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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/20/2009	.	
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The Committee on Transportation and Economic Development Appropriations (Gardiner and Diaz de la Portilla) 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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11 involves branch line rehabilitation, new connecting track, rail  
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



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40 Transportation pursuant to ss. 341.8201-341.842.

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).



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



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98 meaning as provided in s. 11.45, including a "public agency" as  
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



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127 required to meet statewide and regional needs. The rail system  
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, with a



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

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

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

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

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

182 (7) Develop and administer state standards concerning the  
183 safety and performance of rail systems, hazardous material  
184 handling, and operations. Such standards shall be developed



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185 jointly with representatives of affected rail systems, with full  
186 consideration given to nationwide industry norms, and shall  
187 define the minimum acceptable standards for safety and  
188 performance.

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

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

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

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

211 (12) Implement a program of branch line continuance  
212 projects when an analysis of the industrial and economic  
213 potential of the line indicates that public involvement is





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214 required to preserve essential rail service and facilities.

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

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

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

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

224

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

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

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

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



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

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

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

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



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

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

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



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

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

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



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330 subparagraph, provided that:

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

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

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

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

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

373 (18)~~(17)~~ Exercise such other functions, powers, and duties  
374 in connection with the rail system plan as are necessary to  
375 develop a safe, efficient, and effective statewide  
376 transportation system.

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

384 Section 4. Subsection (1) of section 212.0606, Florida  
385 Statutes, is amended to read:

386 212.0606 Rental car surcharge.—

387 (1) (a) A surcharge of \$2.00 per day or any part of a day is



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388 imposed upon the lease or rental of a motor vehicle licensed for  
389 hire and designed to carry less than nine passengers regardless  
390 of whether such motor vehicle is licensed in Florida. The  
391 surcharge applies to only the first 30 days of the term of any  
392 lease or rental. The surcharge is subject to all applicable  
393 taxes imposed by this chapter.

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

402 1. The county surcharge may be used solely to fund the  
403 transportation needs of the county as determined by the county  
404 commission.

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

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

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

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



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417           6. After the county commission votes to impose a county  
418 surcharge, the county surcharge shall be applied on the first  
419 day of the month following the vote.

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

423           8. The county commission which approved the county  
424 surcharge shall cause the question to be placed on the ballot  
425 for a vote by the electors of that county at the next general  
426 election immediately following the vote of the county  
427 commission.

428           9. If a majority of the voters of the county vote in favor  
429 of the referendum approving the continuation of the county  
430 surcharge, that surcharge continues to be valid.

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

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

436  
437 ===== T I T L E   A M E N D M E N T =====

438 And the title is amended as follows:

439           Delete everything before the enacting clause  
440 and insert:

441                           A bill to be entitled

442           An act relating to public transit; amending s.

443           341.301, F.S.; providing definitions relating to

444           commuter rail service, rail corridors, and railroad

445           operation for purposes of the rail program within the





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