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1
 2 An act relating to indemnification and insurance
 3 obligations of commuter rail transportation providers;
 4 creating part III of ch. 343, F.S., entitled "Coastal
 5 Link Commuter Rail Service Act,"; creating s. 343.811,
 6 F.S.; providing a short title; providing definitions;
 7 authorizing agencies, in conjunction with the
 8 operation of certain commuter rail services, to assume
 9 certain indemnification and insurance obligations,
 10 subject to certain requirements; providing
 11 construction; reenacting s. 341.302(17)(d), F.S.,
 12 relating to the rail program and duties and
 13 responsibilities of the Department of Transportation,
 14 to incorporate the enactment of part III of ch. 343,
 15 F.S., in a reference thereto; providing an effective
 16 date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Part III of chapter 343, Florida Statutes,
 21 consisting of section 343.811, is created and entitled "Coastal
 22 Link Commuter Rail Service Act."

23 Section 2. Section 343.811, Florida Statutes, is created
 24 to read:

25 343.811 Power to assume indemnification and insurance

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26 obligations.-

27 (1) SHORT TITLE.—This section may be cited as the "Coastal
 28 Link Commuter Rail Service Act."

29 (2) DEFINITIONS.—As used in this section, the term:

30 (a) "Agency" means a state, county, municipality,
 31 district, authority, or other separate unit of government
 32 created or established by law which has entered into an
 33 agreement with Brightline, which agreement permits it to operate
 34 commuter rail service on the Coastal Link corridor.

35 (b) "Brightline" means Brightline Trains Florida, LLC, or
 36 its successors and assigns, or any of its affiliates that is a
 37 party to an agreement with an agency in connection with the
 38 Coastal Link corridor. For the purposes of its status as an
 39 indemnitee, the term "Brightline" includes Florida East Coast
 40 Dispatch, LLC, or its successors or assigns.

41 (c) "Coastal Link corridor" means the rail transit system,
 42 including the intercity passenger rail service stations and
 43 vehicle maintenance facilities, located on or adjacent to FECR
 44 and Brightline rail corridor in Miami-Dade County, Broward
 45 County, and Palm Beach County. The term includes structures
 46 essential to railroad operations, including land, structures,
 47 improvements, rights-of-way, easements, rail lines, rail beds,
 48 guideway structures, switches, yards, parking facilities, power
 49 relays, switching houses, rail stations, any ancillary
 50 development, and any other facilities or equipment used for the

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51 purposes of construction, operation, or maintenance of a
 52 railroad that provides rail service.

53 (d) "Commuter rail service" means the operation of trains
 54 transporting passengers and making frequent stops within urban
 55 areas and the immediate suburbs along the rail corridor for the
 56 purpose of transporting passengers, including boarding and
 57 alighting and the nonrevenue movement of passenger trains for
 58 storage, maintenance, or repairs. The term does not include the
 59 operation of trains by Brightline transporting passengers in
 60 intercity passenger rail service between Brightline stations. As
 61 used in this paragraph, "Brightline stations" means the
 62 Brightline-owned intercity passenger rail service stations in
 63 Miami located near Aventura, Fort Lauderdale, Boca Raton, and
 64 West Palm Beach, as well as any future stations developed by
 65 Brightline in connection with its intercity passenger rail
 66 service.

67 (e) "FECR" means Florida East Coast Railway, LLC, or its
 68 successors and assigns. For the purposes of its status as an
 69 indemnitee, the term "FECR" includes Florida East Coast
 70 Dispatch, LLC, or its successors and assigns.

71 (f) "Intercity passenger rail service" means all passenger
 72 service on the Coastal Link corridor other than commuter rail
 73 service and is characterized by trains making less frequent
 74 stops along the Coastal Link corridor than the commuter rail
 75 service makes.

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76 (g) "Joint infrastructure" means any portion or segment of
 77 the Coastal Link corridor which does not contain tracks or
 78 infrastructure designated for the exclusive use of an operator.
 79 Train stations, including, but not limited to, pedestrian
 80 bridges, stairs, or conveyance systems, do not constitute part
 81 of the joint infrastructure.

82 (h) "Limited covered accident" means a collision directly
 83 between the trains, locomotives, rail cars, or rail equipment of
 84 more than one operator on the Coastal Link corridor, where the
 85 collision is caused by or arising from the willful misconduct of
 86 one of the responsible operators, as adjudicated pursuant to a
 87 final and unappealable court order, or if punitive damages or
 88 exemplary damages are awarded due to the conduct of the
 89 responsible operator, as adjudicated pursuant to a final and
 90 unappealable court order. For purposes of this paragraph,
 91 "responsible operator" means an operator or its subsidiaries,
 92 agents, licensees, employees, officers, or directors which has
 93 caused a collision as a result of its willful misconduct.

94 (i) "Operator" means:

95 1. Brightline, including any passenger rail operators that
 96 access the Coastal Link corridor pursuant to a contract with
 97 Brightline, other than an agency;

98 2. FECR, including Amtrak or any freight rail operators
 99 that access the Coastal Link corridor pursuant to a contract
 100 with FECR;

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101 3. An agency, including any commuter rail operators that
 102 access the Coastal Link corridor pursuant to a contract with an
 103 agency; or

104 4. SFRTA, with respect to its operations contemplated
 105 under s. 343.545.

106 (j) "Passenger" means, with respect to intercity passenger
 107 rail service or commuter rail service, a person, ticketed or
 108 unticketed, using the intercity passenger rail service or
 109 commuter rail service on the Coastal Link corridor:

110 1. Onboard trains, locomotives, rail cars, or rail
 111 equipment employed in such intercity passenger rail service or
 112 commuter rail service or boarding or alighting therefrom;

113 2. On or about the Coastal Link corridor for any purpose
 114 related to such intercity passenger rail service or commuter
 115 rail service, including parking or purchasing tickets therefor
 116 and coming to, waiting for, and leaving from locomotives, rail
 117 cars, or rail equipment; or

118 3. Meeting, assisting, or in the company of a person
 119 described in subparagraph 1. or subparagraph 2.

120 (k) "Proportionate share" means, with respect to a loss,
 121 injury, or damage for which operators share responsibility, a
 122 percentage in proportion to the number of operators involved in
 123 the relevant incident.

124 1. When one or more agencies are jointly operating a
 125 commuter rail service, such agencies are considered a single

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126 operator for purposes of computing and assessing the
 127 proportionate share of such loss, injury, or damage.

128 2. When two operators are involved in the incident, each
 129 is responsible for one-half of such loss, injury, or damage;
 130 when three operators are involved in the incident, each is
 131 responsible for one-third of such loss, injury, or damage, and
 132 so on.

133 3. When more than one agency shares responsibility with
 134 respect to any loss, injury, or damage, each such agency is
 135 considered a separate entity for purposes of determining its
 136 proportionate share.

137 (1) "Rail corridor invitee" means a person who is on or
 138 about the Coastal Link corridor who is a passenger or who is
 139 otherwise present on the Coastal Link corridor at the request
 140 of, pursuant to a contract with, or otherwise for the purpose of
 141 doing business with or at the behest of an operator. The term
 142 does not include patrons at any station who are not also
 143 passengers, commercial or residential tenants at any station or
 144 the developments in and around the stations or their invitees,
 145 or third parties performing work at a station or in the Coastal
 146 Link corridor, including any utilities or fiber optic companies.

147 1. A rail corridor invitee of an agency may not be
 148 considered a rail corridor invitee of Brightline or FECR.

149 2. A rail corridor invitee of Brightline or FECR may not
 150 be considered a rail corridor invitee of an agency.

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151 3. An employee of an operator is not a rail corridor
152 invitee of such operator at any time the employee is a passenger
153 or is otherwise present on the Coastal Link corridor at the
154 request of, pursuant to a contract with, or otherwise for the
155 purpose of doing business with or at the behest of another
156 operator.

157 4. When a passenger is transferring from the service of
158 one operator to another, the passenger is a rail corridor
159 invitee of the first operator until the passenger has left the
160 first operator's platform, at which time the passenger is then a
161 rail corridor invitee of the other operator.

162 (m) "Self-insurance retention amount" means an amount
163 equal to \$5 million.

164 (n) "SFRTA" means the South Florida Regional
165 Transportation Authority.

166 (3) ASSUMPTION OF OBLIGATIONS; PURCHASE OF INSURANCE.—In
167 conjunction with the development or operation of a commuter rail
168 service on the Coastal Link corridor, an agency may:

169 (a) Assume obligations pursuant to the following:

170 1.a. The agency may assume the obligation by contract to
171 protect, defend, indemnify, and hold harmless FECR and its
172 officers, agents, and employees from and against:

173 (I) Any liability, cost, and expense, including, but not
174 limited to, the agency's passengers and other rail corridor
175 invitees in, on, or about the Coastal Link corridor, regardless

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176 of whether the loss, damage, destruction, injury, or death
 177 giving rise to any such liability, cost, or expense is caused in
 178 whole or in part, and to whatever nature or degree, by the
 179 fault, failure, negligence, misconduct, nonfeasance, or
 180 misfeasance of such freight rail operator, its successors, or
 181 its officers, agents, and employees, or any other person or
 182 persons whomsoever.

183 (II) Any loss, injury, or damage incurred by other rail
 184 corridor invitees up to the amount of the self-insurance
 185 retention amount with respect to limited covered accidents
 186 caused by the agency.

187 b. The agency may assume the obligation by contract to
 188 protect, defend, indemnify, and hold harmless Brightline and its
 189 officers, agents, and employees from and against:

190 (I) Any liability, cost, and expense, including, but not
 191 limited to, the agency's passengers and rail corridor invitees
 192 in the Coastal Link corridor, regardless of whether the loss,
 193 damage, destruction, injury, or death giving rise to any such
 194 liability, cost, or expense is caused in whole or in part, and
 195 to whatever nature or degree, by the fault, failure, negligence,
 196 misconduct, nonfeasance, or misfeasance of Brightline, its
 197 successors, or its officers, agents, and employees, or any other
 198 person or persons whomsoever.

199 (II) Any loss, injury, or damage incurred by other rail
 200 corridor invitees up to the amount of the self-insurance

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201 retention amount with respect to limited covered accidents
202 caused by the agency.

203 2. The assumption of liability of the agency by contract
204 pursuant to sub-subparagraph 1.a. or sub-subparagraph 1.b. may
205 not in any instance exceed the following parameters of
206 allocation of risk:

207 a. The agency may be solely responsible for any loss,
208 injury, or damage to the agency's passengers, or rail corridor
209 invitees, third parties, or trespassers, regardless of
210 circumstances or cause, subject to sub-subparagraph b. and
211 subparagraphs 3., 4., and 5.

212 b.(I) In the event of a limited covered accident caused by
213 FECR, the authority of an agency to protect, defend, and
214 indemnify FECR for all liability, cost, and expense, including
215 punitive or exemplary damages, in excess of the self-insurance
216 retention amount exists only if FECR agrees, with respect to
217 such limited covered accident caused by FECR, to protect,
218 defend, and indemnify the agency for the amount of the self-
219 insurance retention amount.

220 (II) In the event of a limited covered accident caused by
221 Brightline, the authority of an agency to protect, defend, and
222 indemnify Brightline for all liability, cost, and expense,
223 including punitive or exemplary damages, in excess of the self-
224 insurance retention amount exists only if Brightline agrees,
225 with respect to such limited covered accident, to protect,

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226 defend, and indemnify the agency for the amount of the self-
 227 insurance retention amount.

228 3. When only one train is involved in an incident and:

229 a. The train is an agency's train, including an incident
 230 with trespassers or at-grade crossings, the agency may be solely
 231 responsible for any loss, injury, or damage.

232 b. The train is FECR's train, including an incident with
 233 trespassers or at-grade crossings, FECR is solely responsible
 234 for any loss, injury, or damage, except for the agency's
 235 passengers and other rail corridor invitees, which are the
 236 responsibility of the agency, and Brightline's passengers and
 237 other rail corridor invitees, which are the responsibility of
 238 Brightline.

239 c. The train is Brightline's train, including an incident
 240 with trespassers or at-grade crossings, Brightline is solely
 241 responsible for any loss, injury, or damage, except for the
 242 agency's passengers or rail corridor invitees, which are the
 243 responsibility of the agency, and FECR's rail corridor invitees,
 244 which are the responsibility of FECR.

245 4. When an incident involves more than one operator, each
 246 operator is responsible for:

247 a. Its property; passengers; employees, excluding
 248 employees who are, at the time of the incident, rail corridor
 249 invitees of another operator; and other rail corridor invitees.

250 b. Its proportionate share of any loss or damage to the

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251 joint infrastructure.

252 c. Its proportionate share of any loss, injury, or damage
 253 to:

254 (I) Rail corridor invitees who are not rail corridor
 255 invitees of operators, provided that the agency shall always be
 256 responsible for its passengers and its rail corridor invitees
 257 regardless of whether the agency was involved in the incident.

258 (II) Trespassers or third parties outside the Coastal Link
 259 corridor as a result of the incident.

260 5. Any such contractual duty to protect, defend,
 261 indemnify, and hold harmless FECR or Brightline with respect to
 262 claims by rail passengers shall expressly include a specific cap
 263 on the amount of the contractual duty, which amount may not
 264 exceed \$323 million per occurrence and shall be adjusted so that
 265 the per-occurrence insurance requirement is equal to the
 266 aggregate allowable awards to all rail passengers, against all
 267 defendants, for all claims, including claims for punitive
 268 damages, arising from a single accident or incident in
 269 accordance with 49 U.S.C. s. 28103, or any successor provision,
 270 without prior legislative approval.

271 6. Notwithstanding any provision of this section to the
 272 contrary, the liabilities of the agency to the state or any
 273 other agency shall be as set forth in an agreement among such
 274 entities and limited by s. 768.28(19).

275 (b) Purchase liability insurance, which amount may not

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276 exceed \$323 million per occurrence, which amount shall be
 277 adjusted so that the per-occurrence insurance requirement is
 278 equal to the aggregate allowable awards to all rail passengers,
 279 against all defendants, for all claims, including claims for
 280 punitive damages, arising from a single accident or incident in
 281 accordance with 49 U.S.C. s. 28103, or any successor provision,
 282 and establish a self-insurance retention fund for the purpose of
 283 paying the deductible limit established in the insurance
 284 policies it may obtain, including coverage for a county agency,
 285 any freight rail operator as described in paragraph (a),
 286 Brightline, commuter rail service providers, governmental
 287 entities, or any ancillary development, which self-insurance
 288 retention fund or deductible shall not exceed the self-insurance
 289 retention amount.

290 1. Such insurance and self-insurance retention fund may
 291 provide coverage for all damages, including, but not limited to,
 292 compensatory, special, and exemplary, and be maintained to
 293 provide an adequate fund to cover claims and liabilities for
 294 loss, injury, or damage arising out of or connected with the
 295 ownership, operation, maintenance, and management of the Coastal
 296 Link corridor.

297 2. Any self-insured retention account shall be a
 298 segregated account of the agency and shall be subject to the
 299 same conditions, restrictions, exclusions, obligations, and
 300 duties included in any and all of the policies of liability

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301 insurance purchased under this paragraph.

302 3. Unless otherwise specifically provided by general law,
 303 FECR and Brightline, and their respective officers, agents, and
 304 employees, are not officers, agents, employees, or subdivisions
 305 of the state and are not entitled to sovereign immunity.

306
 307 Neither the assumption by contract to protect, defend,
 308 indemnify, and hold harmless; the purchase of insurance; nor the
 309 establishment of a self-insurance retention fund shall be deemed
 310 to be a waiver of any defense of sovereign immunity for tort
 311 claims or deemed to increase the limits of the agency's
 312 liability for tort claims as provided in s. 768.28.

313 Section 3. For the purpose of incorporating the enactment
 314 of part III of chapter 343, Florida Statutes, in a reference
 315 thereto, paragraph (d) of subsection (17) of section 341.302,
 316 Florida Statutes, is reenacted to read:

317 341.302 Rail program; duties and responsibilities of the
 318 department.—The department, in conjunction with other
 319 governmental entities, including the rail enterprise and the
 320 private sector, shall develop and implement a rail program of
 321 statewide application designed to ensure the proper maintenance,
 322 safety, revitalization, and expansion of the rail system to
 323 assure its continued and increased availability to respond to
 324 statewide mobility needs. Within the resources provided pursuant
 325 to chapter 216, and as authorized under federal law, the

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326 department shall:

327 (17) In conjunction with the acquisition, ownership,
 328 construction, operation, maintenance, and management of a rail
 329 corridor, have the authority to:

330 (d) Without altering any of the rights granted to the
 331 department under this section, agree to assume the obligations
 332 to indemnify and insure, pursuant to s. 343.545, freight rail
 333 service, intercity passenger rail service, and commuter rail
 334 service on a department-owned rail corridor, whether ownership
 335 is in fee or by easement, or on a rail corridor where the
 336 department has the right to operate.

337
 338 Neither the assumption by contract to protect, defend,
 339 indemnify, and hold harmless; the purchase of insurance; nor the
 340 establishment of a self-insurance retention fund shall be deemed
 341 to be a waiver of any defense of sovereign immunity for torts
 342 nor deemed to increase the limits of the department's or the
 343 governmental entity's liability for torts as provided in s.
 344 768.28. The requirements of s. 287.022(1) shall not apply to the
 345 purchase of any insurance under this subsection. The provisions
 346 of this subsection shall apply and inure fully as to any other
 347 governmental entity providing commuter rail service and
 348 constructing, operating, maintaining, or managing a rail
 349 corridor on publicly owned right-of-way under contract by the
 350 governmental entity with the department or a governmental entity

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351 designated by the department. Notwithstanding any law to the
352 contrary, procurement for the construction, operation,
353 maintenance, and management of any rail corridor described in
354 this subsection, whether by the department, a governmental
355 entity under contract with the department, or a governmental
356 entity designated by the department, shall be pursuant to s.
357 287.057 and shall include, but not be limited to, criteria for
358 the consideration of qualifications, technical aspects of the
359 proposal, and price. Further, any such contract for design-build
360 shall be procured pursuant to the criteria in s. 337.11(7).

361 Section 4. This act shall take effect July 1, 2025.