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2009

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

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

27  
28       Section 1.   Section 341.301, Florida Statutes, is amended

29 to read:

30 341.301 Definitions; ss. 341.302-341.303 ~~ss. 341.302 and~~  
 31 ~~341.303~~.--As used in ss. 341.302-341.303 ~~ss. 341.302 and~~  
 32 ~~341.303~~, the term:

33 (1) "Ancillary development" includes any lessee or  
 34 licensee of the department, including other governmental  
 35 entities, vendors, retailers, restaurateurs, or contract service  
 36 providers, within a department-owned rail corridor, except for  
 37 providers of commuter rail service, intercity rail passenger  
 38 service, or freight rail service.

39 (2) ~~(1)~~ "Branch line continuance project" means a project  
 40 that involves branch line rehabilitation, new connecting track,  
 41 rail banking, and other similar types of projects, including  
 42 those specifically identified in the federal Railroad  
 43 Revitalization and Regulatory Reform Act of 1976, and subsequent  
 44 amendments to that act.

45 (3) "Commuter rail passenger" or "commuter rail  
 46 passengers" means all persons, ticketed or unticketed, using the  
 47 commuter rail service on a department-owned rail corridor:

48 (a) On board trains, locomotives, rail cars, or rail  
 49 equipment employed in commuter rail service or entraining and  
 50 detraining therefrom;

51 (b) On or about the rail corridor for any purpose related  
 52 to the commuter rail service, including parking, inquiring about  
 53 commuter rail service, or purchasing tickets therefor, and  
 54 coming to, waiting for, leaving from, or observing trains,  
 55 locomotives, rail cars, or rail equipment; or

56 (c) Meeting, assisting, or in the company of any person

57 described in paragraph (a) or paragraph (b).

58 (4) "Commuter rail service" means the transportation of  
 59 commuter rail passengers and other passengers by rail pursuant  
 60 to a rail program provided by the department or any other  
 61 governmental entity.

62 (5) "Governmental entity" or "governmental entities" has  
 63 the same meaning as in s. 11.45 and includes a "public agency"  
 64 as defined in s. 163.01.

65 (6)-2) "Intercity rail transportation system" means the  
 66 network of railroad facilities used or available for interstate  
 67 and intrastate passenger and freight operations by railroads,  
 68 whether or not on a schedule or whether or not restricted.

69 (7) "Multiuse corridor" includes accommodations for  
 70 alternative transportation and recreation uses, such as rail,  
 71 bicycle, hiking, and equestrian activities.

72 (8) "Rail corridor" means a linear contiguous strip of  
 73 real property that is used for rail service. The term includes  
 74 the corridor and structures essential to railroad operations,  
 75 including the land, structures, improvements, rights-of-way,  
 76 easements, rail lines, rail beds, guideway structures, switches,  
 77 yards, parking facilities, power relays, switching houses, rail  
 78 stations, ancillary development, and any other facilities or  
 79 equipment used for the purposes of construction, operation, or  
 80 maintenance of a railroad that provides rail service.

81 (9) "Rail corridor invitee" means all persons who are on  
 82 or about a department-owned rail corridor:

83 (a) For any purpose related to any ancillary development  
 84 thereon; or

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

87            (10)~~(3)~~ "Rail programs" means those programs administered  
88 by the state or other governmental entities which involve  
89 projects affecting the movement of people or goods by rail lines  
90 that have been or will be constructed to serve freight or  
91 passenger markets within a city or between cities.

92            (11)~~(4)~~ "Rail service development project" means a project  
93 undertaken by a public agency to determine whether a new or  
94 innovative technique or measure can be utilized to improve or  
95 expand rail service. The duration of the project funding shall  
96 be limited according to the type of project and in no case shall  
97 exceed 3 years. Rail service development projects include those  
98 projects and other actions undertaken to enhance railroad  
99 operating efficiency or increased rail service, including  
100 measures that result in improved speed profiles, operations, or  
101 technological applications that lead to reductions in operating  
102 costs and increases in productivity or service.

103            (12)~~(5)~~ "Railroad" or "rail system" means any common  
104 carrier fixed-guideway transportation system such as the  
105 conventional steel rail-supported, steel-wheeled system. The  
106 term does not include a high-speed rail line developed by the  
107 Department of Transportation pursuant to ss. 341.8201-341.842.

108            (13)~~(6)~~ "Railroad capital improvement project" means a  
109 project identified by the rail component of the Florida  
110 Transportation Plan, which project involves the leasing,  
111 acquisition, design, construction, reconstruction, or  
112 improvement to the existing intercity rail transportation system

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113 or future segments thereof, including such items as locomotives  
114 and other rolling stock, tracks, terminals, and rights-of-way  
115 for the continuance or expansion of rail service as necessary to  
116 ensure the continued effectiveness of the state's rail  
117 facilities and systems in meeting mobility and industrial  
118 development needs.

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

122 (15)~~(7)~~ "Train" means any locomotive engine that is  
123 powered by diesel fuel, electricity, or other means, with or  
124 without cars coupled thereto, and operated upon a railroad track  
125 or any other form of fixed guideway, except that the term does  
126 not include a light rail vehicle such as a streetcar or people  
127 mover.

128 Section 2. Section 341.302, Florida Statutes, is amended  
129 to read:

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

140 (1) Provide the overall leadership, coordination, and

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141 financial and technical assistance necessary to assure the  
142 effective responses of the state's rail system to current and  
143 anticipated mobility needs.

144 (2) Promote and facilitate the implementation of advanced  
145 rail systems, including high-speed rail and magnetic levitation  
146 systems.

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

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

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

167 1. Work closely with the City of Lakeland and Plant City  
168 along with Hillsborough and Polk Counties to identify and

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169 address anticipated impacts associated with an increase in rail  
170 freight traffic;

171 2. Work with the impacted local governments and CSX  
172 Transportation Company to identify and evaluate potential  
173 alternative routes for through rail traffic destined for the CSX  
174 Integrated Logistics Center in Winter Haven. As soon as possible  
175 following the completion of the department's alternative rail  
176 traffic evaluation, the department shall begin a project  
177 development and environmental study of the preferred alternative  
178 so that the negative impacts of commuter rail programs funded by  
179 the state will be eliminated no later than 8 years after  
180 commuter rail programs begin operation to enhance regional  
181 passenger rail connectivity; and

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

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197 (4) As part of the work program of the department,  
198 formulate a specific program of projects and financing to  
199 respond to identified railroad needs.

200 (5) Provide technical and financial assistance to units of  
201 local government to address identified rail transportation  
202 needs.

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

206 (7) Develop and administer state standards concerning the  
207 safety and performance of rail systems, hazardous material  
208 handling, and operations. Such standards shall be developed  
209 jointly with representatives of affected rail systems, with full  
210 consideration given to nationwide industry norms, and shall  
211 define the minimum acceptable standards for safety and  
212 performance.

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

221 (9) Assess penalties, in accordance with the applicable  
222 federal regulations, for the failure to adhere to the state  
223 standards.

224 (10) Administer rail operating and construction programs,



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225 | which programs shall include the regulation of maximum train  
226 | operating speeds, the opening and closing of public grade  
227 | crossings, the construction and rehabilitation of public grade  
228 | crossings, and the installation of traffic control devices at  
229 | public grade crossings, the administering of the programs by the  
230 | department including participation in the cost of the programs.

231 |       (11) Coordinate and facilitate the relocation of railroads  
232 | from congested urban areas to nonurban areas when relocation has  
233 | been determined feasible and desirable from the standpoint of  
234 | safety, operational efficiency, and economics.

235 |       (12) Implement a program of branch line continuance  
236 | projects when an analysis of the industrial and economic  
237 | potential of the line indicates that public involvement is  
238 | required to preserve essential rail service and facilities.

239 |       (13) Provide new rail service and equipment when:

240 |       (a) Pursuant to the transportation planning process, a  
241 | public need has been determined to exist;

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

246 |       (c) Service cannot be reasonably provided by other  
247 | governmental or privately owned rail systems.

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

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

261 (15) Assist in the development and implementation of  
 262 marketing programs for rail services and of information systems  
 263 directed toward assisting rail systems users.

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

267 (17) In conjunction with the acquisition, ownership,  
 268 construction, operation, maintenance, and management of a rail  
 269 corridor, have the authority to:

270 (a) Assume the obligation by contract to forever protect,  
 271 defend, and indemnify and hold harmless the freight rail  
 272 operator, or its successors, from whom the department has  
 273 acquired a real property interest in the rail corridor, and that  
 274 freight rail operator's officers, agents, and employees, from  
 275 and against any liability, cost, and expense, including, but not  
 276 limited to, commuter rail passengers, rail corridor invitees,  
 277 and trespassers in the rail corridor, regardless of whether the  
 278 loss, damage, destruction, injury, or death giving rise to any  
 279 such liability, cost, or expense is caused in whole or in part  
 280 and to whatever nature or degree by the fault, failure,

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281 negligence, misconduct, nonfeasance, or misfeasance of such  
282 freight rail operator, its successors, or its officers, agents,  
283 and employees, or any other person or persons whomsoever,  
284 provided that such assumption of liability of the department by  
285 contract shall not in any instance exceed the following  
286 parameters of allocation of risk:

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

291 2. When only one train is involved in an incident, the  
292 department may be solely responsible for any loss, injury, or  
293 damage if the train is a department train or other train  
294 pursuant to subparagraph 3., but only if in an instance when  
295 only a freight rail operator train is involved, the freight rail  
296 operator is solely responsible for any loss, injury, or damage,  
297 except for commuter rail passengers, rail corridor invitees, and  
298 trespassers, and the freight rail operator is solely responsible  
299 for its property and all of its people in any instance when its  
300 train is involved in an incident.

301 3. For the purposes of this subsection, any train involved  
302 in an incident that is neither the department's train nor the  
303 freight rail operator's train, hereinafter referred to in this  
304 subsection as an "other train," may be treated as a department  
305 train, solely for purposes of any allocation of liability  
306 between the department and the freight rail operator only, but  
307 only if the department and the freight rail operator share  
308 responsibility equally as to third parties outside the rail

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309 corridor who incur loss, injury, or damage as a result of any  
310 incident involving both a department train and a freight rail  
311 operator train, and the allocation as between the department and  
312 the freight rail operator, regardless of whether the other train  
313 is treated as a department train, shall remain one-half each as  
314 to third parties outside the rail corridor who incur loss,  
315 injury, or damage as a result of the incident, and the  
316 involvement of any other train shall not alter the sharing of  
317 equal responsibility as to third parties outside the rail  
318 corridor who incur loss, injury, or damage as a result of the  
319 incident.

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

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

331 b. If a department train, a freight rail operator train,  
332 and any other train are involved in an incident, the allocation  
333 of liability between the department and the freight rail  
334 operator, regardless of whether the other train is treated as a  
335 department train, shall remain one-half each as to third parties  
336 outside the rail corridor who incur loss, injury, or damage as a

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337 result of the incident; the involvement of any other train shall  
338 not alter the sharing of equal responsibility as to third  
339 parties outside the rail corridor who incur loss, injury, or  
340 damage as a result of the incident; and, if the owner, operator,  
341 or insurer of the other train makes any payment to injured third  
342 parties outside the rail corridor who incur loss, injury, or  
343 damage as a result of the incident, the allocation of credit  
344 between the department and the freight rail operator as to such  
345 payment shall not in any case reduce the freight rail operator's  
346 third-party-sharing allocation of one-half under this paragraph  
347 to less than one-third of the total third party liability.

348 5. Any such contractual duty to protect, defend,  
349 indemnify, and hold harmless such a freight rail operator shall  
350 expressly include a specific cap on the amount of the  
351 contractual duty, which amount shall not exceed \$200 million  
352 without prior legislative approval; require the department to  
353 purchase liability insurance and establish a self-insurance  
354 retention fund in the amount of the specific cap established  
355 under this paragraph; provided that no such contractual duty  
356 shall in any case be effective nor otherwise extend the  
357 department's liability in scope and effect beyond the  
358 contractual liability insurance and self-insurance retention  
359 fund required pursuant to this paragraph; and provided that the  
360 freight rail operator's compensation to the department for  
361 future use of the department's rail corridor shall include a  
362 monetary contribution to the cost of such liability coverage for  
363 the sole benefit of the freight rail operator.

364 (b) Purchase liability insurance, which amount shall not

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

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

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

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393 corridor on publicly owned right-of-way under contract by the  
394 governmental entity with the department or a governmental entity  
395 designated by the department.

396 (18)~~(17)~~ Exercise such other functions, powers, and duties  
397 in connection with the rail system plan as are necessary to  
398 develop a safe, efficient, and effective statewide  
399 transportation system.

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