  
381 the drawdown of such escrowed closing shall not occur unless and  
382 until final Federal Transit Administration full-funding grant  
383 agreement approval is obtained for the proposed Central Florida  
384 Commuter Rail Transit Project Initial Operating Segment.

385 Section 30. The Central Florida Commuter Rail Commission or  
386 "Sunrail" shall hire qualified, safety-sensitive employees. At  
387 least 75 percent of the employees must live and work in the  
388 state at the time they are hired.

389 Section 31. Effective upon this act becoming a law,



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390 subsection (1) of section 212.0606, Florida Statutes, is amended  
391 to read:

392 212.0606 Rental car surcharge.—

393 (1) (a) A surcharge of \$2 ~~\$2.00~~ per day or any part of a day  
394 is imposed upon the lease or rental of a motor vehicle licensed  
395 for hire and designed to carry less than nine passengers  
396 regardless of whether such motor vehicle is licensed in Florida.  
397 The surcharge applies to only the first 30 days of the term of  
398 any lease or rental. The surcharge is subject to all applicable  
399 taxes imposed by this chapter.

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

409 1. The county surcharge may be used solely to fund the  
410 transportation needs of the county as determined by the county  
411 commission.

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

414 3. The county commission shall, by a super majority vote at  
415 the same meeting at which the county surcharge was authorized,  
416 also designate the account or fund into which the proceeds from  
417 the county surcharge shall be deposited.

418 4. All funds collected from the county surcharge shall be



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419 deposited into the designated account or fund, subject to the  
420 applicable taxes imposed by this chapter.

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

424 6. After the county commission votes to impose a county  
425 surchARGE, the county surcharge shall be applied on the first  
426 day of the month following the vote.

427 7. The authority to impose the county surcharge approved by  
428 the county commission is effective immediately after the vote  
429 and is valid until the next business day following the 2010  
430 general election.

431 8. The county commission that approved the county surcharge  
432 shall cause the question to be placed on the ballot for a vote  
433 by the electors of that county on or before the 2010 general  
434 election.

435 9. If a majority of the voters of the county vote in favor  
436 of the referendum approving the continuation of the county  
437 surchARGE, the surcharge continues to be valid.

438 10. If a majority of the voters of the county vote against  
439 the referendum approving the continuation of the county  
440 surchARGE, the county surcharge shall cease to be effective on  
441 the next business day following the election.

442 11. Notwithstanding subparagraph 7., if a majority of the  
443 voters of the county vote against continuation of the surcharge  
444 as provided in subparagraph 10., the county commission may,  
445 within 6 months after the election and by a super majority vote  
446 of the commission, impose the surcharge authorized by this  
447 section without causing the question to be placed again on





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448 ballot for a vote by the electors.

449 Section 32. Except as otherwise expressly provided in this  
450 act and except for this section, which shall take effect upon  
451 becoming a law, this act shall take effect July 1, 2009.

452

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

454 And the title is amended as follows:

455 Delete line 1428

456 and insert:

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



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477 entities providing commuter rail service on public  
478 right-of-way; authorizing an escrowed closing of the  
479 pending Central Florida Rail Corridor acquisition;  
480 requiring that the Central Florida Commuter Rail  
481 Commission or Sunrail hire qualified, safety-sensitive  
482 employees, at least 75 percent of whom must currently  
483 live and work in the state; amending s. 212.0606,  
484 F.S.; authorizing a county to impose a county  
485 surcharge upon the lease or rental of a motor vehicle  
486 licensed for hire; requiring that the county surcharge  
487 may be used solely to fund the transportation needs of  
488 the county as determined by the county commission;  
489 requiring the county commission to place the county  
490 surcharge on the ballot for a vote by the electors;  
491 prescribing a process by which the county may impose  
492 the surcharge after the electors vote against  
493 continuation of the surcharge; providing effective  
494 dates.