

By the Committees on Transportation and Economic Development  
Appropriations; and Judiciary; and Senators Constantine,  
Gardiner, Baker, Haridopolos, and Altman

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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; authorizing the closing of the pending  
24      Central Florida Rail Corridor acquisition; amending s.  
25      212.0606, F.S.; authorizing a county to impose a  
26      county surcharge upon the lease or rental of a motor  
27      vehicle licensed for hire; requiring that the county  
28      surcharge may be used solely to fund the  
29      transportation needs of the county as determined by

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30 the county commission; requiring the county commission  
31 to place the county surcharge on the ballot of the  
32 next general election for a vote by the electors;  
33 providing an effective date.  
34

35 Be It Enacted by the Legislature of the State of Florida:  
36

37 Section 1. Section 341.301, Florida Statutes, is amended to  
38 read:

39 341.301 Definitions; ss. 341.302-341.303 ~~ss. 341.302 and~~  
40 ~~341.303.~~—As used in ss. 341.302-341.303 ~~ss. 341.302 and 341.303,~~  
41 the term:

42 (1) "Branch line continuance project" means a project that  
43 involves branch line rehabilitation, new connecting track, rail  
44 banking, and other similar types of projects, including those  
45 specifically identified in the federal Railroad Revitalization  
46 and Regulatory Reform Act of 1976, and subsequent amendments to  
47 that act.

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

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

57 (4) "Rail service development project" means a project  
58 undertaken by a public agency to determine whether a new or

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59 innovative technique or measure can be utilized to improve or  
60 expand rail service. The duration of the project funding shall  
61 be limited according to the type of project and in no case shall  
62 exceed 3 years. Rail service development projects include those  
63 projects and other actions undertaken to enhance railroad  
64 operating efficiency or increased rail service, including  
65 measures that result in improved speed profiles, operations, or  
66 technological applications that lead to reductions in operating  
67 costs and increases in productivity or service.

68 (5) "Railroad" or "rail system" means any common carrier  
69 fixed-guideway transportation system such as the conventional  
70 steel rail-supported, steel-wheeled system. The term does not  
71 include a high-speed rail line developed by the Department of  
72 Transportation pursuant to ss. 341.8201-341.842.

73 (6) "Railroad capital improvement project" means a project  
74 identified by the rail component of the Florida Transportation  
75 Plan, which project involves the leasing, acquisition, design,  
76 construction, reconstruction, or improvement to the existing  
77 intercity rail transportation system or future segments thereof,  
78 including such items as locomotives and other rolling stock,  
79 tracks, terminals, and rights-of-way for the continuance or  
80 expansion of rail service as necessary to ensure the continued  
81 effectiveness of the state's rail facilities and systems in  
82 meeting mobility and industrial development needs.

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

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

91       (a) On board trains, locomotives, rail cars, or rail  
92 equipment employed in commuter rail service or entraining and  
93 detraining therefrom;

94       (b) On or about the rail corridor for any purpose related  
95 to the commuter rail service, including, parking, inquiring  
96 about commuter rail service, or purchasing tickets therefor, and  
97 coming to, waiting for, leaving from, or observing trains,  
98 locomotives, rail cars, or rail equipment; or

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

101       (9) "Commuter rail service" means the transportation of  
102 commuter rail passengers and other passengers by rail pursuant  
103 to a rail program provided by the department or any other  
104 governmental entities.

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

107       (a) For any purpose related to any ancillary development  
108 thereon; or

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

111       (11) "Rail corridor" means a linear contiguous strip of  
112 real property that is used for rail service. The term includes  
113 the corridor and structures essential to railroad operations,  
114 including the land, structures, improvements, rights-of-way,  
115 easements, rail lines, rail beds, guideway structures, switches,  
116 yards, parking facilities, power relays, switching houses, rail

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117 stations, ancillary development, and any other facilities or  
118 equipment used for the purposes of construction, operation, or  
119 maintenance of a railroad that provides rail service.

120 (12) "Railroad operations" means the use of the rail  
121 corridor to conduct commuter rail service, intercity rail  
122 passenger service, or freight rail service.

123 (13) "Ancillary development" includes any lessee or  
124 licensee of the department, including other governmental  
125 entities, vendors, retailers, restaurateurs, or contract service  
126 providers, within a department-owned rail corridor, except for  
127 providers of commuter rail service, intercity rail passenger  
128 service, or freight rail service.

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

132 Section 2. Section 341.302, Florida Statutes, is amended to  
133 read:

134 341.302 Rail program, duties and responsibilities of the  
135 department.—The department, in conjunction with other  
136 governmental entities ~~units~~ and the private sector, shall  
137 develop and implement a rail program of statewide application  
138 designed to ensure the proper maintenance, safety,  
139 revitalization, and expansion of the rail system to assure its  
140 continued and increased availability to respond to statewide  
141 mobility needs. Within the resources provided pursuant to  
142 chapter 216, and as authorized under federal law Title 49 C.F.R.  
143 ~~part 212~~, the department shall:

144 (1) Provide the overall leadership, coordination, and  
145 financial and technical assistance necessary to assure the

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146 effective responses of the state's rail system to current and  
147 anticipated mobility needs.

148 (2) Promote and facilitate the implementation of advanced  
149 rail systems, including high-speed rail and magnetic levitation  
150 systems.

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

153 (a) The plan may contain detailed regional components,  
154 consistent with regional transportation plans, as needed to  
155 ensure connectivity within the state's regions, and it shall be  
156 consistent with the Florida Transportation Plan developed  
157 pursuant to s. 339.155. The rail system plan shall include an  
158 identification of priorities, programs, and funding levels  
159 required to meet statewide and regional needs. The rail system  
160 plan shall be developed in a manner that will assure the maximum  
161 use of existing facilities and the optimum integration and  
162 coordination of the various modes of transportation, public and  
163 private, in the most cost-effective manner possible. The rail  
164 system plan shall be updated at least every 5 2 years and  
165 include plans for both passenger rail service and freight rail  
166 service, accompanied by a report to the Legislature regarding  
167 the status of the plan.

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

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

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175       2. In coordination with the affected local governments and  
176 CSX Transportation, Inc., finalize all viable alternatives from  
177 the department's Rail Traffic Evaluation Study to identify and  
178 develop an alternative route for through-freight rail traffic  
179 moving through Central Florida, including Polk and Hillsborough  
180 Counties. Following the completion of the department's  
181 alternative rail traffic evaluation, the department shall begin  
182 a project development and environmental study that must be  
183 reviewed and approved by appropriate federal agencies so that a  
184 preferred alternative can be identified which minimizes the  
185 impacts associated with freight rail movements along the  
186 corridor. This preferred alternative shall become the basis for  
187 future development of this freight rail corridor and, with a  
188 priority ranking from the Polk Transportation Planning  
189 Organization, or its successor, shall be programmed for funding  
190 in the department's work program in a fiscal year no later than  
191 10 years from commencement of construction of the CSX Integrated  
192 Logistics Center; and

193       3. Provide technical assistance to a coalition of local  
194 governments in Central Florida, including the counties of  
195 Brevard, Citrus, Hernando, Hillsborough, Lake, Marion, Orange,  
196 Osceola, Pasco, Pinellas, Polk, Manatee, Sarasota, Seminole,  
197 Sumter, and Volusia, and the municipalities within those  
198 counties, to develop a regional rail system plan that addresses  
199 passenger and freight opportunities in the region, is consistent  
200 with the Florida Rail System Plan, and incorporates appropriate  
201 elements of the Tampa Bay Area Regional Authority Master Plan,  
202 the Metroplan Orlando Regional Transit System Concept Plan,  
203 including the Sunrail project, and the Florida Department of

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204 Transportation Alternate Rail Traffic Evaluation.

205 (4) As part of the work program of the department,  
206 formulate a specific program of projects and financing to  
207 respond to identified railroad needs.

208 (5) Provide technical and financial assistance to units of  
209 local government to address identified rail transportation  
210 needs.

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

214 (7) Develop and administer state standards concerning the  
215 safety and performance of rail systems, hazardous material  
216 handling, and operations. Such standards shall be developed  
217 jointly with representatives of affected rail systems, with full  
218 consideration given to nationwide industry norms, and shall  
219 define the minimum acceptable standards for safety and  
220 performance.

221 (8) Conduct, at a minimum, inspections of track and rolling  
222 stock; train signals and related equipment; hazardous materials  
223 transportation, including the loading, unloading, and labeling  
224 of hazardous materials at shippers', receivers', and transfer  
225 points; and train operating practices to determine adherence to  
226 state and federal standards. Department personnel may enforce  
227 any safety regulation issued under the Federal Government's  
228 preemptive authority over interstate commerce.

229 (9) Assess penalties, in accordance with the applicable  
230 federal regulations, for the failure to adhere to the state  
231 standards.

232 (10) Administer rail operating and construction programs,



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233 which programs shall include the regulation of maximum train  
234 operating speeds, the opening and closing of public grade  
235 crossings, the construction and rehabilitation of public grade  
236 crossings, and the installation of traffic control devices at  
237 public grade crossings, the administering of the programs by the  
238 department including participation in the cost of the programs.

239 (11) Coordinate and facilitate the relocation of railroads  
240 from congested urban areas to nonurban areas when relocation has  
241 been determined feasible and desirable from the standpoint of  
242 safety, operational efficiency, and economics.

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

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

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

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

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

256  
257 The department may own, lease, and otherwise encumber  
258 facilities, equipment, and appurtenances thereto, as necessary  
259 to provide new rail services; or the department may provide such  
260 service by contracts with privately owned service providers.

261 (14) Furnish required emergency rail transportation service

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262 if no other private or public rail transportation operation is  
263 available to supply the required service and such service is  
264 clearly in the best interest of the people in the communities  
265 being served. Such emergency service may be furnished through  
266 contractual arrangement, actual operation of state-owned  
267 equipment and facilities, or any other means determined  
268 appropriate by the secretary.

269 (15) Assist in the development and implementation of  
270 marketing programs for rail services and of information systems  
271 directed toward assisting rail systems users.

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

275 (17) In conjunction with the acquisition, ownership,  
276 construction, operation, maintenance, and management of a rail  
277 corridor, have the authority to:

278 (a) Assume the obligation by contract to forever protect,  
279 defend, indemnify, and hold harmless the freight rail operator,  
280 or its successors, from whom the department has acquired a real  
281 property interest in the rail corridor, and that freight rail  
282 operator's officers, agents, and employees, from and against any  
283 liability, cost, and expense, including, but not limited to,  
284 commuter rail passengers, rail corridor invitees, and  
285 trespassers in the rail corridor, regardless of whether the  
286 loss, damage, destruction, injury, or death giving rise to any  
287 such liability, cost, or expense is caused in whole or in part,  
288 and to whatever nature or degree, by the fault, failure,  
289 negligence, misconduct, nonfeasance, or misfeasance of such  
290 freight rail operator, its successors, or its officers, agents,

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291 and employees, or any other person or persons whomsoever,  
292 provided that such assumption of liability of the department by  
293 contract shall not in any instance exceed the following  
294 parameters of allocation of risk:

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

299 2. When only one train is involved in an incident, the  
300 department may be solely responsible for any loss, injury, or  
301 damage if the train is a department train or other train  
302 pursuant to subparagraph 3., but in an instance when only a  
303 freight rail operator train is involved, the freight rail  
304 operator is solely responsible for any loss, injury, or damage,  
305 except for commuter rail passengers, rail corridor invitees, and  
306 trespassers, and the freight rail operator is solely responsible  
307 for its property and all of its people in any instance when its  
308 train is involved in an incident.

309 3. For the purposes of this subsection, any train involved  
310 in an incident that is neither the department's train nor the  
311 freight rail operator's train, hereinafter referred to in this  
312 subsection as an "other train," may be treated as a department  
313 train, solely for purposes of any allocation of liability  
314 between the department and the freight rail operator only, but  
315 only if the department and the freight rail operator share  
316 responsibility equally as to third parties outside the rail  
317 corridor who incur loss, injury, or damage as a result of any  
318 incident involving both a department train and a freight rail  
319 operator train, and the allocation as between the department and

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320 the freight rail operator, regardless of whether the other train  
321 is treated as a department train, shall remain one-half each as  
322 to third parties outside the rail corridor who incur loss,  
323 injury, or damage as a result of the incident. The involvement  
324 of any other train shall not alter the sharing of equal  
325 responsibility as to third parties outside the rail corridor who  
326 incur loss, injury, or damage as a result of the incident.

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

328 a. If only a department train and freight rail operator's  
329 train, or only another train as described in subparagraph 3. and  
330 a freight rail operator's train, are involved in an incident,  
331 the department may be responsible for its property and all of  
332 its people, all commuter rail passengers, rail corridor  
333 invitees, and trespassers, but only if the freight rail operator  
334 is responsible for its property and all of its people, and the  
335 department and the freight rail operator each share one-half  
336 responsibility as to third parties outside the rail corridor who  
337 incur loss, injury, or damage as a result of the incident.

338 b. If a department train, a freight rail operator train,  
339 and any other train are involved in an incident, the allocation  
340 of liability between the department and the freight rail  
341 operator, regardless of whether the other train is treated as a  
342 department train, shall remain one-half each as to third parties  
343 outside the rail corridor who incur loss, injury, or damage as a  
344 result of the incident. The involvement of any other train shall  
345 not alter the sharing of equal responsibility as to third  
346 parties outside the rail corridor who incur loss, injury, or  
347 damage as a result of the incident, and, if the owner, operator,  
348 or insurer of the other train makes any payment to injured third

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349 parties outside the rail corridor who incur loss, injury, or  
350 damage as a result of the incident, the allocation of credit  
351 between the department and the freight rail operator as to such  
352 payment shall not in any case reduce the freight rail operator's  
353 third-party-sharing allocation of one-half under this paragraph  
354 to less than one-third of the total third-party liability.

355 5. Any such contractual duty to protect, defend, indemnify,  
356 and hold harmless such a freight rail operator shall expressly  
357 include a specific cap on the amount of the contractual duty,  
358 which amount shall not exceed \$200 million without prior  
359 legislative approval, and the department shall purchase  
360 liability insurance and establish a self-insurance retention  
361 fund in the amount of the specific cap established under this  
362 subparagraph, provided that:

363 a. No such contractual duty shall in any case be effective  
364 or otherwise extend the department's liability in scope and  
365 effect beyond the contractual liability insurance and self-  
366 insurance retention fund required pursuant to this paragraph;  
367 and

368 b. The freight rail operator's compensation to the  
369 department for future use of the department's rail corridor  
370 shall include a monetary contribution to the cost of such  
371 liability coverage for the sole benefit of the freight rail  
372 operator.

373 (b) Purchase liability insurance, which amount shall not  
374 exceed \$200 million, and establish a self-insurance retention  
375 fund for the purpose of paying the deductible limit established  
376 in the insurance policies it may obtain, including coverage for  
377 the department, any freight rail operator as described in

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378 paragraph (a), commuter rail service providers, governmental  
379 entities, or ancillary development. The insureds shall pay a  
380 reasonable monetary contribution to the cost of such liability  
381 coverage for the sole benefit of the insured. Such insurance and  
382 self-insurance retention fund may provide coverage for all  
383 damages, including, but not limited to, compensatory, special,  
384 and exemplary, and be maintained to provide an adequate fund to  
385 cover claims and liabilities for loss, injury, or damage arising  
386 out of or connected with the ownership, operation, maintenance,  
387 and management of a rail corridor.

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

391 Neither the assumption by contract to protect, defend,  
392 indemnify, and hold harmless; the purchase of insurance; nor the  
393 establishment of a self-insurance retention fund shall be deemed  
394 to be a waiver of any defense of sovereign immunity for torts  
395 nor deemed to increase the limits of the department's or the  
396 governmental entity's liability for torts as provided in s.  
397 768.28. The requirements of s. 287.022(1) shall not apply to the  
398 purchase of any insurance hereunder. The provisions of this  
399 subsection shall apply and inure fully as to any other  
400 governmental entity providing commuter rail service and  
401 constructing, operating, maintaining, or managing a rail  
402 corridor on publicly owned right-of-way under contract by the  
403 governmental entity with the department or a governmental entity  
404 designated by the department.

405 (18)~~(17)~~ Exercise such other functions, powers, and duties  
406 in connection with the rail system plan as are necessary to

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407 develop a safe, efficient, and effective statewide  
408 transportation system.

409       Section 3. The Department of Transportation may complete an  
410 escrowed closing on the pending Central Florida Rail Corridor  
411 acquisition; however, the drawdown of such escrowed closing  
412 shall not occur unless and until final Federal Transit  
413 Administration full-funding grant agreement approval is obtained  
414 for the proposed Central Florida Commuter Rail Transit Project  
415 Initial Operating Segment.

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

418       212.0606 Rental car surcharge.—

419       (1) (a) A surcharge of \$2.00 per day or any part of a day is  
420 imposed upon the lease or rental of a motor vehicle licensed for  
421 hire and designed to carry less than nine passengers regardless  
422 of whether such motor vehicle is licensed in Florida. The  
423 surcharge applies to only the first 30 days of the term of any  
424 lease or rental. The surcharge is subject to all applicable  
425 taxes imposed by this chapter.

426       (b) A county may impose a county surcharge of \$2 per day or  
427 any part of a day upon the lease or rental of a motor vehicle  
428 licensed for hire and designed to carry fewer than nine  
429 passengers, regardless of whether such motor vehicle is licensed  
430 in Florida. The county surcharge applies to only the first 30  
431 days of the term of any lease or rental. The county surcharge is  
432 subject to all applicable taxes imposed by this chapter. The  
433 county surcharge is subject to the following conditions:

434       1. The county surcharge may be used solely to fund the  
435 transportation needs of the county as determined by the county

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436 commission.

437 2. The county surcharge may be imposed only by a super  
438 majority vote of the county commission.

439 3. The county commission shall, by a super majority vote at  
440 the same meeting at which the county surcharge was authorized,  
441 also designate the account or fund into which the proceeds from  
442 the county surcharge shall be deposited.

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

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

449 6. After the county commission votes to impose a county  
450 surcharge, the county surcharge shall be applied on the first  
451 day of the month following the vote.

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

455 8. The county commission that approved the county surcharge  
456 shall cause the question to be placed on the ballot for a vote  
457 by the electors of that county at the next general election  
458 immediately following the vote of the county commission.

459 9. If a majority of the voters of the county vote in favor  
460 of the referendum approving the continuation of the county  
461 surcharge, the surcharge continues to be valid.

462 10. If a majority of the voters of the county vote against  
463 the referendum approving the continuation of the county  
464 surcharge, the county surcharge shall cease to be effective on



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465 the next business day following the general election.

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