

Amendment No.

CHAMBER ACTION

Senate

House

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Representative Santiago offered the following:

Amendment to Amendment (312750) (with title amendment)

Remove lines 2783-2827 of the amendment and insert:

Section 67. 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:

(1) "Ancillary development" includes any lessee or licensee of the department, including other governmental entities, vendors, retailers, restaurateurs, or contract service providers, within a ~~department-owned~~ rail corridor owned by the department or in which the department has an easement interest, a right to operate, or a right of access. The term does not

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15 ~~include, except for~~ providers of commuter rail service,
16 intercity rail passenger service by an intercity rail passenger
17 operator or by National Railroad Passenger Corporation, or
18 freight rail service. The term includes air and subsurface
19 rights, services that provide a local area network for devices
20 for transmitting data over wireless networks, and advertising.

21 (2) "Branch line continuance project" means a project that
22 involves branch line rehabilitation, new connecting track, rail
23 banking, and other similar types of projects, including those
24 specifically identified in the federal Railroad Revitalization
25 and Regulatory Reform Act of 1976, and subsequent amendments to
26 that act.

27 (3) "Commuter rail passenger" or "passengers" means all
28 persons, ticketed or unticketed, using the commuter rail service
29 on a ~~department-owned~~ rail corridor owned by the department or
30 in which the department has an easement interest, a right to
31 operate, or a right of access:

32 (a) On board trains, locomotives, rail cars, or rail
33 equipment employed in commuter rail service or entraining
34 thereon and detraining therefrom;

35 (b) On or about the rail corridor for any purpose related
36 to the commuter rail service, including parking, inquiring about
37 commuter rail service, or purchasing tickets therefor, and
38 coming to, waiting for, leaving from, or observing trains,
39 locomotives, rail cars, or rail equipment; or

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

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

42 (4) "Commuter rail service" means the transportation of
43 commuter rail passengers and other passengers by rail pursuant
44 to a rail program provided by the department or any other
45 governmental entity.

46 (5) "Department train" means a train operating in the rail
47 corridor pursuant to an easement interest, a right to operate,
48 or a right to access granted to the department, or an assignee
49 of the department, or an "other train" as defined in s.
50 341.302(17)(a)4.

51 (6)~~(5)~~ "Governmental entity" or "entities" has the same
52 meaning as provided in s. 11.45, including a "public agency" as
53 defined in s. 163.01.

54 (7) "Intercity rail passenger operator" means a private
55 rail operator of passenger rail service in a minimum of three
56 counties, other than National Railroad Passenger Corporation,
57 whose ridership consists of passengers traveling between two or
58 more metropolitan areas.

59 (8)~~(6)~~ "Intercity rail transportation system" means the
60 network of railroad facilities used or available for interstate
61 and intrastate passenger and freight operations by railroads,
62 whether or not on a schedule or whether or not restricted.

63 (9)~~(7)~~ "Limited covered accident" means:

64 (a) A collision directly between the trains, locomotives,
65 rail cars, or rail equipment of the department and the freight
66 rail operator only, where the collision is caused by or arising

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67 from the willful misconduct of the freight rail operator or its
68 subsidiaries, agents, licensees, employees, officers, or
69 directors or where punitive damages or exemplary damages are
70 awarded due to the conduct of the freight rail operator or its
71 subsidiaries, agents, licensees, employees, officers, or
72 directors; ~~or~~

73 (b) A collision directly between the trains, locomotives,
74 rail cars, or rail equipment of the department and National
75 Railroad Passenger Corporation only, where the collision is
76 caused by or arising from the willful misconduct of National
77 Railroad Passenger Corporation or its subsidiaries, agents,
78 licensees, employees, officers, or directors or where punitive
79 damages or exemplary damages are awarded due to the conduct of
80 National Railroad Passenger Corporation or its subsidiaries,
81 agents, licensees, employees, officers, or directors; or

82 (c) A collision directly between the trains, locomotives,
83 rail cars, or rail equipment of the department and the intercity
84 rail passenger operator only, where the collision is caused by
85 or arising from the willful misconduct of the intercity rail
86 passenger operator or its subsidiaries, agents, licensees,
87 employees, officers, or directors or where punitive damages or
88 exemplary damages are awarded due to the conduct of the
89 intercity rail passenger operator or its subsidiaries, agents,
90 licensees, employees, officers, or directors.

91 (10)-(8) "Rail corridor" means a linear contiguous strip of
92 real property that is used for rail service. The term includes

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93 the corridor and structures essential to railroad operations,
94 including the land, structures, improvements, rights-of-way,
95 easements, rail lines, rail beds, guideway structures, switches,
96 yards, parking facilities, power relays, switching houses, rail
97 stations, any ancillary development, and any other facilities or
98 equipment used for the purposes of construction, operation, or
99 maintenance of a railroad that provides rail service.

100 ~~(11)-(9)~~ "Rail corridor invitee" means all persons who are
101 on or about a ~~department-owned~~ rail corridor owned by the
102 department or in which the department has an easement interest,
103 a right to operate, or a right of access:

104 (a) For any purpose related to any ancillary development
105 thereon; or

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

108 ~~(12)-(10)~~ "Rail programs" means those programs administered
109 by the state or other governmental entities which involve
110 projects affecting the movement of people or goods by rail lines
111 that have been or will be constructed to serve freight or
112 passenger markets within a city or between cities.

113 ~~(13)-(11)~~ "Rail service development project" means a
114 project undertaken by a public agency to determine whether a new
115 or innovative technique or measure can be utilized to improve or
116 expand rail service. The duration of the project funding shall
117 be limited according to the type of project and in no case shall
118 exceed 3 years. Rail service development projects include those

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119 projects and other actions undertaken to enhance railroad
120 operating efficiency or increased rail service, including
121 measures that result in improved speed profiles, operations, or
122 technological applications that lead to reductions in operating
123 costs and increases in productivity or service.

124 ~~(14)-(12)~~ "Railroad" or "rail system" means any common
125 carrier fixed-guideway transportation system such as the
126 conventional steel rail-supported, steel-wheeled system as well
127 as the high-speed rail system defined in s. 341.8203.

128 ~~(15)-(13)~~ "Railroad capital improvement project" means a
129 project identified by the rail component of the Florida
130 Transportation Plan, which project involves the leasing,
131 acquisition, design, construction, reconstruction, or
132 improvement to the existing intercity rail transportation system
133 or future segments thereof, including such items as locomotives
134 and other rolling stock, tracks, terminals, and rights-of-way
135 for the continuance or expansion of rail service as necessary to
136 ensure the continued effectiveness of the state's rail
137 facilities and systems in meeting mobility and industrial
138 development needs.

139 ~~(16)-(14)~~ "Railroad operations" means the use of the rail
140 corridor to conduct commuter rail service by an intercity rail
141 passenger operator or by National Railroad Passenger
142 Corporation, intercity rail passenger service, or freight rail
143 service.

144 ~~(17)-(15)~~ "Train" means any locomotive engine that is

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145 | powered by diesel fuel, electricity, or other means, with or
146 | without cars coupled thereto, and operated upon a railroad track
147 | or any other form of fixed guideway, except that the term does
148 | not include a light rail vehicle such as a streetcar or people
149 | mover.

150 | Section 68. Subsection (17) of section 341.302, Florida
151 | Statutes, is amended to read:

152 | 341.302 Rail program; duties and responsibilities of the
153 | department.—The department, in conjunction with other
154 | governmental entities, including the rail enterprise and the
155 | private sector, shall develop and implement a rail program of
156 | statewide application designed to ensure the proper maintenance,
157 | safety, revitalization, and expansion of the rail system to
158 | assure its continued and increased availability to respond to
159 | statewide mobility needs. Within the resources provided pursuant
160 | to chapter 216, and as authorized under federal law, the
161 | department shall:

162 | (17) In conjunction with the acquisition, ownership,
163 | construction, operation, maintenance, and management of a rail
164 | corridor, have the authority to:

165 | (a) Assume obligations pursuant to the following:

166 | 1.a. The department may assume the obligation by contract
167 | to forever protect, defend, indemnify, and hold harmless the
168 | freight rail operator, or its successors, from whom the
169 | department has acquired a real property interest in the rail
170 | corridor, and that freight rail operator's officers, agents, and

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171 employees, from and against any liability, cost, and expense,
172 including, but not limited to, commuter rail passengers and rail
173 corridor invitees in the rail corridor, regardless of whether
174 the loss, damage, destruction, injury, or death giving rise to
175 any such liability, cost, or expense is caused in whole or in
176 part, and to whatever nature or degree, by the fault, failure,
177 negligence, misconduct, nonfeasance, or misfeasance of such
178 freight rail operator, its successors, or its officers, agents,
179 and employees, or any other person or persons whomsoever; ~~or~~

180 b. The department may assume the obligation by contract to
181 forever protect, defend, indemnify, and hold harmless National
182 Railroad Passenger Corporation, or its successors, and officers,
183 agents, and employees of National Railroad Passenger
184 Corporation, from and against any liability, cost, and expense,
185 including, but not limited to, commuter rail passengers and rail
186 corridor invitees in the rail corridor, regardless of whether
187 the loss, damage, destruction, injury, or death giving rise to
188 any such liability, cost, or expense is caused in whole or in
189 part, and to whatever nature or degree, by the fault, failure,
190 negligence, misconduct, nonfeasance, or misfeasance of National
191 Railroad Passenger Corporation, its successors, or its officers,
192 agents, and employees, or any other person or persons
193 whomsoever; or

194 c. The department may assume the obligation by contract to
195 forever protect, defend, indemnify, and hold harmless an
196 intercity rail passenger operator or its successors, or a

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197 freight rail operator or its successors, from whom the
198 department has acquired an easement interest, a right to
199 operate, or a right of access in the rail corridor and that
200 intercity rail passenger operator's or freight rail operator's
201 officers, agents, and employees from and against any liability,
202 cost, and expense, including, but not limited to, commuter rail
203 passengers and rail corridor invitees in the rail corridor,
204 regardless of whether the loss, damage, destruction, injury, or
205 death giving rise to any such liability, cost, or expense is
206 caused in whole or in part, and to whatever nature or degree, by
207 the fault, failure, negligence, misconduct, nonfeasance, or
208 misfeasance of such intercity rail passenger operator or such
209 freight rail operator, its successors, or its officers, agents,
210 and employees or any other person.

211 2. The assumption of liability of the department by
212 contract pursuant to sub-subparagraph 1.a. or sub-subparagraph
213 1.b. may not in any instance exceed the following parameters of
214 allocation of risk:

215 a. The department may be solely responsible for any loss,
216 injury, or damage to commuter rail passengers, or rail corridor
217 invitees, or trespassers, regardless of circumstances or cause,
218 subject to sub-subparagraph b. and subparagraphs 3., 4., 5., and
219 6.

220 b.(I) In the event of a limited covered accident, the
221 authority of the department to protect, defend, and indemnify
222 the freight operator for all liability, cost, and expense,

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223 including punitive or exemplary damages, in excess of the
224 deductible or self-insurance retention fund established under
225 paragraph (b) and actually in force at the time of the limited
226 covered accident exists only if the freight operator agrees,
227 with respect to the limited covered accident, to protect,
228 defend, and indemnify the department for the amount of the
229 deductible or self-insurance retention fund established under
230 paragraph (b) and actually in force at the time of the limited
231 covered accident.

232 (II) In the event of a limited covered accident, the
233 authority of the department to protect, defend, and indemnify
234 National Railroad Passenger Corporation for all liability, cost,
235 and expense, including punitive or exemplary damages, in excess
236 of the deductible or self-insurance retention fund established
237 under paragraph (b) and actually in force at the time of the
238 limited covered accident exists only if National Railroad
239 Passenger Corporation agrees, with respect to the limited
240 covered accident, to protect, defend, and indemnify the
241 department for the amount of the deductible or self-insurance
242 retention fund established under paragraph (b) and actually in
243 force at the time of the limited covered accident.

244 (III) In the event of a limited covered accident, the
245 authority of the department to protect, defend, and indemnify
246 the intercity rail passenger operator for all liability, cost,
247 and expense, including punitive or exemplary damages, in excess
248 of the deductible or self-insurance retention fund established

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249 under paragraph (b) and actually in force at the time of the
250 limited covered accident exists only if the intercity rail
251 passenger operator agrees, with respect to the limited covered
252 accident, to protect, defend, and indemnify the department for
253 the amount of the deductible or self-insurance retention fund
254 established under paragraph (b) and actually in force at the
255 time of the limited covered accident.

256 3. When only one train is involved in an incident, the
257 department may be solely responsible for any loss, injury, or
258 damage if the train is a department train or other train
259 pursuant to subparagraph 4., but only if:

260 a. When an incident occurs with only a freight train
261 involved, including incidents with trespassers or at grade
262 crossings, the freight rail operator is solely responsible for
263 any loss, injury, or damage, except for commuter rail passengers
264 and rail corridor invitees; ~~or~~

265 b. When an incident occurs with only a National Railroad
266 Passenger Corporation train involved, including incidents with
267 trespassers or at grade crossings, National Railroad Passenger
268 Corporation is solely responsible for any loss, injury, or
269 damage, except for commuter rail passengers and rail corridor
270 invitees; or

271 c. When an incident occurs with only an intercity rail
272 passenger train involved, including incidents with trespassers
273 or at grade crossings, the intercity rail passenger operator is
274 solely responsible for any loss, injury, or damage, except for

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275 commuter rail passengers and rail corridor invitees.

276 4. For the purposes of this subsection:

277 a. Any train involved in an incident that is not ~~neither~~
278 the department's train, ~~nor~~ the freight rail operator's train,
279 or an intercity rail passenger operator's train, hereinafter
280 referred to in this subsection as an "other train," may be
281 treated as a department train, solely for purposes of any
282 allocation of liability between the department and the freight
283 rail operator only, but only if the department and the freight
284 rail operator share responsibility equally as to third parties
285 outside the rail corridor who incur loss, injury, or damage as a
286 result of any incident involving both a department train and a
287 freight rail operator train, and the allocation as between the
288 department and the freight rail operator, regardless of whether
289 the other train is treated as a department train, shall remain
290 one-half each as to third parties outside the rail corridor who
291 incur loss, injury, or damage as a result of the incident. The
292 involvement of any other train shall not alter the sharing of
293 equal responsibility as to third parties outside the rail
294 corridor who incur loss, injury, or damage as a result of the
295 incident; ~~or~~

296 b. Any train involved in an incident that is not ~~neither~~
297 the department's train or ~~nor~~ the National Railroad Passenger
298 Corporation's train, ~~hereinafter~~ referred to in this subsection
299 as an "other train," may be treated as a department train,
300 solely for purposes of any allocation of liability between the

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301 department and National Railroad Passenger Corporation only, but
302 only if the department and National Railroad Passenger
303 Corporation share responsibility equally as to third parties
304 outside the rail corridor who incur loss, injury, or damage as a
305 result of any incident involving both a department train and a
306 National Railroad Passenger Corporation train, and the
307 allocation as between the department and National Railroad
308 Passenger Corporation, regardless of whether the other train is
309 treated as a department train, shall remain one-half each as to
310 third parties outside the rail corridor who incur loss, injury,
311 or damage as a result of the incident. The involvement of any
312 other train shall not alter the sharing of equal responsibility
313 as to third parties outside the rail corridor who incur loss,
314 injury, or damage as a result of the incident; or

315 c. Any train involved in an incident that is not the
316 department's train, the intercity rail passenger operator's
317 train, or the freight rail operator's train, referred to in this
318 subsection as an "other train," may be treated as a department
319 train, solely for purposes of any allocation of liability
320 between the department and the intercity rail passenger operator
321 only, but only if the department and the intercity rail
322 passenger operator share responsibility equally as to third
323 parties outside the rail corridor who incur loss, injury, or
324 damage as a result of any incident involving both a department
325 train and an intercity rail passenger train, and the allocation
326 as between the department and the intercity rail passenger

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327 operator, regardless of whether the other train is treated as a
328 department train, shall remain one-half each as to third parties
329 outside the rail corridor who incur loss, injury, or damage as a
330 result of the incident. The involvement of any other train shall
331 not alter the sharing of equal responsibility as to third
332 parties outside the rail corridor who incur loss, injury, or
333 damages as a result of the incident.

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

335 a.(I) If only a department train and freight rail
336 operator's train, or only an other train as described in sub-
337 subparagraph 4.a. and a freight rail operator's train, are
338 involved in an incident, the department may be responsible for
339 its property and all of its people, all commuter rail
340 passengers, and rail corridor invitees, but only if the freight
341 rail operator is responsible for its property and all of its
342 people, and the department and the freight rail operator each
343 share one-half responsibility as to trespassers or third parties
344 outside the rail corridor who incur loss, injury, or damage as a
345 result of the incident; ~~or~~

346 (II) If only a department train and a National Railroad
347 Passenger Corporation train, or only an other train as described
348 in sub-subparagraph 4.b. and a National Railroad Passenger
349 Corporation train, are involved in an incident, the department
350 may be responsible for its property and all of its people, all
351 commuter rail passengers, and rail corridor invitees, but only
352 if National Railroad Passenger Corporation is responsible for

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353 its property and all of its people, all National Railroad
354 Passenger Corporation's rail passengers, and the department and
355 National Railroad Passenger Corporation each share one-half
356 responsibility as to trespassers or third parties outside the
357 rail corridor who incur loss, injury, or damage as a result of
358 the incident; or

359 (III) If only a department train and an intercity rail
360 passenger operator's train, or only an other train as described
361 in sub-subparagraph 4.a. and an intercity rail passenger
362 operator's train, are involved in an incident, the department
363 may be responsible for its property and all of its people, all
364 commuter rail passengers, and rail corridor invitees, but only
365 if the intercity rail passenger operator is responsible for its
366 property and all of its people, and the department and the
367 intercity rail passenger operator each share one-half
368 responsibility as to trespassers or third parties outside the
369 rail corridor who incur loss, injury, or damage as a result of
370 the incident.

371 b.(I) If a department train, a freight rail operator
372 train, and any other train are involved in an incident, the
373 allocation of liability between the department and the freight
374 rail operator, regardless of whether the other train is treated
375 as a department train, shall remain one-half each as to third
376 parties outside the rail corridor who incur loss, injury, or
377 damage as a result of the incident; the involvement of any other
378 train shall not alter the sharing of equal responsibility as to

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379 third parties outside the rail corridor who incur loss, injury,
380 or damage as a result of the incident; and, if the owner,
381 operator, or insurer of the other train makes any payment to
382 injured third parties outside the rail corridor who incur loss,
383 injury, or damage as a result of the incident, the allocation of
384 credit between the department and the freight rail operator as
385 to such payment shall not in any case reduce the freight rail
386 operator's third-party-sharing allocation of one-half under this
387 paragraph to less than one-third of the total third party
388 liability; ~~or~~

389 (II) If a department train, a National Railroad Passenger
390 Corporation train, and any other train are involved in an
391 incident, the allocation of liability between the department and
392 National Railroad Passenger Corporation, regardless of whether
393 the other train is treated as a department train, shall remain
394 one-half each as to third parties outside the rail corridor who
395 incur loss, injury, or damage as a result of the incident; the
396 involvement of any other train shall not alter the sharing of
397 equal responsibility as to third parties outside the rail
398 corridor who incur loss, injury, or damage as a result of the
399 incident; and, if the owner, operator, or insurer of the other
400 train makes any payment to injured third parties outside the
401 rail corridor who incur loss, injury, or damage as a result of
402 the incident, the allocation of credit between the department
403 and National Railroad Passenger Corporation as to such payment
404 shall not in any case reduce National Railroad Passenger

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405 Corporation's third-party-sharing allocation of one-half under
406 this sub-subparagraph to less than one-third of the total third
407 party liability; or

408 (III) If a department train, an intercity rail passenger
409 operator train, and any other train are involved in an incident,
410 the allocation of liability between the department and the
411 intercity rail passenger operator, regardless of whether the
412 other train is treated as a department train, shall remain one-
413 half each as to third parties outside the rail corridor who
414 incur loss, injury, or damage as a result of the incident; the
415 involvement of any other train shall not alter the sharing of
416 equal responsibility as to third parties outside the rail
417 corridor who incur loss, injury, or damage as a result of the
418 incident; and, if the owner, operator, or insurer of the other
419 train makes any payment to injured third parties outside the
420 rail corridor who incur loss, injury, or damage as a result of
421 the incident, the allocation of credit between the department
422 and the intercity rail passenger operator as to such payment
423 shall not in any case reduce the intercity rail passenger
424 operator's third-party-sharing allocation of one-half under this
425 sub-subparagraph to less than one-third of the total third party
426 liability.

427 6. Any such contractual duty to protect, defend,
428 indemnify, and hold harmless such a freight rail operator,
429 intercity rail passenger operator, or National Railroad
430 Passenger Corporation shall expressly include a specific cap on

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431 the amount of the contractual duty, which amount shall not
432 exceed \$200 million without prior legislative approval, and the
433 department to purchase liability insurance and establish a self-
434 insurance retention fund in the amount of the specific cap
435 established under this subparagraph, provided that:

436 a. No such contractual duty shall in any case be effective
437 nor otherwise extend the department's liability in scope and
438 effect beyond the contractual liability insurance and self-
439 insurance retention fund required pursuant to this paragraph;
440 and

441 b.(I) The freight rail operator's compensation to the
442 department for future use of the department's rail corridor
443 shall include a monetary contribution to the cost of such
444 liability coverage for the sole benefit of the freight rail
445 operator.

446 (II) National Railroad Passenger Corporation's
447 compensation to the department for future use of the
448 department's rail corridor shall include a monetary contribution
449 to the cost of such liability coverage for the sole benefit of
450 National Railroad Passenger Corporation.

451 (III) The intercity rail passenger operator's compensation
452 to the department for future use of the department's rail
453 corridor shall include a monetary contribution to the cost of
454 such liability coverage for the sole benefit of the intercity
455 rail passenger operator.

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

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457 exceed \$200 million, and establish a self-insurance retention
458 fund for the purpose of paying the deductible limit established
459 in the insurance policies it may obtain, including coverage for
460 the department, any intercity rail passenger operator, any
461 freight rail operator ~~as described in paragraph (a)~~, National
462 Railroad Passenger Corporation, commuter rail service providers,
463 governmental entities, or any ancillary development, which self-
464 insurance retention fund or deductible shall not exceed \$10
465 million. The insureds shall pay a reasonable monetary
466 contribution to the cost of such liability coverage for the sole
467 benefit of the insured. Such insurance and self-insurance
468 retention fund may provide coverage for all damages, including,
469 but not limited to, compensatory, special, and exemplary, and be
470 maintained to provide an adequate fund to cover claims and
471 liabilities for loss, injury, or damage arising out of or
472 connected with the ownership, operation, maintenance, and
473 management of a rail corridor.

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

476

477 Neither the assumption by contract to protect, defend,
478 indemnify, and hold harmless; the purchase of insurance; nor the
479 establishment of a self-insurance retention fund shall be deemed
480 to be a waiver of any defense of sovereign immunity for torts
481 nor deemed to increase the limits of the department's or the
482 governmental entity's liability for torts as provided in s.

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483 768.28. The requirements of s. 287.022(1) shall not apply to the
484 purchase of any insurance under this subsection. The provisions
485 of this subsection shall apply and inure fully as to any other
486 governmental entity providing commuter rail service and
487 constructing, operating, maintaining, or managing a rail
488 corridor on publicly owned right-of-way, including a public
489 easement on private right-of-way, under contract by the
490 governmental entity with the department or a governmental entity
491 designated by the department. Notwithstanding any law to the
492 contrary, procurement for the construction, operation,
493 maintenance, and management of any rail corridor described in
494 this subsection, whether by the department, a governmental
495 entity under contract with the department, or a governmental
496 entity designated by the department, shall be pursuant to s.
497 287.057 and shall include, but not be limited to, criteria for
498 the consideration of qualifications, technical aspects of the
499 proposal, and price. Further, any such contract for design-build
500 shall be procured pursuant to the criteria in s. 337.11(7).

501
502 -----
503 **T I T L E A M E N D M E N T**

504 Remove lines 3772-3784 of the amendment and insert:
505 donor registry; amending s. 341.301, F.S.; revising
506 definitions relating to rail programs; amending s.
507 341.302, F.S., relating to the rail program; revising
508 provisions for assumption of obligations and liability

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509 | in conjunction with the acquisition, ownership,
510 | construction, operation, maintenance, and management
511 | of a rail corridor;

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