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LEGISLATIVE ACTION

| Senate      | . | House |
|-------------|---|-------|
| Comm: UNFAV | . |       |
| 04/20/2009  | . |       |
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The Committee on Transportation and Economic Development Appropriations (Dockery) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Section 341.301, Florida Statutes, is amended to read:

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

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



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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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99 defined in s. 163.01.

100 Section 2. Section 341.302, Florida Statutes, is amended to  
101 read:

102 341.302 Rail program, duties and responsibilities of the  
103 department.—The department, in conjunction with other  
104 governmental entities ~~units~~ and the private sector, shall  
105 develop and implement a rail program of statewide application  
106 designed to ensure the proper maintenance, safety,  
107 revitalization, and expansion of the rail system to assure its  
108 continued and increased availability to respond to statewide  
109 mobility needs. Within the resources provided pursuant to  
110 chapter 216, and as authorized under federal law ~~Title 49 C.F.R.~~  
111 ~~part 212~~, the department shall:

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

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

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

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



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

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

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

143 2. In coordination with the affected local governments and  
144 CSX Transportation, Inc., finalize all viable alternatives from  
145 the department's Rail Traffic Evaluation Study to identify and  
146 develop an alternative route for through-freight rail traffic  
147 moving through Central Florida, including Polk and Hillsborough  
148 Counties. Following the completion of the department's  
149 alternative rail traffic evaluation, the department shall begin  
150 a project development and environmental study that must be  
151 reviewed and approved by appropriate federal agencies so that a  
152 preferred alternative can be identified which minimizes the  
153 impacts associated with freight rail movements along the  
154 corridor. This preferred alternative shall become the basis for  
155 future development of this freight rail corridor and shall be  
156 prioritized for funding in the department's work program no



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157 later than 10 years following commencement of construction of  
158 the CSX Integrated Logistics Center; and

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

171 (4) As part of the work program of the department,  
172 formulate a specific program of projects and financing to  
173 respond to identified railroad needs.

174 (5) Provide technical and financial assistance to units of  
175 local government to address identified rail transportation  
176 needs.

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

180 (7) Develop and administer state standards concerning the  
181 safety and performance of rail systems, hazardous material  
182 handling, and operations. Such standards shall be developed  
183 jointly with representatives of affected rail systems, with full  
184 consideration given to nationwide industry norms, and shall  
185 define the minimum acceptable standards for safety and



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186 performance.

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

195 (9) Assess penalties, in accordance with the applicable  
196 federal regulations, for the failure to adhere to the state  
197 standards.

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

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

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

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

214 (a) Pursuant to the transportation planning process, a



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215 public need has been determined to exist;

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

220 (c) Service cannot be reasonably provided by other  
221 governmental or privately owned rail systems.  
222

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

227 (14) Furnish required emergency rail transportation service  
228 if no other private or public rail transportation operation is  
229 available to supply the required service and such service is  
230 clearly in the best interest of the people in the communities  
231 being served. Such emergency service may be furnished through  
232 contractual arrangement, actual operation of state-owned  
233 equipment and facilities, or any other means determined  
234 appropriate by the secretary.

235 (15) Assist in the development and implementation of  
236 marketing programs for rail services and of information systems  
237 directed toward assisting rail systems users.

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

241 (17) In conjunction with the acquisition, ownership,  
242 construction, operation, maintenance, and management of a rail  
243 corridor, have the authority to:



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

260       1. The department may be solely responsible for any loss,  
261 injury, or damage to commuter rail passengers, or rail corridor  
262 invitees, regardless of circumstances or cause, subject to  
263 subparagraphs 2., 3., and 4.

264       2. When only one train is involved in an incident, the  
265 department may be solely responsible for any loss, injury, or  
266 damage if the train is a department train or other train  
267 pursuant to subparagraph 3. In an instance when only a freight  
268 rail operator train is involved, the freight rail operator is  
269 solely responsible for any loss, injury, or damage, except for  
270 commuter rail passengers and rail corridor invitees, and the  
271 freight rail operator is solely responsible for its property,  
272 all of its people, all rail crossings, and people who are



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273 neither commuter rail passengers or rail corridor invitees in  
274 any instance when its train is involved in an incident.

275 3. For the purposes of this subsection, any train involved  
276 in an incident that is neither the department's train nor the  
277 freight rail operator's train, hereinafter referred to in this  
278 subsection as an "other train," for the purposes of allocating  
279 liability.

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

281 a. If only a department train and freight rail operator's  
282 train, or only another train as described in subparagraph 3. and  
283 a freight rail operator's train, are involved in an incident,  
284 the department may be responsible for its property and all of  
285 its people, all commuter rail passengers, and rail corridor  
286 invitees, but only if the freight rail operator is responsible  
287 for its property and all of its people, and the department and  
288 the freight rail operator share responsibility one-half each as  
289 to third parties outside the rail corridor who incur loss,  
290 injury, or damage as a result of the incident.

291 b. If a department train, a freight rail operator train,  
292 and any other train are involved in an incident, the allocation  
293 of liability between the department and the freight rail  
294 operator, regardless of whether the other train is treated as a  
295 department train, shall remain one-half each as to third parties  
296 outside the rail corridor who incur loss, injury, or damage as a  
297 result of the incident; the involvement of any other train shall  
298 not alter the sharing of equal responsibility as to third  
299 parties outside the rail corridor who incur loss, injury, or  
300 damage as a result of the incident; and, if the owner, operator,  
301 or insurer of the other train makes any payment to injured third



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302 parties outside the rail corridor who incur loss, injury, or  
303 damage as a result of the incident, the allocation of credit  
304 between the department and the freight rail operator as to such  
305 payment shall not in any case reduce the freight rail operator's  
306 third-party-sharing allocation of one-half under this paragraph  
307 to less than one-third of the total third party liability.

308 5. Any such contractual duty to protect, defend, indemnify,  
309 and hold harmless such a freight rail operator shall expressly  
310 include a specific cap on the amount of the contractual duty,  
311 which amount shall not exceed \$200 million without prior  
312 legislative approval; require the department to purchase  
313 liability insurance and establish a self-insurance retention  
314 fund in the amount of the specific cap established under this  
315 paragraph; provided that no such contractual duty shall in any  
316 case be effective nor otherwise extend the department's  
317 liability in scope and effect beyond the contractual liability  
318 insurance and self-insurance retention fund required pursuant to  
319 this paragraph; and provided that the freight rail operator's  
320 compensation to the department for future use of the  
321 department's rail corridor shall include a monetary contribution  
322 to the cost of such liability coverage for the sole benefit of  
323 the freight rail operator.

324 (b) Purchase liability insurance, which amount shall not  
325 exceed \$200 million per contract authorized under paragraph (a)  
326 and which amount shall be at least equal to the amount of the  
327 indemnification obligation for each contract authorized under  
328 paragraph (a) and establish a self-insurance retention fund for  
329 the purpose of paying the deductible limit established in the  
330 insurance policies it may obtain, including coverage for the



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331 department, any freight rail operator as described in paragraph  
332 (a), commuter rail service providers, governmental entities, or  
333 ancillary development; however, the insureds shall pay a  
334 reasonable monetary contribution to the cost of such liability  
335 coverage for the sole benefit of the insured. Such insurance and  
336 self-insurance retention fund may provide coverage for all  
337 damages, including, but not limited to, compensatory and  
338 special, and be maintained to provide an adequate fund to cover  
339 claims and liabilities for loss, injury, or damage arising out  
340 of or connected with the ownership, operation, maintenance, and  
341 management of a rail corridor.

342  
343 Neither the assumption by contract to protect, defend,  
344 indemnify, and hold harmless; the purchase of insurance; nor the  
345 establishment of a self-insurance retention fund shall be deemed  
346 to be a waiver of any defense of sovereign immunity for torts  
347 nor deemed to increase the limits of the department's or the  
348 governmental entity's liability for torts as provided in s.  
349 768.28. The provisions of this subsection shall apply and inure  
350 fully as to any other governmental entity providing commuter  
351 rail service and constructing, operating, maintaining, or  
352 managing a rail corridor on publicly owned right-of-way under  
353 contract by the governmental entity with the department or a  
354 governmental entity designated by the department. The assumption  
355 by contract to protect, defend, indemnify, and hold harmless  
356 shall take effect whenever the department's physical and on-site  
357 train activities begin.

358 (c) The department shall have no indemnification  
359 obligations to any freight rail operator or third party for any



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360 exemplary damages awarded against such freight rail operator or  
361 third party attributable to the conduct of the freight rail  
362 operator or third party.

363 (d) Notwithstanding any other provision in this section,  
364 the department shall have no indemnification obligations to any  
365 freight rail operator or third party until such time that  
366 commuter rail is operating in the rail corridor.

367 (18)~~(17)~~ Exercise such other functions, powers, and duties  
368 in connection with the rail system plan as are necessary to  
369 develop a safe, efficient, and effective statewide  
370 transportation system.

371 Section 4. (1) The Department of Transportation may not  
372 guarantee funding for the operation or maintenance of any  
373 commuter rail corridor or system without specific and discreet  
374 legislative authorization. The guarantee may not be a part of  
375 any other subject matter bill or legislative package.

376 (2) The Department of Transportation may not support any  
377 new commuter rail corridor otherwise authorized by the  
378 department until federal, state, and local governments have  
379 established a dedicated funding source to pay for the corridor  
380 and the associated operation and maintenance of a commuter rail  
381 system.

382 Section 5. This act shall take effect upon becoming a law.

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384  
385 ===== T I T L E A M E N D M E N T =====

386 And the title is amended as follows:

387  
388 Delete everything before the enacting clause



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389 and insert:

390                   A bill to be entitled  
391           An act relating to public transit; amending s.  
392           341.301, F.S.; providing definitions relating to  
393           commuter rail service, rail corridors, and railroad  
394           operation for purposes of the rail program within the  
395           Department of Transportation; amending s. 341.302,  
396           F.S.; revising certain citations; revising the time  
397           period within which the department must revise the  
398           rail system plan and requiring a report; providing  
399           additional duties for the department relating to a  
400           regional rail system plan; authorizing the department  
401           to assume certain liability on a rail corridor;  
402           authorizing the department to indemnify and hold  
403           harmless a railroad company when the department  
404           acquires a rail corridor from the company; providing  
405           allocation of risk; providing a specific cap on the  
406           amount of the contractual duty for such  
407           indemnification; authorizing the department to  
408           purchase and provide insurance in relation to rail  
409           corridors; extending provisions to other governmental  
410           entities providing commuter rail service on public  
411           right-of-way; designating certain persons as agents of  
412           the state while acting within the scope of and  
413           pursuant to guidelines established in the contract or  
414           by rule; prohibiting the Department of Transportation  
415           from guaranteeing funding for the operation or  
416           maintenance of any commuter rail corridor or system  
417           without specific and discreet legislative



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418 authorization; prohibiting the Department of  
419 Transportation from supporting any new commuter rail  
420 corridor otherwise authorized by the department until  
421 federal, state, and local governments have established  
422 a dedicated funding source to pay for the corridor and  
423 the associated operation and maintenance of a commuter  
424 rail system; providing an effective date.