

By the Committee on Judiciary; and Senators Constantine,  
Gardiner, Baker, Haridopolos, and Altman

590-02696-09

20091212c1

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~~

590-02696-09

20091212c1

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

590-02696-09

20091212c1

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,

590-02696-09

20091212c1

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

590-02696-09

20091212c1

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

590-02696-09

20091212c1

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

165 2. In coordination with the affected local governments and  
166 CSX Transportation, Inc., finalize all viable alternatives from  
167 the department's Rail Traffic Evaluation Study to identify and  
168 develop an alternative route for through-freight rail traffic  
169 moving through Central Florida, including Polk and Hillsborough  
170 Counties. Following the completion of the department's  
171 alternative rail traffic evaluation, the department shall begin  
172 a project development and environmental study that must be  
173 reviewed and approved by appropriate federal agencies so that a  
174 preferred alternative can be identified which minimizes the

590-02696-09

20091212c1

175 impacts associated with freight rail movements along the  
176 corridor. This preferred alternative shall become the basis for  
177 future development of this freight rail corridor and shall be  
178 prioritized for funding in the department's work program no  
179 later than 10 years from commencement of construction of the CSX  
180 Integrated Logistics Center; and

181 3. Provide technical assistance to a coalition of local  
182 governments in Central Florida, including the counties of  
183 Brevard, Citrus, Hernando, Hillsborough, Lake, Marion, Orange,  
184 Osceola, Pasco, Pinellas, Polk, Manatee, Sarasota, Seminole,  
185 Suwannee, and Volusia, and the municipalities within those  
186 counties, to develop a regional rail system plan that addresses  
187 passenger and freight opportunities in the region, is consistent  
188 with the Florida Rail System Plan, and incorporates appropriate  
189 elements of the Tampa Bay Area Regional Authority Master Plan,  
190 the Metroplan Orlando Regional Transit System Concept Plan,  
191 including the Sunrail project, and the Florida Department of  
192 Transportation Alternate Rail Traffic Evaluation.

193 (4) As part of the work program of the department,  
194 formulate a specific program of projects and financing to  
195 respond to identified railroad needs.

196 (5) Provide technical and financial assistance to units of  
197 local government to address identified rail transportation  
198 needs.

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

202 (7) Develop and administer state standards concerning the  
203 safety and performance of rail systems, hazardous material

590-02696-09

20091212c1

204 handling, and operations. Such standards shall be developed  
205 jointly with representatives of affected rail systems, with full  
206 consideration given to nationwide industry norms, and shall  
207 define the minimum acceptable standards for safety and  
208 performance.

209 (8) Conduct, at a minimum, inspections of track and rolling  
210 stock; train signals and related equipment; hazardous materials  
211 transportation, including the loading, unloading, and labeling  
212 of hazardous materials at shippers', receivers', and transfer  
213 points; and train operating practices to determine adherence to  
214 state and federal standards. Department personnel may enforce  
215 any safety regulation issued under the Federal Government's  
216 preemptive authority over interstate commerce.

217 (9) Assess penalties, in accordance with the applicable  
218 federal regulations, for the failure to adhere to the state  
219 standards.

220 (10) Administer rail operating and construction programs,  
221 which programs shall include the regulation of maximum train  
222 operating speeds, the opening and closing of public grade  
223 crossings, the construction and rehabilitation of public grade  
224 crossings, and the installation of traffic control devices at  
225 public grade crossings, the administering of the programs by the  
226 department including participation in the cost of the programs.

227 (11) Coordinate and facilitate the relocation of railroads  
228 from congested urban areas to nonurban areas when relocation has  
229 been determined feasible and desirable from the standpoint of  
230 safety, operational efficiency, and economics.

231 (12) Implement a program of branch line continuance  
232 projects when an analysis of the industrial and economic

590-02696-09

20091212c1

233 potential of the line indicates that public involvement is  
234 required to preserve essential rail service and facilities.

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

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

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

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

244

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

249 (14) Furnish required emergency rail transportation service  
250 if no other private or public rail transportation operation is  
251 available to supply the required service and such service is  
252 clearly in the best interest of the people in the communities  
253 being served. Such emergency service may be furnished through  
254 contractual arrangement, actual operation of state-owned  
255 equipment and facilities, or any other means determined  
256 appropriate by the secretary.

257 (15) Assist in the development and implementation of  
258 marketing programs for rail services and of information systems  
259 directed toward assisting rail systems users.

260 (16) Conduct research into innovative or potentially  
261 effective rail technologies and methods and maintain expertise

590-02696-09

20091212c1

262 in state-of-the-art rail developments.

263 (17) In conjunction with the acquisition, ownership,  
264 construction, operation, maintenance, and management of a rail  
265 corridor, have the authority to:

266 (a) Assume the obligation by contract to forever protect,  
267 defend, and indemnify and hold harmless the freight rail  
268 operator, or its successors, from whom the department has  
269 acquired a real property interest in the rail corridor, and that  
270 freight rail operator's officers, agents, and employees, from  
271 and against any liability, cost, and expense, including, but not  
272 limited to, commuter rail passengers, rail corridor invitees,  
273 and trespassers in the rail corridor, regardless of whether the  
274 loss, damage, destruction, injury, or death giving rise to any  
275 such liability, cost, or expense is caused in whole or in part  
276 and to whatever nature or degree by the fault, failure,  
277 negligence, misconduct, nonfeasance, or misfeasance of such  
278 freight rail operator, its successors, or its officers, agents,  
279 and employees, or any other person or persons whomsoever,  
280 provided that such assumption of liability of the department by  
281 contract shall not in any instance exceed the following  
282 parameters of allocation of risk:

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

287 2. When only one train is involved in an incident, the  
288 department may be solely responsible for any loss, injury, or  
289 damage if the train is a department train or other train  
290 pursuant to subparagraph 3., but only if in an instance when

590-02696-09

20091212c1

291 only a freight rail operator train is involved, the freight rail  
292 operator is solely responsible for any loss, injury, or damage,  
293 except for commuter rail passengers, rail corridor invitees, and  
294 trespassers, and the freight rail operator is solely responsible  
295 for its property and all of its people in any instance when its  
296 train is involved in an incident.

297 3. For the purposes of this subsection, any train involved  
298 in an incident that is neither the department's train nor the  
299 freight rail operator's train, hereinafter referred to in this  
300 subsection as an "other train," may be treated as a department  
301 train, solely for purposes of any allocation of liability  
302 between the department and the freight rail operator only, but  
303 only if the department and the freight rail operator share  
304 responsibility equally as to third parties outside the rail  
305 corridor who incur loss, injury, or damage as a result of any  
306 incident involving both a department train and a freight rail  
307 operator train, and the allocation as between the department and  
308 the freight rail operator, regardless of whether the other train  
309 is treated as a department train, shall remain one-half each as  
310 to third parties outside the rail corridor who incur loss,  
311 injury, or damage as a result of the incident, and the  
312 involvement of any other train shall not alter the sharing of  
313 equal responsibility as to third parties outside the rail  
314 corridor who incur loss, injury, or damage as a result of the  
315 incident.

316 4. When more than one train is involved in an incident:  
317 a. If only a department train and freight rail operator's  
318 train, or only another train as described in subparagraph 3. and  
319 a freight rail operator's train, are involved in an incident,

590-02696-09

20091212c1

320 the department may be responsible for its property and all of  
321 its people, all commuter rail passengers, rail corridor  
322 invitees, and trespassers, but only if the freight rail operator  
323 is responsible for its property and all of its people, and the  
324 department and the freight rail operator share responsibility  
325 one-half each as to third parties outside the rail corridor who  
326 incur loss, injury, or damage as a result of the incident.

327 b. If a department train, a freight rail operator train,  
328 and any other train are involved in an incident, the allocation  
329 of liability between the department and the freight rail  
330 operator, regardless of whether the other train is treated as a  
331 department train, shall remain one-half each as to third parties  
332 outside the rail corridor who incur loss, injury, or damage as a  
333 result of the incident; the involvement of any other train shall  
334 not alter the sharing of equal responsibility as to third  
335 parties outside the rail corridor who incur loss, injury, or  
336 damage as a result of the incident; and, if the owner, operator,  
337 or insurer of the other train makes any payment to injured third  
338 parties outside the rail corridor who incur loss, injury, or  
339 damage as a result of the incident, the allocation of credit  
340 between the department and the freight rail operator as to such  
341 payment shall not in any case reduce the freight rail operator's  
342 third-party-sharing allocation of one-half under this paragraph  
343 to less than one-third of the total third party liability.

344 5. Any such contractual duty to protect, defend, indemnify,  
345 and hold harmless such a freight rail operator shall expressly  
346 include a specific cap on the amount of the contractual duty,  
347 which amount shall not exceed \$200 million without prior  
348 legislative approval; require the department to purchase

590-02696-09

20091212c1

349 liability insurance and establish a self-insurance retention  
350 fund in the amount of the specific cap established under this  
351 paragraph; provided that no such contractual duty shall in any  
352 case be effective nor otherwise extend the department's  
353 liability in scope and effect beyond the contractual liability  
354 insurance and self-insurance retention fund required pursuant to  
355 this paragraph; and provided that the freight rail operator's  
356 compensation to the department for future use of the  
357 department's rail corridor shall include a monetary contribution  
358 to the cost of such liability coverage for the sole benefit of  
359 the freight rail operator.

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

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

590-02696-09

20091212c1

378 Neither the assumption by contract to protect, defend,  
379 indemnify, and hold harmless; the purchase of insurance; nor the  
380 establishment of a self-insurance retention fund shall be deemed  
381 to be a waiver of any defense of sovereign immunity for torts  
382 nor deemed to increase the limits of the department's or the  
383 governmental entity's liability for torts as provided in s.  
384 768.28. The requirements of s. 287.022(1) shall not apply to the  
385 purchase of any insurance hereunder. The provisions of this  
386 subsection shall apply and inure fully as to any other  
387 governmental entity providing commuter rail service and  
388 constructing, operating, maintaining, or managing a rail  
389 corridor on publicly owned right-of-way under contract by the  
390 governmental entity with the department or a governmental entity  
391 designated by the department.

392 (18) ~~(17)~~ Exercise such other functions, powers, and duties  
393 in connection with the rail system plan as are necessary to  
394 develop a safe, efficient, and effective statewide  
395 transportation system.

396 Section 3. This act shall take effect upon becoming a law.