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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/15/2009	.	
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The Committee on Transportation and Economic Development Appropriations (Gardiner and Diaz de la Portilla) recommended the following:

1 **Senate Substitute for Amendment (939008) (with title**
2 **amendment)**

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5
6 Delete everything after the enacting clause
7 and insert:

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

10 341.301 Definitions; ss. 341.302-341.303 ~~ss. 341.302 and~~



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11 ~~341.303.~~—As used in ss. 341.302-341.303 ~~ss. 341.302 and 341.303,~~
12 the term:

13 (1) "Branch line continuance project" means a project that
14 involves branch line rehabilitation, new connecting track, rail
15 banking, and other similar types of projects, including those
16 specifically identified in the federal Railroad Revitalization
17 and Regulatory Reform Act of 1976, and subsequent amendments to
18 that act.

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

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

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

39 (5) "Railroad" or "rail system" means any common carrier



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40 fixed-guideway transportation system such as the conventional
41 steel rail-supported, steel-wheeled system. The term does not
42 include a high-speed rail line developed by the Department of
43 Transportation pursuant to ss. 341.8201-341.842.

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

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

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

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

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



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69 locomotives, rail cars, or rail equipment; or

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

72 (9) "Commuter rail service" means the transportation of
73 commuter rail passengers and other passengers by rail pursuant
74 to a rail program provided by the department or any other
75 governmental entities.

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

78 (a) For any purpose related to any ancillary development
79 thereon; or

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

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

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

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



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98 providers of commuter rail service, intercity rail passenger
99 service, or freight rail service.

100 (14) "Governmental entity" or "entities" has the same
101 meaning as provided in s. 11.45, including a "public agency" as
102 defined in s. 163.01.

103 Section 2. Section 341.302, Florida Statutes, is amended to
104 read:

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

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

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

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

124 (a) The plan may contain detailed regional components,
125 consistent with regional transportation plans, as needed to
126 ensure connectivity within the state's regions, and it shall be



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127 consistent with the Florida Transportation Plan developed
128 pursuant to s. 339.155. The rail system plan shall include an
129 identification of priorities, programs, and funding levels
130 required to meet statewide and regional needs. The rail system
131 plan shall be developed in a manner that will assure the maximum
132 use of existing facilities and the optimum integration and
133 coordination of the various modes of transportation, public and
134 private, in the most cost-effective manner possible. The rail
135 system plan shall be updated at least every 5 2 years and
136 include plans for both passenger rail service and freight rail
137 service, accompanied by a report to the Legislature regarding
138 the status of the plan.

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

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

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



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156 impacts associated with freight rail movements along the
157 corridor. This preferred alternative shall become the basis for
158 future development of this freight rail corridor and, with a
159 priority ranking from the Polk Transportation Planning
160 Organization, or its successor, shall be programmed for funding
161 in the department's work program in a fiscal year no later than
162 10 years from commencement of construction of the CSX Integrated
163 Logistics Center; and

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

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

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

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



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185 (7) Develop and administer state standards concerning the
186 safety and performance of rail systems, hazardous material
187 handling, and operations. Such standards shall be developed
188 jointly with representatives of affected rail systems, with full
189 consideration given to nationwide industry norms, and shall
190 define the minimum acceptable standards for safety and
191 performance.

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

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

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

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



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

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

219 (a) Pursuant to the transportation planning process, a
220 public need has been determined to exist;

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

225 (c) Service cannot be reasonably provided by other
226 governmental or privately owned rail systems.

227
228 The department may own, lease, and otherwise encumber
229 facilities, equipment, and appurtenances thereto, as necessary
230 to provide new rail services; or the department may provide such
231 service by contracts with privately owned service providers.

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

240 (15) Assist in the development and implementation of
241 marketing programs for rail services and of information systems
242 directed toward assisting rail systems users.



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

246 (17) In conjunction with the acquisition, ownership,
247 construction, operation, maintenance, and management of a rail
248 corridor, have the authority to:

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

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

270 2. When only one train is involved in an incident, the
271 department may be solely responsible for any loss, injury, or



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272 damage if the train is a department train or other train
273 pursuant to subparagraph 3., but in an instance when only a
274 freight rail operator train is involved, the freight rail
275 operator is solely responsible for any loss, injury, or damage,
276 except for commuter rail passengers, rail corridor invitees, and
277 trespassers, and the freight rail operator is solely responsible
278 for its property and all of its people in any instance when its
279 train is involved in an incident.

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

298 4. When more than one train is involved in an incident:
299 a. If only a department train and freight rail operator's
300 train, or only another train as described in subparagraph 3. and



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301 a freight rail operator's train, are involved in an incident,
302 the department may be responsible for its property and all of
303 its people, all commuter rail passengers, rail corridor
304 invitees, and trespassers, but only if the freight rail operator
305 is responsible for its property and all of its people, and the
306 department and the freight rail operator each share one-half
307 responsibility as to third parties outside the rail corridor who
308 incur loss, injury, or damage as a result of the incident.

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

326 5. Any such contractual duty to protect, defend, indemnify,
327 and hold harmless such a freight rail operator shall expressly
328 include a specific cap on the amount of the contractual duty,
329 which amount shall not exceed \$200 million without prior



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330 legislative approval, and the department shall purchase
331 liability insurance and establish a self-insurance retention
332 fund in the amount of the specific cap established under this
333 subparagraph, provided that:

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

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

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



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

361
362 Neither the assumption by contract to protect, defend,
363 indemnify, and hold harmless; the purchase of insurance; nor the
364 establishment of a self-insurance retention fund shall be deemed
365 to be a waiver of any defense of sovereign immunity for torts
366 nor deemed to increase the limits of the department's or the
367 governmental entity's liability for torts as provided in s.
368 768.28. The requirements of s. 287.022(1) shall not apply to the
369 purchase of any insurance hereunder. The provisions of this
370 subsection shall apply and inure fully as to any other
371 governmental entity providing commuter rail service and
372 constructing, operating, maintaining, or managing a rail
373 corridor on publicly owned right-of-way under contract by the
374 governmental entity with the department or a governmental entity
375 designated by the department.

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

380 Section 3. The department may complete an escrowed closing
381 on the pending Central Florida Rail Corridor acquisition;
382 however, the drawdown of such escrowed closing shall not occur
383 unless and until final Federal Transit Administration full-
384 funding grant agreement approval is obtained for the proposed
385 Central Florida Commuter Rail Transit Project Initial Operating
386 Segment.

387 Section 4. Subsection (1) of section 212.0606, Florida



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388 Statutes, is amended to read:

389 212.0606 Rental car surcharge.—

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

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

405 1. The county surcharge may be used solely to fund the
406 transportation needs of the county as determined by the county
407 commission.

408 2. The county surcharge may only be imposed by a
409 supermajority vote of the county commission.

410 3. The county commission, shall, by a supermajority vote at
411 the same meeting at which the county surcharge was authorized,
412 also designate the account or fund into which the proceeds from
413 the county surcharge shall be deposited.

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



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

420 6. After the county commission votes to impose a county
421 surchARGE, the county surcharge shall be applied on the first
422 day of the month following the vote.

423 7. The authority to impose the county surcharge approved by
424 the county commission is effective immediately after the vote
425 and is valid until the day after the following general election.

426 8. The county commission which approved the county
427 surchARGE shall cause the question to be placed on the ballot
428 for a vote by the electors of that county at the next general
429 election immediately following the vote of the county
430 commission.

431 9. If a majority of the voters of the county vote in favor
432 of the referendum approving the continuation of the county
433 surchARGE, that surcharge continues to be valid.

434 10. If a majority of the voters of the county vote against
435 the referendum approving the continuation of the county
436 surchARGE, the county surcharge shall cease to be effective on
437 the next business day following the general election.

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

439
440 ===== T I T L E A M E N D M E N T =====

441 And the title is amended as follows:

442 Delete everything before the enacting clause
443 and insert:

444 A bill to be entitled

445 An act relating to public transit; amending s.



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446 341.301, F.S.; providing definitions relating to
447 commuter rail service, rail corridors, and railroad
448 operation for purposes of the rail program within the
449 Department of Transportation; amending s. 341.302,
450 F.S.; revising certain citations; revising the time
451 period within which the department must revise the
452 rail system plan and requiring a report; providing
453 additional duties for the department relating to a
454 regional rail system plan; authorizing the department
455 to assume certain liability on a rail corridor;
456 authorizing the department to indemnify and hold
457 harmless a railroad company when the department
458 acquires a rail corridor from the company; providing
459 allocation of risk; providing a specific cap on the
460 amount of the contractual duty for such
461 indemnification; authorizing the department to
462 purchase and provide insurance in relation to rail
463 corridors; authorizing marketing and promotional
464 expenses; extending provisions to other governmental
465 entities providing commuter rail service on public
466 right-of-way; authorizing the closing of the pending
467 Central Florida Rail Corridor acquisition; amending s.
468 212.0606, F.S.; authorizing a county to impose a
469 county surcharge upon the lease or rental of a motor
470 vehicle licensed for hire; requiring that the county
471 surcharge may be used solely to fund the
472 transportation needs of the county as determined by
473 the county commission; requiring the county commission
474 to place the county surcharge on the ballot of the



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next general election for a vote by the electors;
providing an effective date.