

1 A bill to be entitled
 2 An act relating to the South Florida Regional
 3 Transportation Authority; creating s. 343.545, F.S.;
 4 defining terms; authorizing the South Florida Regional
 5 Transportation Authority, in conjunction with the
 6 operation of a certain commuter rail service, to have
 7 the power to assume specified indemnification and
 8 insurance obligations, subject to certain
 9 requirements; amending s. 341.302, F.S.; authorizing
 10 the Department of Transportation to agree to assume
 11 certain indemnification and insurance obligations
 12 under certain circumstances; providing an effective
 13 date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Section 343.545, Florida Statutes, is created
 18 to read:

19 343.545 Power to assume indemnification and insurance
 20 obligations; definitions.—

21 (1) As used in this section, the term:

22 (a) "All Aboard Florida" or "AAF" means All Aboard Florida
 23 Operations, LLC, or its successors and assigns.

24 (b) "AAF intercity rail passenger" means any person,
 25 ticketed or unticketed, using the AAF intercity passenger rail

26 service on the rail corridor:

27 1. On board trains, locomotives, rail cars, or rail
28 equipment employed in AAF intercity passenger rail service or
29 entraining thereon and detraining therefrom;

30 2. On or about the rail corridor for any purpose related
31 to the AAF intercity passenger rail service, including parking
32 or purchasing tickets therefor and coming to, waiting for, and
33 leaving from locomotives, rail cars, or rail equipment; or

34 3. Meeting, assisting, or in the company of any person
35 described in subparagraph 1. or subparagraph 2.

36 (c) "AAF rail corridor invitee" means any rail corridor
37 invitee who is an AAF intercity rail passenger or is otherwise
38 present on the rail corridor at the request of, pursuant to a
39 contract with, or otherwise for the purpose of doing business
40 with or at the behest of AAF, including persons who are vendors
41 or employees of vendors at the MiamiCentral station or any other
42 station that AAF may construct on the rail corridor. The term
43 does not include patrons at any station, except those patrons
44 who are also AAF's intercity rail passengers; commercial or
45 residential tenants of the developments in and around the
46 stations or their invitees; or any third parties performing work
47 at a station or in the rail corridor, such as employees and
48 invitees of PI or related entities, utilities, and fiber optic
49 companies, or invitees or employees of the department or any
50 county or municipality.

51 (d) "Authority" or "SFRTA" means the South Florida
52 Regional Transportation Authority.

53 (e) "Commuter rail passenger" means any person, ticketed
54 or unticketed, using the commuter rail service on the rail
55 corridor:

56 1. On board trains, locomotives, rail cars, or rail
57 equipment employed in commuter rail service or entraining
58 thereon and detraining therefrom;

59 2. On or about the rail corridor for any purpose related
60 to the commuter rail service, including parking or purchasing
61 tickets therefor and coming to, waiting for, and leaving from
62 locomotives, rail cars, or rail equipment; or

63 3. Meeting, assisting, or in the company of any person
64 described in subparagraph 1. or subparagraph 2.

65 (f) "Commuter rail service" means the operation of the
66 authority's trains transporting passengers and making frequent
67 stops within urban areas and their immediate suburbs along the
68 rail corridor for the purpose of passengers entraining and
69 detraining, and including the nonrevenue movement of trains for
70 storage or maintenance. The term does not include the operation
71 of trains by AAF transporting passengers in intercity passenger
72 rail service between passenger rail stations established by AAF
73 at Miami-Dade, Fort Lauderdale, West Palm Beach, or future
74 stations but shall include the provision of non-SFRTA commuter
75 rail service by AAF or a third party designated by AAF,

76 including SFRTA.

77 (g) "Existing IRIS crossing" means the existing, at-grade
78 railroad crossing between the SFRC and the rail corridor located
79 in Miami-Dade County.

80 (h) "Florida East Coast Railway" or "FECR" means Florida
81 East Coast Railway, LLC, or its successors and assigns.

82 (i) "FECR rail corridor invitee" means any rail corridor
83 invitee who is present on the rail corridor at the request of,
84 pursuant to a contract with, or otherwise for the purpose of
85 doing business with or at the behest of FECR. The term does not
86 include patrons at any station; commercial or residential
87 tenants of the developments in and around the stations or their
88 invitees; or any third parties performing work at a station or
89 in the rail corridor, such as employees and invitees of PI or
90 related entities, utilities, and fiber optic companies or
91 others, or invitees or employees of the department or any county
92 or municipality.

93 (j) "Freight rail service" means any and all uses and
94 purposes that are related to or ancillary to current and future
95 freight rail operations on, along, over, under, and across the
96 rail corridor, including operating trains, rail cars, business
97 cars, locomotives, hi-rail vehicles, and other rail equipment
98 for the movement of freight in overhead and local service;
99 interchanging rail cars with other freight railroads; providing
100 pickups, setoffs, transloading services, or storage in transit;

101 and any and all other activities that are ancillary or related
102 to the transportation of freight on or along the rail corridor.

103 (k) "Intercity passenger rail service" means all passenger
104 service on the rail corridor other than commuter rail service
105 and is characterized by trains making less frequent stops along
106 the rail corridor than the commuter rail service makes.

107 (l) "Joint infrastructure" means any portion or segment of
108 the rail corridor which does not contain tracks or
109 infrastructure designated for the exclusive use of the
110 authority, AAF, or FECR and portions of the MiamiCentral station
111 used by both AAF and SFRTA, including, but not limited to,
112 stairs, elevators, and escalators.

113 (m) "Limited covered accident" means:

114 1. A collision directly between the trains, locomotives,
115 rail cars, or rail equipment of SFRTA and FECR only, where the
116 collision is caused by or arising from the willful misconduct of
117 FECR or its subsidiaries, agents, licensees, employees,
118 officers, or directors, as adjudicated pursuant to a final and
119 unappealable court order, or if punitive damages or exemplary
120 damages are awarded due to the conduct of FECR or its
121 subsidiaries, agents, licensees, employees, officers, or
122 directors, as adjudicated pursuant to a final and unappealable
123 court order; or

124 2. A collision directly between the trains, locomotives,
125 rail cars, or rail equipment of SFRTA and AAF only, if the

126 collision is caused by or arising from the willful misconduct of
127 AAF or its subsidiaries, agents, licensees, employees, officers,
128 or directors, as adjudicated pursuant to a final and
129 unappealable court order, or if punitive damages or exemplary
130 damages are awarded due to the conduct of AAF or its
131 subsidiaries, agents, licensees, employees, officers, or
132 directors, as adjudicated pursuant to a final and unappealable
133 court order.

134 (n) "MiamiCentral" means the primary All Aboard Florida
135 station located in downtown Miami, which includes exclusive
136 areas used by the authority for commuter rail service.

137 (o) "Non-SFRTA commuter rail service" means AAF's
138 operation, or an AAF third-party designee's operation, of trains
139 in any commuter rail service on the rail corridor which is not
140 SFRTA's commuter rail service. The term does not include:

141 1. Any service operated by the authority between the
142 MiamiCentral station and any stations in Miami-Dade County,
143 Broward County, Palm Beach County, or points north on the FECR
144 rail corridor; and

145 2. SFRTA's commuter rail service on the South Florida Rail
146 Corridor owned by the department.

147 (p) "Non-SFRTA commuter rail service operator" means the
148 operator of any non-SFRTA commuter rail service.

149 (q) "Other train" means a train that is not SFRTA's train,
150 FECR's train, AAF's train, a train of a non-SFRTA commuter rail

151 service operator, or a train of any other operator of intercity
152 rail passenger service and must be treated as a train of the
153 entity that made the initial request for the train to operate on
154 the rail corridor.

155 (r) "Passenger easement" means a permanent, perpetual, and
156 exclusive easement on, along, over, under, or across the rail
157 corridor for commuter rail service.

158 (s) "PI" means FDG Flagler Station II, LLC, which has an
159 easement on the rail corridor for nonrail uses.

160 (t) "Rail corridor" means the portion of a linear
161 contiguous strip of real property which is used for rail service
162 and owned by FECR or owned or controlled by AAF. The term
163 applies only when the authority has, by contract, assumed the
164 obligation to forever protect, defend, indemnify, and hold
165 harmless FECR, AAF, or their successors, in accordance with
166 subsection (2), and acquired an easement interest, a lease, a
167 right to operate, or a right of access. The term includes
168 structures essential to railroad operations, including the land,
169 structures, improvements, rights-of-way, easements, rail lines,
170 rail beds, guideway structures, switches, yards, parking
171 facilities, power relays, switching houses, rail stations, any
172 ancillary development, and any other facilities or equipment
173 used for the purposes of construction, operation, or maintenance
174 of a railroad that provides rail service.

175 (u) "Rail corridor invitee" means any person who is on or

176 about the rail corridor in which the AAF, SFRTA, or non-SFRTA
177 commuter rail service operator has an easement interest, a
178 lease, a right to operate, or a right of access and who is:
179 1. Present at the behest of an AAF, an SFRTA, an FECR, or
180 the non-SFRTA commuter rail service operator for any purpose;
181 2. Otherwise entitled to be on or about the rail corridor;
182 or
183 3. Meeting, assisting, or in the company of a person
184 described in subparagraph 1. or subparagraph 2.
185 (v) "SFRC" means South Florida Rail Corridor.
186 (w) "SFRTA rail corridor invitee" means any rail corridor
187 invitee who is SFRTA's commuter rail passenger or is otherwise
188 present on the rail corridor at the request of, pursuant to a
189 contract with, for the purpose of doing business with, or at the
190 behest of SFRTA. The term does not include patrons at any
191 station, except those patrons who are also SFRTA's commuter rail
192 passengers; any person present on the rail corridor who is a
193 patron of the non-SFRTA commuter rail service or is meeting or
194 assisting a person who is a patron of the non-SFRTA commuter
195 rail service; commercial or residential tenants of the
196 developments in and around the stations or their invitees; or
197 any third parties performing work at a station or in the rail
198 corridor, such as employees and invitees of PI or related
199 entities, utilities, and fiber optic companies or others or
200 invitees or employees of the department or any county or

201 municipality.

202 (2) The authority, in conjunction with the operation of a
203 commuter rail service on a rail corridor, has the power to
204 assume the following obligations:

205 (a) To indemnify AAF and FECR in accordance with the terms
206 specified in this paragraph for so long as AAF and FECR or their
207 successors in interest agree to indemnify the authority in
208 accordance with the terms specified in this paragraph.

209 1. Except as specifically provided in this paragraph, the
210 authority shall protect, defend, indemnify, and hold harmless
211 FECR and its officers, agents, employees, successors, and
212 assigns from and against any liability, cost, and expense,
213 including, but not limited to, SFRTA's commuter rail passengers
214 and rail corridor invitees in, on, or about the rail corridor,
215 regardless of whether the loss, damage, destruction, injury, or
216 death giving rise to any such liability, cost, or expense is
217 caused in whole or in part, and to whatever nature or degree, by
218 the fault, failure, negligence, misconduct, nonfeasance, or
219 misfeasance of FECR or its officers, agents, employees,
220 successors, and assigns;

221 2. Except as specifically provided in this paragraph, the
222 authority shall protect, defend, indemnify, and hold harmless
223 AAF and its officers, agents, employees, successors, and assigns
224 from and against any liability, cost, and expense, including,
225 but not limited to, SFRTA commuter rail passengers and SFRTA

226 rail corridor invitees in, on, or about the rail corridor,
227 regardless of whether the loss, damage, destruction, injury, or
228 death giving rise to any such liability, cost, or expense is
229 caused in whole or in part, and to whatever nature or degree, by
230 the fault, failure, negligence, misconduct, nonfeasance, or
231 misfeasance of AAF or its officers, agents, employees,
232 successors, and assigns; and

233 3. The assumption of liability by the authority may not in
234 any instance exceed the following parameters of allocation of
235 risk:

236 a. The authority shall be solely responsible for any loss,
237 injury, or damage to SFRTA commuter rail passengers, or to SFRTA
238 rail corridor invitees, or trespassers, other than passengers or
239 invitees of the non-SFRTA commuter rail service, regardless of
240 circumstances or cause, subject to the terms and provisions of
241 this paragraph.

242 b. FECR shall, with respect to a limited covered accident,
243 protect, defend, and indemnify SFRTA for the amount of the self-
244 insurance retention account.

245 c. AAF shall, with respect to a limited covered accident,
246 protect, defend, and indemnify SFRTA for the amount of the self-
247 insurance retention account.

248 d. When only one train is involved in an incident,
249 including incidents with trespassers or at at-grade crossings,
250 the authority shall be solely responsible for any loss, injury,

251 or damage if the train is an SFRTA train.

252 e. When an incident occurs with only FECR's train
253 involved, including incidents with trespassers or at at-grade
254 crossings, FECR shall be solely responsible for any loss,
255 injury, or damage, except for SFRTA's commuter rail passengers,
256 SFRTA employees, and SFRTA rail corridor invitees.

257 f. When an incident occurs with only AAF's train involved,
258 including incidents with trespassers or at at-grade crossings,
259 AAF shall be solely responsible for any loss, injury, or damage,
260 except for SFRTA's commuter rail passengers, SFRTA employees,
261 and SFRTA rail corridor invitees.

262 g. For the purposes of this paragraph:

263 (I) An "other train" shall be treated as the train of the
264 entity that made the initial request for the train to operate on
265 the rail corridor.

266 (II) In an incident involving any other train that is not
267 an SFRTA train, the other train shall be treated as an SFRTA
268 train solely for purposes of any allocation of liability
269 between:

270 (A) SFRTA and FECR. SFRTA and FECR shall share
271 responsibility equally as to third parties outside the rail
272 corridor who incur loss, injury, or damage as a result of any
273 incident involving both SFRTA's train and FECR's train, and the
274 allocation as between SFRTA and FECR, regardless of whether the
275 other train is treated as an SFRTA train, shall remain one-half

276 each as to third parties outside the rail corridor who incur
277 loss, injury, or damage as a result of the incident. The
278 involvement of any other train shall not alter the sharing of
279 equal responsibility as to third parties outside the rail
280 corridor who incur loss, injury, or damage as a result of the
281 incident.

282 (B) SFRTA and AAF. SFRTA and AAF shall share
283 responsibility equally as to third parties outside the rail
284 corridor who incur loss, injury, or damage as a result of any
285 incident involving both SFRTA's train and AAF's train, and the
286 allocation as between SFRTA and AAF, regardless of whether the
287 other train is treated as an SFRTA train, shall remain one-half
288 each as to third parties outside the rail corridor who incur
289 loss, injury, or damage as a result of the incident. The
290 involvement of any other train shall not alter the sharing of
291 equal responsibility as to third parties outside the rail
292 corridor who incur loss, injury, or damage as a result of the
293 incident.

294 h. When more than one train is involved in an incident:

295 (I) If only an SFRTA train and an FECR train, or only an
296 other train that is an SFRTA train by definition and an FECR
297 train, are involved in an incident, SFRTA shall be responsible
298 for its property and all SFRTA's commuter rail passengers, SFRTA
299 employees, and SFRTA rail corridor invitees. FECR shall be
300 responsible for its property and all of its employees and FECR

301 rail corridor invitees. SFRTA and FECR shall each share one-half
302 responsibility as to the joint infrastructure and rail corridor
303 invitees who are not SFRTA rail corridor invitees or FECR rail
304 corridor invitees, including, but not limited to, trespassers or
305 third parties outside the rail corridor who incur loss, injury,
306 or damage as a result of the incident.

307 (II) If only an SFRTA train and an AAF train, or only an
308 other train that is by definition an SFRTA train and an AAF
309 train, are involved in an incident, SFRTA shall be responsible
310 for its property and all SFRTA's commuter rail passengers, SFRTA
311 employees, and SFRTA rail corridor invitees. AAF shall be
312 responsible for its property and all of its employees, AAF's
313 intercity rail passengers, and AAF rail corridor invitees. SFRTA
314 and AAF shall each share one-half responsibility as to the joint
315 infrastructure and rail corridor invitees who are not SFRTA rail
316 corridor invitees or AAF rail corridor invitees, including, but
317 not limited to, trespassers or third parties outside the rail
318 corridor who incur loss, injury, or damage as a result of the
319 incident.

320 (III) If an FECR train, an SFRTA train, and an AAF train
321 are involved in an incident, SFRTA shall be responsible for its
322 property and all SFRTA's commuter rail passengers, SFRTA
323 employees, and SFRTA rail corridor invitees. AAF shall be
324 responsible for its property and all of its employees, AAF's
325 intercity rail passengers, and AAF rail corridor invitees. FECR

326 shall be responsible for its property and all of its employees
327 and FECR rail corridor invitees. SFRTA, FECR, and AAF shall each
328 share one-third responsibility as to the joint infrastructure
329 and rail corridor invitees who are not SFRTA rail corridor
330 invitees, AAF rail corridor invitees, or FECR rail corridor
331 invitees, including, but not limited to, trespassers or third
332 parties outside the rail corridor who incur loss, injury, or
333 damage as a result of the incident.

334 (IV) If an SFRTA train, an FECR train, and an AAF train
335 are involved in an incident, the allocation of liability among
336 SFRTA, FECR, and AAF shall be one-third each as to third parties
337 outside the rail corridor who incur loss, injury, or damage as a
338 result of the incident.

339 (V) If an SFRTA train, an FECR train, and any other train
340 are involved in an incident, the allocation of liability among
341 SFRTA, FECR, and the other train shall be one-third each as to
342 third parties outside the rail corridor who incur loss, injury,
343 or damage as a result of the incident.

344 (VI) If an SFRTA train, an AAF train, and any other train
345 are involved in an incident, the allocation of liability among
346 SFRTA, AAF, and the other train shall be one-third each as to
347 third parties outside the rail corridor who incur loss, injury,
348 or damage as a result of the incident.

349 i. Notwithstanding anything to the contrary set forth in
350 this paragraph, SFRTA is not obligated to indemnify FECR and AAF

351 for any amount in excess of the insurance coverage limit.
352 Regardless of whether SFRTA maintains the insurance coverage
353 required pursuant to paragraph (b) to cover the indemnification
354 obligations of this paragraph, SFRTA shall remain responsible
355 for the indemnification obligations set forth in this paragraph
356 up to the insurance coverage limit.

357 j. If the non-SFRTA commuter rail service is provided by
358 an entity under contract with AAF, SFRTA may elect, at its sole
359 discretion, to provide the same insurance coverage and to
360 indemnify and hold harmless any non-SFRTA commuter rail service
361 operator to the same extent that it provides such insurance or
362 indemnification to AAF pursuant to this section.

363 (b) To purchase railroad liability insurance of \$295
364 million per occurrence, which amount shall be adjusted in
365 accordance with applicable law up to the insurance coverage
366 limit, with a \$5 million self-insurance retention account that
367 shall be composed of and defined as the "SFRTA insurance
368 program." The SFRTA insurance program may, at SFRTA's sole
369 discretion, cover the obligations described in this section or
370 any other service operated by SFRTA on a rail corridor. Because
371 the self-insurance retention account is a part of the SFRTA
372 insurance program, all definitions, terms, conditions,
373 restrictions, exclusions, obligations, and duties included in
374 any and all of the policies of insurance procured by SFRTA for
375 the SFRTA insurance program shall apply to the self-insurance

376 retention account and its application to claims against the
 377 applicable insureds. SFRTA shall name FECR and AAF as insureds
 378 on any policies it procures pursuant to this section at no cost
 379 to AAF and FECR and ensure that all policies shall have a waiver
 380 of exclusion for punitive damages and coverage for claims made
 381 pursuant to the Federal Employers Liability Act, 45 U.S.C. ss.
 382 51 et seq. Such policies must also include terrorism coverage,
 383 pollution coverage, including, but not limited to, coverage
 384 applicable in the event of a railroad accident, a derailment, or
 385 an overturn, and evacuation expense coverage.

386 Section 2. Paragraph (d) is added to subsection (17) of
 387 section 341.302, Florida Statutes, to read:

388 341.302 Rail program; duties and responsibilities of the
 389 department.—The department, in conjunction with other
 390 governmental entities, including the rail enterprise and the
 391 private sector, shall develop and implement a rail program of
 392 statewide application designed to ensure the proper maintenance,
 393 safety, revitalization, and expansion of the rail system to
 394 assure its continued and increased availability to respond to
 395 statewide mobility needs. Within the resources provided pursuant
 396 to chapter 216, and as authorized under federal law, the
 397 department shall:

398 (17) In conjunction with the acquisition, ownership,
 399 construction, operation, maintenance, and management of a rail
 400 corridor, have the authority to:

401 (d) Without altering any of the rights granted to the
402 department under this section, agree to assume the obligations
403 to indemnify and insure, pursuant to s. 343.545, freight rail
404 service, intercity passenger rail service, and commuter rail
405 service on a department-owned rail corridor, whether ownership
406 is in fee or by easement, or on a rail corridor where the
407 department has the right to operate.
408

409 Neither the assumption by contract to protect, defend,
410 indemnify, and hold harmless; the purchase of insurance; nor the
411 establishment of a self-insurance retention fund shall be deemed
412 to be a waiver of any defense of sovereign immunity for torts
413 nor deemed to increase the limits of the department's or the
414 governmental entity's liability for torts as provided in s.
415 768.28. The requirements of s. 287.022(1) shall not apply to the
416 purchase of any insurance under this subsection. The provisions
417 of this subsection shall apply and inure fully as to any other
418 governmental entity providing commuter rail service and
419 constructing, operating, maintaining, or managing a rail
420 corridor on publicly owned right-of-way under contract by the
421 governmental entity with the department or a governmental entity
422 designated by the department. Notwithstanding any law to the
423 contrary, procurement for the construction, operation,
424 maintenance, and management of any rail corridor described in
425 this subsection, whether by the department, a governmental

426 | entity under contract with the department, or a governmental
427 | entity designated by the department, shall be pursuant to s.
428 | 287.057 and shall include, but not be limited to, criteria for
429 | the consideration of qualifications, technical aspects of the
430 | proposal, and price. Further, any such contract for design-build
431 | shall be procured pursuant to the criteria in s. 337.11(7).

432 | Section 3. This act shall take effect July 1, 2017.

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