

By Senators Constantine and Gardiner

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1 A bill to be entitled
2 An act relating to public transit; amending s.
3 341.301, F.S.; providing definitions relating to
4 commuter rail service, rail corridors, and railroad
5 operation for purposes of the rail program within the
6 Department of Transportation; amending s. 341.302,
7 F.S.; revising certain citations; revising the time
8 period within which the department must revise the
9 rail system plan and requiring a report; providing
10 additional duties for the department relating to a
11 regional rail system plan; authorizing the department
12 to assume certain liability on a rail corridor;
13 authorizing the department to indemnify and hold
14 harmless a railroad company when the department
15 acquires a rail corridor from the company; providing
16 allocation of risk; providing a specific cap on the
17 amount of the contractual duty for such
18 indemnification; authorizing the department to
19 purchase and provide insurance in relation to rail
20 corridors; authorizing marketing and promotional
21 expenses; extending provisions to other governmental
22 entities providing commuter rail service on public
23 right-of-way; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Section 341.301, Florida Statutes, is amended to
28 read:

29 341.301 Definitions; ss. 341.302-341.303 ~~ss. 341.302 and~~

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30 ~~341.303.~~—As used in ss. 341.302-341.303 ~~ss. 341.302 and 341.303~~,

31 the term:

32 (1) "Branch line continuance project" means a project that

33 involves branch line rehabilitation, new connecting track, rail

34 banking, and other similar types of projects, including those

35 specifically identified in the federal Railroad Revitalization

36 and Regulatory Reform Act of 1976, and subsequent amendments to

37 that act.

38 (2) "Intercity rail transportation system" means the

39 network of railroad facilities used or available for interstate

40 and intrastate passenger and freight operations by railroads,

41 whether or not on a schedule or whether or not restricted.

42 (3) "Rail programs" means those programs administered by

43 the state or other governmental entities which involve projects

44 affecting the movement of people or goods by rail lines that

45 have been or will be constructed to serve freight or passenger

46 markets within a city or between cities.

47 (4) "Rail service development project" means a project

48 undertaken by a public agency to determine whether a new or

49 innovative technique or measure can be utilized to improve or

50 expand rail service. The duration of the project funding shall

51 be limited according to the type of project and in no case shall

52 exceed 3 years. Rail service development projects include those

53 projects and other actions undertaken to enhance railroad

54 operating efficiency or increased rail service, including

55 measures that result in improved speed profiles, operations, or

56 technological applications that lead to reductions in operating

57 costs and increases in productivity or service.

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

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

63 (6) "Railroad capital improvement project" means a project
64 identified by the rail component of the Florida Transportation
65 Plan, which project involves the leasing, acquisition, design,
66 construction, reconstruction, or improvement to the existing
67 intercity rail transportation system or future segments thereof,
68 including such items as locomotives and other rolling stock,
69 tracks, terminals, and rights-of-way for the continuance or
70 expansion of rail service as necessary to ensure the continued
71 effectiveness of the state's rail facilities and systems in
72 meeting mobility and industrial development needs.

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

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

81 (a) On board trains, locomotives, rail cars, or rail
82 equipment employed in commuter rail service or entraining and
83 detraining therefrom;

84 (b) On or about the rail corridor for any purpose related
85 to the commuter rail service, including, parking, inquiring
86 about commuter rail service, or purchasing tickets therefor, and
87 coming to, waiting for, leaving from, or observing trains,

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88 locomotives, rail cars, or rail equipment; or

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

91 (9) "Commuter rail service" means the transportation of
92 commuter rail passengers and other passengers by rail pursuant
93 to a rail program provided by the department or any other
94 governmental entities.

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

97 (a) For any purpose related to any ancillary development
98 thereon; or

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

101 (11) "Rail corridor" means a linear contiguous strip of
102 real property that is used for rail service. The term includes
103 the corridor and structures essential to railroad operations,
104 including the land, structures, improvements, rights-of-way,
105 easements, rail lines, rail beds, guideway structures, switches,
106 yards, parking facilities, power relays, switching houses, rail
107 stations, ancillary development, and any other facilities or
108 equipment used for the purposes of construction, operation, or
109 maintenance of a railroad that provides rail service.

110 (12) "Railroad operations" means the use of the rail
111 corridor to conduct commuter rail service, intercity rail
112 passenger service, or freight rail service.

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

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117 providers of commuter rail service, intercity rail passenger
118 service, or freight rail service.

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

122 Section 2. Section 341.302, Florida Statutes, is amended to
123 read:

124 341.302 Rail program, duties and responsibilities of the
125 department.—The department, in conjunction with other
126 governmental entities ~~units~~ and the private sector, shall
127 develop and implement a rail program of statewide application
128 designed to ensure the proper maintenance, safety,
129 revitalization, and expansion of the rail system to assure its
130 continued and increased availability to respond to statewide
131 mobility needs. Within the resources provided pursuant to
132 chapter 216, and as authorized under federal law Title 49 C.F.R.
133 ~~part 212~~, the department shall:

134 (1) Provide the overall leadership, coordination, and
135 financial and technical assistance necessary to assure the
136 effective responses of the state's rail system to current and
137 anticipated mobility needs.

138 (2) Promote and facilitate the implementation of advanced
139 rail systems, including high-speed rail and magnetic levitation
140 systems.

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

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

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146 consistent with the Florida Transportation Plan developed
147 pursuant to s. 339.155. The rail system plan shall include an
148 identification of priorities, programs, and funding levels
149 required to meet statewide and regional needs. The rail system
150 plan shall be developed in a manner that will assure the maximum
151 use of existing facilities and the optimum integration and
152 coordination of the various modes of transportation, public and
153 private, in the most cost-effective manner possible. The rail
154 system plan shall be updated at least every 5 ~~2~~ years and
155 include plans for both passenger rail service and freight rail
156 service, accompanied by a report to the Legislature regarding
157 the status of the plan.

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

161 1. Work closely with the City of Lakeland and Polk County
162 to identify and address, to the extent practicable, anticipated
163 impacts associated with an increase in rail freight traffic;

164 2. Work with the City of Lakeland and CSX Transportation
165 Company to identify and develop, if feasible, an alternative
166 route bypassing the City of Lakeland for through rail traffic
167 destined for the CSX Intergrated Logistics Center in Winter
168 Haven. As soon as possible following the completion of the
169 department's alternative rail traffic evaluation, the department
170 shall begin, if warranted, a project development and
171 environmental study of the preferred alternative; and

172 3. Provide technical assistance to a coalition of local
173 governments in Central Florida, including the counties of
174 Brevard, Citrus, Hernando, Hillsborough, Lake, Marion, Orange,

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175 Osceola, Pasco, Pinellas, Polk, Manatee, Sarasota, Seminole,
176 Sumter, and Volusia, and the municipalities within those
177 counties, to develop a regional rail system plan that addresses
178 passenger and freight opportunities in the region, is consistent
179 with the Florida Rail System Plan, and incorporates appropriate
180 elements of the Tampa Bay Area Regional Authority Master Plan,
181 the Metroplan Orlando Regional Transit System Concept Plan,
182 including the Sunrail project, and the Florida Department of
183 Transportation Alternate Rail Traffic Evaluation.

184 (4) As part of the work program of the department,
185 formulate a specific program of projects and financing to
186 respond to identified railroad needs.

187 (5) Provide technical and financial assistance to units of
188 local government to address identified rail transportation
189 needs.

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

193 (7) Develop and administer state standards concerning the
194 safety and performance of rail systems, hazardous material
195 handling, and operations. Such standards shall be developed
196 jointly with representatives of affected rail systems, with full
197 consideration given to nationwide industry norms, and shall
198 define the minimum acceptable standards for safety and
199 performance.

200 (8) Conduct, at a minimum, inspections of track and rolling
201 stock; train signals and related equipment; hazardous materials
202 transportation, including the loading, unloading, and labeling
203 of hazardous materials at shippers', receivers', and transfer

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204 points; and train operating practices to determine adherence to
205 state and federal standards. Department personnel may enforce
206 any safety regulation issued under the Federal Government's
207 preemptive authority over interstate commerce.

208 (9) Assess penalties, in accordance with the applicable
209 federal regulations, for the failure to adhere to the state
210 standards.

211 (10) Administer rail operating and construction programs,
212 which programs shall include the regulation of maximum train
213 operating speeds, the opening and closing of public grade
214 crossings, the construction and rehabilitation of public grade
215 crossings, and the installation of traffic control devices at
216 public grade crossings, the administering of the programs by the
217 department including participation in the cost of the programs.

218 (11) Coordinate and facilitate the relocation of railroads
219 from congested urban areas to nonurban areas when relocation has
220 been determined feasible and desirable from the standpoint of
221 safety, operational efficiency, and economics.

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

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

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

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

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

235
236 The department may own, lease, and otherwise encumber
237 facilities, equipment, and appurtenances thereto, as necessary
238 to provide new rail services; or the department may provide such
239 service by contracts with privately owned service providers.

240 (14) Furnish required emergency rail transportation service
241 if no other private or public rail transportation operation is
242 available to supply the required service and such service is
243 clearly in the best interest of the people in the communities
244 being served. Such emergency service may be furnished through
245 contractual arrangement, actual operation of state-owned
246 equipment and facilities, or any other means determined
247 appropriate by the secretary.

248 (15) Assist in the development and implementation of
249 marketing programs for rail services and of information systems
250 directed toward assisting rail systems users.

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

254 (17) In conjunction with the acquisition, ownership,
255 construction, operation, maintenance, and management of a rail
256 corridor, have the authority to:

257 (a) Assume the obligation by contract to forever protect,
258 defend, and indemnify and hold harmless the freight rail
259 operator, or its successors, from whom the department has
260 acquired a real property interest in the rail corridor, and that
261 freight rail operator's officers, agents, and employees, from

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262 and against any liability, cost, and expense, including, but not
263 limited to, commuter rail passengers, rail corridor invitees,
264 and trespassers in the rail corridor, regardless of whether the
265 loss, damage, destruction, injury, or death giving rise to any
266 such liability, cost, or expense is caused in whole or in part
267 and to whatever nature or degree by the fault, failure,
268 negligence, misconduct, nonfeasance, or misfeasance of such
269 freight rail operator, its successors, or its officers, agents,
270 and employees, or any other person or persons whomsoever,
271 provided that such assumption of liability of the department by
272 contract shall not in any instance exceed the following
273 parameters of allocation of risk:

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

278 2. When only one train is involved in an incident, the
279 department may be solely responsible for any loss, injury, or
280 damage if the train is a department train or other train
281 pursuant to subparagraph 3., but only if in an instance when
282 only a freight rail operator train is involved, the freight rail
283 operator is solely responsible for any loss, injury, or damage,
284 except for commuter rail passengers, rail corridor invitees, and
285 trespassers, and the freight rail operator is solely responsible
286 for its property and all of its people in any instance when its
287 train is involved in an incident.

288 3. For the purposes of this subsection, any train involved
289 in an incident that is neither the department's train nor the
290 freight rail operator's train, hereinafter referred to in this

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291 subsection as an "other train," may be treated as a department
292 train, solely for purposes of any allocation of liability
293 between the department and the freight rail operator only, but
294 only if the department and the freight rail operator share
295 responsibility equally as to third parties outside the rail
296 corridor who incur loss, injury, or damage as a result of any
297 incident involving both a department train and a freight rail
298 operator train, and the allocation as between the department and
299 the freight rail operator, regardless of whether the other train
300 is treated as a department train, shall remain one-half each as
301 to third parties outside the rail corridor who incur loss,
302 injury, or damage as a result of the incident, and the
303 involvement of any other train shall not alter the sharing of
304 equal responsibility as to third parties outside the rail
305 corridor who incur loss, injury, or damage as a result of the
306 incident.

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

308 a. If only a department train and freight rail operator's
309 train, or only another train as described in subparagraph 3. and
310 a freight rail operator's train, are involved in an incident,
311 the department may be responsible for its property and all of
312 its people, all commuter rail passengers, rail corridor
313 invitees, and trespassers, but only if the freight rail operator
314 is responsible for its property and all of its people, and the
315 department and the freight rail operator share responsibility
316 one-half each as to third parties outside the rail corridor who
317 incur loss, injury, or damage as a result of the incident.

318 b. If a department train, a freight rail operator train,
319 and any other train are involved in an incident, the allocation

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320 of liability between the department and the freight rail
321 operator, regardless of whether the other train is treated as a
322 department train, shall remain one-half each as to third parties
323 outside the rail corridor who incur loss, injury, or damage as a
324 result of the incident; the involvement of any other train shall
325 not alter the sharing of equal responsibility as to third
326 parties outside the rail corridor who incur loss, injury, or
327 damage as a result of the incident; and, if the owner, operator,
328 or insurer of the other train makes any payment to injured third
329 parties outside the rail corridor who incur loss, injury, or
330 damage as a result of the incident, the allocation of credit
331 between the department and the freight rail operator as to such
332 payment shall not in any case reduce the freight rail operator's
333 third-party-sharing allocation of one-half under this paragraph
334 to less than one-third of the total third party liability.

335 5. Any such contractual duty to protect, defend, indemnify,
336 and hold harmless such a freight rail operator shall expressly
337 include a specific cap on the amount of the contractual duty,
338 which amount shall not exceed \$200 million without prior
339 legislative approval; require the department to purchase
340 liability insurance and establish a self-insurance retention
341 fund in the amount of the specific cap established under this
342 paragraph; provided that no such contractual duty shall in any
343 case be effective nor otherwise extend the department's
344 liability in scope and effect beyond the contractual liability
345 insurance and self-insurance retention fund required pursuant to
346 this paragraph; and provided that the freight rail operator's
347 compensation to the department for future use of the
348 department's rail corridor shall include a monetary contribution

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349 to the cost of such liability coverage for the sole benefit of
350 the freight rail operator.

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

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

368
369 Neither the assumption by contract to protect, defend,
370 indemnify, and hold harmless; the purchase of insurance; nor the
371 establishment of a self-insurance retention fund shall be deemed
372 to be a waiver of any defense of sovereign immunity for torts
373 nor deemed to increase the limits of the department's or the
374 governmental entity's liability for torts as provided in s.
375 768.28. The requirements of s. 287.022(1) shall not apply to the
376 purchase of any insurance hereunder. The provisions of this
377 subsection shall apply and inure fully as to any other

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378 governmental entity providing commuter rail service and
379 constructing, operating, maintaining, or managing a rail
380 corridor on publicly owned right-of-way under contract by the
381 governmental entity with the department or a governmental entity
382 designated by the department.

383 (18)~~(17)~~ Exercise such other functions, powers, and duties
384 in connection with the rail system plan as are necessary to
385 develop a safe, efficient, and effective statewide
386 transportation system.

387 Section 3. This act shall take effect July 1, 2009.