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LEGISLATIVE ACTION

Senate

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House

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03/09/2012 05:01 PM

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Senator Dean moved the following:

Senate Amendment (with title amendment)

Between lines 33 and 34

insert:

Section 1. Subsection (7) of section 341.301, Florida Statutes, is amended to read:

341.301 Definitions; ss. 341.302-341.303.—As used in ss. 341.302-341.303, the term:

(7) "Limited covered accident" means:

(a) A collision directly between the trains, locomotives, rail cars, or rail equipment of the department and the freight rail operator only, where the collision is caused by or arising from the willful misconduct of the freight rail operator or its



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14 subsidiaries, agents, licensees, employees, officers, or
15 directors or where punitive damages or exemplary damages are
16 awarded due to the conduct of the freight rail operator or its
17 subsidiaries, agents, licensees, employees, officers, or
18 directors; or

19 (b) A collision directly between the trains, locomotives,
20 rail cars, or rail equipment of the department and National
21 Railroad Passenger Corporation only, where the collision is
22 caused by or arising from the willful misconduct of National
23 Railroad Passenger Corporation or its subsidiaries, agents,
24 licensees, employees, officers, or directors or where punitive
25 damages or exemplary damages are awarded due to the conduct of
26 National Railroad Passenger Corporation or its subsidiaries,
27 agents, licensees, employees, officers, or directors.

28 Section 2. Subsection (17) of section 341.302, Florida
29 Statutes, is amended to read:

30 341.302 Rail program; duties and responsibilities of the
31 department.—The department, in conjunction with other
32 governmental entities, including the rail enterprise and the
33 private sector, shall develop and implement a rail program of
34 statewide application designed to ensure the proper maintenance,
35 safety, revitalization, and expansion of the rail system to
36 assure its continued and increased availability to respond to
37 statewide mobility needs. Within the resources provided pursuant
38 to chapter 216, and as authorized under federal law, the
39 department shall:

40 (17) In conjunction with the acquisition, ownership,
41 construction, operation, maintenance, and management of a rail
42 corridor, have the authority to:



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43 (a) Assume obligations pursuant to the following:
44 1.a. The department may assume the obligation by contract
45 to forever protect, defend, indemnify, and hold harmless the
46 freight rail operator, or its successors, from whom the
47 department has acquired a real property interest in the rail
48 corridor, and that freight rail operator's officers, agents, and
49 employees, from and against any liability, cost, and expense,
50 including, but not limited to, commuter rail passengers and rail
51 corridor invitees in the rail corridor, regardless of whether
52 the loss, damage, destruction, injury, or death giving rise to
53 any such liability, cost, or expense is caused in whole or in
54 part, and to whatever nature or degree, by the fault, failure,
55 negligence, misconduct, nonfeasance, or misfeasance of such
56 freight rail operator, its successors, or its officers, agents,
57 and employees, or any other person or persons whomsoever; or
58 b. The department may assume the obligation by contract to
59 forever protect, defend, indemnify, and hold harmless National
60 Railroad Passenger Corporation, or its successors, and National
61 Railroad Passenger Corporation's officers, agents, and
62 employees, from and against any liability, cost, and expense,
63 including, but not limited to, commuter rail passengers and rail
64 corridor invitees in the rail corridor, regardless of whether
65 the loss, damage, destruction, injury, or death giving rise to
66 any such liability, cost, or expense is caused in whole or in
67 part, and to whatever nature or degree, by the fault, failure,
68 negligence, misconduct, nonfeasance, or misfeasance of National
69 Railroad Passenger Corporation, its successors, or its officers,
70 agents, and employees, or any other person or persons
71 whomsoever.



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72 2. However, ~~Provided that~~ such assumption of liability of
73 the department by contract as to either sub-subparagraph 1.a. or
74 sub-subparagraph 1.b. may ~~shall~~ not in any instance exceed the
75 following parameters of allocation of risk:

76 a.1. The department may be solely responsible for any loss,
77 injury, or damage to commuter rail passengers, or rail corridor
78 invitees, or trespassers, regardless of circumstances or cause,
79 subject to sub-subparagraph b. and subparagraphs ~~2.7~~ 3., 4., 5.,
80 and 6.

81 b.(I)2. In the event of a limited covered accident, the
82 authority of the department to protect, defend, and indemnify
83 the freight operator for all liability, cost, and expense,
84 including punitive or exemplary damages, in excess of the
85 deductible or self-insurance retention fund established under
86 paragraph (b) and actually in force at the time of the limited
87 covered accident exists only if the freight operator agrees,
88 with respect to the limited covered accident, to protect,
89 defend, and indemnify the department for the amount of the
90 deductible or self-insurance retention fund established under
91 paragraph (b) and actually in force at the time of the limited
92 covered accident.

93 (II) In the event of a limited covered accident, the
94 authority of the department to protect, defend, and indemnify
95 National Railroad Passenger Corporation for all liability, cost,
96 and expense, including punitive or exemplary damages, in excess
97 of the deductible or self-insurance retention fund established
98 under paragraph (b) and actually in force at the time of the
99 limited covered accident exists only if National Railroad
100 Passenger Corporation agrees, with respect to the limited



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101 covered accident, to protect, defend, and indemnify the
102 department for the amount of the deductible or self-insurance
103 retention fund established under paragraph (b) and actually in
104 force at the time of the limited covered accident.

105 3. When only one train is involved in an incident, the
106 department may be solely responsible for any loss, injury, or
107 damage if the train is a department train or other train
108 pursuant to subparagraph 4., but only if;

109 a. When an incident occurs with only a freight train
110 involved, including incidents with trespassers or at grade
111 crossings, the freight rail operator is solely responsible for
112 any loss, injury, or damage, except for commuter rail passengers
113 and rail corridor invitees; or

114 b. If an incident occurs with only a National Railroad
115 Passenger Corporation train involved, including incidents with
116 trespassers or at grade crossings, National Railroad Passenger
117 Corporation is solely responsible for any loss, injury, or
118 damage, except for commuter rail passengers and rail corridor
119 invitees.

120 4. For the purposes of this subsection:7

121 a. Any train involved in an incident that is neither the
122 department's train nor the freight rail operator's train,
123 hereinafter referred to in this subsection as an "other train,"
124 may be treated as a department train, solely for purposes of any
125 allocation of liability between the department and the freight
126 rail operator only, but only if the department and the freight
127 rail operator share responsibility equally as to third parties
128 outside the rail corridor who incur loss, injury, or damage as a
129 result of any incident involving both a department train and a



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130 freight rail operator train, and the allocation as between the
131 department and the freight rail operator, regardless of whether
132 the other train is treated as a department train, shall remain
133 one-half each as to third parties outside the rail corridor who
134 incur loss, injury, or damage as a result of the incident. The
135 involvement of any other train shall not alter the sharing of
136 equal responsibility as to third parties outside the rail
137 corridor who incur loss, injury, or damage as a result of the
138 incident; or

139 b. Any train involved in an incident that is neither the
140 department's train nor the National Railroad Passenger
141 Corporation's train, hereinafter referred to in this subsection
142 as an "other train," may be treated as a department train,
143 solely for purposes of any allocation of liability between the
144 department and National Railroad Passenger Corporation only, but
145 only if the department and National Railroad Passenger
146 Corporation share responsibility equally as to third parties
147 outside the rail corridor who incur loss, injury, or damage as a
148 result of any incident involving both a department train and a
149 National Railroad Passenger Corporation train, and the
150 allocation as between the department and National Railroad
151 Passenger Corporation, regardless of whether the other train is
152 treated as a department train, shall remain one-half each as to
153 third parties outside the rail corridor who incur loss, injury,
154 or damage as a result of the incident. The involvement of any
155 other train shall not alter the sharing of equal responsibility
156 as to third parties outside the rail corridor who incur loss,
157 injury, or damage as a result of the incident.

158 5. When more than one train is involved in an incident:



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159 a. (I) If only a department train and freight rail
160 operator's train, or only an other train as described in sub-
161 subparagraph 4.a. subparagraph 4. and a freight rail operator's
162 train, are involved in an incident, the department may be
163 responsible for its property and all of its people, all commuter
164 rail passengers, and rail corridor invitees, but only if the
165 freight rail operator is responsible for its property and all of
166 its people, and the department and the freight rail operator
167 each share one-half responsibility as to trespassers or third
168 parties outside the rail corridor who incur loss, injury, or
169 damage as a result of the incident; or

170 (II) If only a department train and a National Railroad
171 Passenger Corporation train, or only an other train as described
172 in sub-subparagraph 4.b. and a National Railroad Passenger
173 Corporation train, are involved in an incident, the department
174 may be responsible for its property and all of its people, all
175 commuter rail passengers, and rail corridor invitees, but only
176 if National Railroad Passenger Corporation is responsible for
177 its property and all of its people, all National Railroad
178 Passenger Corporation's rail property, and the department and
179 National Railroad Passenger Corporation each share one-half
180 responsibility as to trespassers or third parties outside the
181 rail corridor who incur loss, injury, or damage as a result of
182 the incident.

183 b. (I) If a department train, a freight rail operator train,
184 and any other train are involved in an incident, the allocation
185 of liability between the department and the freight rail
186 operator, regardless of whether the other train is treated as a
187 department train, shall remain one-half each as to third parties



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188 outside the rail corridor who incur loss, injury, or damage as a
189 result of the incident; the involvement of any other train shall
190 not alter the sharing of equal responsibility as to third
191 parties outside the rail corridor who incur loss, injury, or
192 damage as a result of the incident; and, if the owner, operator,
193 or insurer of the other train makes any payment to injured third
194 parties outside the rail corridor who incur loss, injury, or
195 damage as a result of the incident, the allocation of credit
196 between the department and the freight rail operator as to such
197 payment shall not in any case reduce the freight rail operator's
198 third-party-sharing allocation of one-half under this paragraph
199 to less than one-third of the total third party liability; or
200 (II) If a department train, a National Railroad Passenger
201 Corporation train, and any other train are involved in an
202 incident, the allocation of liability between the department and
203 National Railroad Passenger Corporation, regardless of whether
204 the other train is treated as a department train, shall remain
205 one-half each as to third parties outside the rail corridor who
206 incur loss, injury, or damage as a result of the incident; the
207 involvement of any other train shall not alter the sharing of
208 equal responsibility as to third parties outside the rail
209 corridor who incur loss, injury, or damage as a result of the
210 incident; and, if the owner, operator, or insurer of the other
211 train makes any payment to injured third parties outside the
212 rail corridor who incur loss, injury, or damage as a result of
213 the incident, the allocation of credit between the department
214 and National Railroad Passenger Corporation as to such payment
215 shall not in any case reduce National Railroad Passenger
216 Corporation's third-party-sharing allocation of one-half under



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217 this sub-subparagraph to less than one-third of the total third
218 party liability.

219 6. Any such contractual duty to protect, defend, indemnify,
220 and hold harmless such a freight rail operator or National
221 Railroad Passenger Corporation shall expressly include a
222 specific cap on the amount of the contractual duty, which amount
223 shall not exceed \$200 million without prior legislative
224 approval, and the department to purchase liability insurance and
225 establish a self-insurance retention fund in the amount of the
226 specific cap established under this subparagraph, provided that:

227 a. No such contractual duty shall in any case be effective
228 nor otherwise extend the department's liability in scope and
229 effect beyond the contractual liability insurance and self-
230 insurance retention fund required pursuant to this paragraph;
231 and

232 b. The freight rail operator's compensation to the
233 department for future use of the department's rail corridor
234 shall include a monetary contribution to the cost of such
235 liability coverage for the sole benefit of the freight rail
236 operator. National Railroad Passenger Corporation's compensation
237 to the department for future use of the department's rail
238 corridor shall include a monetary contribution to the cost of
239 such liability coverage for the sole benefit of National
240 Railroad Passenger Corporation.

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



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246 paragraph (a), National Railroad Passenger Corporation, commuter
247 rail service providers, governmental entities, or any ancillary
248 development, which self-insurance retention fund or deductible
249 shall not exceed \$10 million. The insureds shall pay a
250 reasonable monetary contribution to the cost of such liability
251 coverage for the sole benefit of the insured. Such insurance and
252 self-insurance retention fund may provide coverage for all
253 damages, including, but not limited to, compensatory, special,
254 and exemplary, and be maintained to provide an adequate fund to
255 cover claims and liabilities for loss, injury, or damage arising
256 out of or connected with the ownership, operation, maintenance,
257 and management of a rail corridor.

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

260

261 ~~Neither~~ The assumption by contract to protect, defend,
262 indemnify, and hold harmless; the purchase of insurance; or ~~nor~~
263 the establishment of a self-insurance retention fund is not
264 ~~shall be~~ deemed to be a waiver of any defense of sovereign
265 immunity for torts nor deemed to increase the limits of the
266 department's or the governmental entity's liability for torts as
267 provided in s. 768.28. The requirements of s. 287.022(1) shall
268 not apply to the purchase of any insurance under this
269 subsection. The provisions of this subsection ~~shall~~ apply and
270 inure fully as to any other governmental entity providing
271 commuter rail service and constructing, operating, maintaining,
272 or managing a rail corridor on publicly owned right-of-way under
273 contract by the governmental entity with the department or a
274 governmental entity designated by the department.



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275 Notwithstanding any law to the contrary, procurement for the
276 construction, operation, maintenance, and management of any rail
277 corridor described in this subsection, whether by the
278 department, a governmental entity under contract with the
279 department, or a governmental entity designated by the
280 department, shall be pursuant to s. 287.057 and shall include,
281 but not be limited to, criteria for the consideration of
282 qualifications, technical aspects of the proposal, and price.
283 Further, any such contract for design-build shall be procured
284 pursuant to the criteria in s. 337.11(7).

285

286 ===== T I T L E A M E N D M E N T =====

287 And the title is amended as follows:

288 Delete line 2

289 and insert:

290 An act relating to mitigation; amending s. 341.301,
291 F.S.; redefining the term "limited covered accident";
292 amending s. 341.302, F.S.; providing parameters within
293 which the Department of Transportation may by contract
294 indemnify against loss by National Railroad Passenger
295 Corporation; authorizing the department to purchase
296 liability insurance including coverage for the
297 department, National Railroad Passenger Corporation,
298 commuter rail service providers, governmental
299 entities, or any ancillary development and establish a
300 self-insurance retention fund; limiting the amount of
301 the insurance and self-insurance retention fund;
302 providing that the insureds must make payments for the
303 coverage; providing that the insurance may provide



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304 coverage for all damages and be maintained to provide
305 a fund to cover liabilities arising from rail corridor
306 ownership and operations; amending s. 373.4137,