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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/15/2009	.	
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The Committee on Transportation and Economic Development
Appropriations (Storms) 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



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12 involves branch line rehabilitation, new connecting track, rail
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



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41 Transportation pursuant to ss. 341.8201-341.842.

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).



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



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99 meaning as provided in s. 11.45, including a "public agency" as
100 defined in s. 163.01.

101 Section 2. Section 341.302, Florida Statutes, is amended to
102 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



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128 required to meet statewide and regional needs. The rail system
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 shall be



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157 prioritized for funding in the department's work program no
158 later than 10 years following commencement of construction of
159 the CSX Integrated Logistics Center; and

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

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

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

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

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



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186 define the minimum acceptable standards for safety and
187 performance.

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

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

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

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

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

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



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

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

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

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

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

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

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

242 (17) In conjunction with the acquisition, ownership,
243 construction, operation, maintenance, and management of a rail



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244 corridor, have the authority to:

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

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

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



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273 all of its people, all rail crossings, and people who are
274 neither commuter rail passengers or rail corridor invitees in
275 any instance when its train is involved in an incident.

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

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

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

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



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

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

325 (b) Purchase liability insurance, which amount shall not
326 exceed \$200 million, and establish a self-insurance retention
327 fund for the purpose of paying the deductible limit established
328 in the insurance policies it may obtain, including coverage for
329 the department, any freight rail operator as described in
330 paragraph (a), commuter rail service providers, governmental



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

340
341 Neither the assumption by contract to protect, defend,
342 indemnify, and hold harmless; the purchase of insurance; nor the
343 establishment of a self-insurance retention fund shall be deemed
344 to be a waiver of any defense of sovereign immunity for torts
345 nor deemed to increase the limits of the department's or the
346 governmental entity's liability for torts as provided in s.
347 768.28. The provisions of this subsection shall apply and inure
348 fully as to any other governmental entity providing commuter
349 rail service and constructing, operating, maintaining, or
350 managing a rail corridor on publicly owned right-of-way under
351 contract by the governmental entity with the department or a
352 governmental entity designated by the department. The assumption
353 by contract to protect, defend, indemnify, and hold harmless
354 shall take effect whenever the department's physical and on-site
355 train activities begin.

356 (18)-(17) Exercise such other functions, powers, and duties
357 in connection with the rail system plan as are necessary to
358 develop a safe, efficient, and effective statewide
359 transportation system.



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360 Section 3. For the purposes of this act, operators,
361 dispatchers, and providers of security for rail services and
362 rail facility maintenance providers in any rail corridor owned
363 by the Department of Transportation, or any of their employees
364 or agents, performing such services under contract with and on
365 behalf of the Department of Transportation, or a governmental
366 entity that is under contract with the Department of
367 Transportation to perform such services or a governmental entity
368 designated by the Department of Transportation, are agents of
369 the state while acting within the scope of and pursuant to
370 guidelines established in the contract or by rule. This section
371 does not designate persons providing contracted operator,
372 dispatcher, security services, rail facility maintenance, or
373 other services as employees or agents of the state for the
374 purposes of the Federal Employers Liability Act, the Federal
375 Railway Labor Act, or chapter 440, Florida Statutes.

376 Section 4. (1) The Department of Transportation may not
377 guarantee funding for the operation or maintenance of any
378 commuter rail corridor or system without specific and discreet
379 legislative authorization. The guarantee may not be a part of
380 any other subject matter bill or legislative package.

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

387 Section 5. This act shall take effect upon becoming a law.
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389 ===== T I T L E A M E N D M E N T =====

390 And the title is amended as follows:

391 Delete everything before the enacting clause

392 and insert:

393 A bill to be entitled

394 An act relating to public transit; amending s.

395 341.301, F.S.; providing definitions relating to

396 commuter rail service, rail corridors, and railroad

397 operation for purposes of the rail program within the

398 Department of Transportation; amending s. 341.302,

399 F.S.; revising certain citations; revising the time

400 period within which the department must revise the

401 rail system plan and requiring a report; providing

402 additional duties for the department relating to a

403 regional rail system plan; authorizing the department

404 to assume certain liability on a rail corridor;

405 authorizing the department to indemnify and hold

406 harmless a railroad company when the department

407 acquires a rail corridor from the company; providing

408 allocation of risk; providing a specific cap on the

409 amount of the contractual duty for such

410 indemnification; authorizing the department to

411 purchase and provide insurance in relation to rail

412 corridors; extending provisions to other governmental

413 entities providing commuter rail service on public

414 right-of-way; designating certain persons as agents of

415 the state while acting within the scope of and

416 pursuant to guidelines established in the contract or

417 by rule; prohibiting the Department of Transportation



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418 from guaranteeing funding for the operation or
419 maintenance of any commuter rail corridor or system
420 without specific and discreet legislative
421 authorization; prohibiting the Department of
422 Transportation from supporting any new commuter rail
423 corridor otherwise authorized by the department until
424 federal, state, and local governments have established
425 a dedicated funding source to pay for the corridor and
426 the associated operation and maintenance of a commuter
427 rail system; providing an effective date.