

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

23
 24 Be It Enacted by the Legislature of the State of Florida:

25
 26 Section 1. Section 341.301, Florida Statutes, is amended
 27 to read:

28 341.301 Definitions; ss. 341.302-341.303 ~~ss. 341.302 and~~

29 ~~341.303~~.--As used in ss. 341.302-341.303 ~~ss. 341.302 and~~
 30 ~~341.303~~, the term:

31 (1) "Branch line continuance project" means a project that
 32 involves branch line rehabilitation, new connecting track, rail
 33 banking, and other similar types of projects, including those
 34 specifically identified in the federal Railroad Revitalization
 35 and Regulatory Reform Act of 1976, and subsequent amendments to
 36 that act.

37 (2) "Intercity rail transportation system" means the
 38 network of railroad facilities used or available for interstate
 39 and intrastate passenger and freight operations by railroads,
 40 whether or not on a schedule or whether or not restricted.

41 (3) "Rail programs" means those programs administered by
 42 the state or other governmental entities which involve projects
 43 affecting the movement of people or goods by rail lines that
 44 have been or will be constructed to serve freight or passenger
 45 markets within a city or between cities.

46 (4) "Rail service development project" means a project
 47 undertaken by a public agency to determine whether a new or
 48 innovative technique or measure can be utilized to improve or
 49 expand rail service. The duration of the project funding shall
 50 be limited according to the type of project and in no case shall
 51 exceed 3 years. Rail service development projects include those
 52 projects and other actions undertaken to enhance railroad
 53 operating efficiency or increased rail service, including
 54 measures that result in improved speed profiles, operations, or
 55 technological applications that lead to reductions in operating
 56 costs and increases in productivity or service.

57 (5) "Railroad" or "rail system" means any common carrier
 58 fixed-guideway transportation system such as the conventional
 59 steel rail-supported, steel-wheeled system. The term does not
 60 include a high-speed rail line developed by the Department of
 61 Transportation pursuant to ss. 341.8201-341.842.

62 (6) "Railroad capital improvement project" means a project
 63 identified by the rail component of the Florida Transportation
 64 Plan, which project involves the leasing, acquisition, design,
 65 construction, reconstruction, or improvement to the existing
 66 intercity rail transportation system or future segments thereof,
 67 including such items as locomotives and other rolling stock,
 68 tracks, terminals, and rights-of-way for the continuance or
 69 expansion of rail service as necessary to ensure the continued
 70 effectiveness of the state's rail facilities and systems in
 71 meeting mobility and industrial development needs.

72 (7) "Train" means any locomotive engine that is powered by
 73 diesel fuel, electricity, or other means, with or without cars
 74 coupled thereto, and operated upon a railroad track or any other
 75 form of fixed guideway, except that the term does not include a
 76 light rail vehicle such as a streetcar or people mover.

77 (8) "Commuter rail passenger" or "passengers" means all
 78 persons, ticketed or unticketed, using the commuter rail service
 79 on a department-owned rail corridor:

80 (a) On board trains, locomotives, rail cars, or rail
 81 equipment employed in commuter rail service or entraining and
 82 detraining therefrom;

83 (b) On or about the rail corridor for any purpose related
 84 to the commuter rail service, including, parking, inquiring

85 about commuter rail service, or purchasing tickets therefor, and
 86 coming to, waiting for, leaving from, or observing trains,
 87 locomotives, rail cars, or rail equipment; or

88 (c) Meeting, assisting, or in the company of any person
 89 described in paragraph (a) or paragraph (b).

90 (9) "Commuter rail service" means the transportation of
 91 commuter rail passengers and other passengers by rail pursuant
 92 to a rail program provided by the department or any other
 93 governmental entities.

94 (10) "Rail corridor invitee" means all persons who are on
 95 or about a department-owned rail corridor:

96 (a) For any purpose related to any ancillary development
 97 thereon; or

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

100 (11) "Rail corridor" means a linear contiguous strip of
 101 real property that is used for rail service. The term includes
 102 the corridor and structures essential to railroad operations,
 103 including the land, structures, improvements, rights-of-way,
 104 easements, rail lines, rail beds, guideway structures, switches,
 105 yards, parking facilities, power relays, switching houses, rail
 106 stations, ancillary development, and any other facilities or
 107 equipment used for the purposes of construction, operation, or
 108 maintenance of a railroad that provides rail service.

109 (12) "Railroad operations" means the use of the rail
 110 corridor to conduct commuter rail service, intercity rail
 111 passenger service, or freight rail service.

112 (13) "Ancillary development" includes any lessee or

113 licensee of the department, including other governmental
 114 entities, vendors, retailers, restaurateurs, or contract service
 115 providers, within a department-owned rail corridor, except for
 116 providers of commuter rail service, intercity rail passenger
 117 service, or freight rail service.

118 (14) "Governmental entity" or "entities" has the same
 119 meaning as provided in s. 11.45, including a "public agency" as
 120 defined in s. 163.01.

121 Section 2. Section 341.302, Florida Statutes, is amended
 122 to read:

123 341.302 Rail program, duties and responsibilities of the
 124 department.--The department, in conjunction with other
 125 governmental entities ~~units~~ and the private sector, shall
 126 develop and implement a rail program of statewide application
 127 designed to ensure the proper maintenance, safety,
 128 revitalization, and expansion of the rail system to assure its
 129 continued and increased availability to respond to statewide
 130 mobility needs. Within the resources provided pursuant to
 131 chapter 216, and as authorized under federal law Title 49 C.F.R.
 132 ~~part 212~~, the department shall:

133 (1) Provide the overall leadership, coordination, and
 134 financial and technical assistance necessary to assure the
 135 effective responses of the state's rail system to current and
 136 anticipated mobility needs.

137 (2) Promote and facilitate the implementation of advanced
 138 rail systems, including high-speed rail and magnetic levitation
 139 systems.

140 (3) Develop and periodically update the rail system plan,

141 on the basis of an analysis of statewide transportation needs.

142 (a) The plan may contain detailed regional components,
 143 consistent with regional transportation plans, as needed to
 144 ensure connectivity within the state's regions, and it shall be
 145 consistent with the Florida Transportation Plan developed
 146 pursuant to s. 339.155. The rail system plan shall include an
 147 identification of priorities, programs, and funding levels
 148 required to meet statewide and regional needs. The rail system
 149 plan shall be developed in a manner that will assure the maximum
 150 use of existing facilities and the optimum integration and
 151 coordination of the various modes of transportation, public and
 152 private, in the most cost-effective manner possible. The rail
 153 system plan shall be updated at least every 5 ~~2~~ years and
 154 include plans for both passenger rail service and freight rail
 155 service, accompanied by a report to the Legislature regarding
 156 the status of the plan.

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

160 1. Work closely with the cities of Lakeland and Plant City
 161 along with the counties of Hillsborough and Polk to identify and
 162 address, to the extent practicable, anticipated impacts
 163 associated with an increase in rail freight traffic;

164 2. Work with the impacted local governments and CSX
 165 Transportation Company to identify and develop an alternative
 166 route for through rail traffic destined for the CSX Integrated
 167 Logistics Center in Winter Haven. As soon as possible following
 168 the completion of the department's alternative rail traffic

169 evaluation, the department shall begin a project development and
 170 environmental study of the preferred alternative such that the
 171 negative impacts of commuter rail programs, and intercity rail
 172 transportation system projects funded by the state, will be
 173 eliminated not later than eight years after commuter rail
 174 programs and intercity rail transportation system projects begin
 175 operation; and

176 3. Provide technical assistance to a coalition of local
 177 governments in Central Florida, including the counties of
 178 Brevard, Citrus, Hernando, Hillsborough, Lake, Marion, Orange,
 179 Osceola, Pasco, Pinellas, Polk, Manatee, Sarasota, Seminole,
 180 Sumter, and Volusia, and the municipalities within those
 181 counties, to develop a regional rail system plan that addresses
 182 passenger and freight opportunities in the region, is consistent
 183 with the Florida Rail System Plan, and incorporates appropriate
 184 elements of the Tampa Bay Area Regional Authority Master Plan,
 185 the Metroplan Orlando Regional Transit System Concept Plan,
 186 including the Sunrail project, and the Florida Department of
 187 Transportation Alternate Rail Traffic Evaluation.

188 (4) As part of the work program of the department,
 189 formulate a specific program of projects and financing to
 190 respond to identified railroad needs.

191 (5) Provide technical and financial assistance to units of
 192 local government to address identified rail transportation
 193 needs.

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

PCB EDCA 09-01

ORIGINAL

2009

197 (7) Develop and administer state standards concerning the
198 safety and performance of rail systems, hazardous material
199 handling, and operations. Such standards shall be developed
200 jointly with representatives of affected rail systems, with full
201 consideration given to nationwide industry norms, and shall
202 define the minimum acceptable standards for safety and
203 performance.

204 (8) Conduct, at a minimum, inspections of track and
205 rolling stock; train signals and related equipment; hazardous
206 materials transportation, including the loading, unloading, and
207 labeling of hazardous materials at shippers', receivers', and
208 transfer points; and train operating practices to determine
209 adherence to state and federal standards. Department personnel
210 may enforce any safety regulation issued under the Federal
211 Government's preemptive authority over interstate commerce.

212 (9) Assess penalties, in accordance with the applicable
213 federal regulations, for the failure to adhere to the state
214 standards.

215 (10) Administer rail operating and construction programs,
216 which programs shall include the regulation of maximum train
217 operating speeds, the opening and closing of public grade
218 crossings, the construction and rehabilitation of public grade
219 crossings, and the installation of traffic control devices at
220 public grade crossings, the administering of the programs by the
221 department including participation in the cost of the programs.

222 (11) Coordinate and facilitate the relocation of railroads
223 from congested urban areas to nonurban areas when relocation has
224 been determined feasible and desirable from the standpoint of

225 safety, operational efficiency, and economics.

226 (12) Implement a program of branch line continuance
 227 projects when an analysis of the industrial and economic
 228 potential of the line indicates that public involvement is
 229 required to preserve essential rail service and facilities.

230 (13) Provide new rail service and equipment when:

231 (a) Pursuant to the transportation planning process, a
 232 public need has been determined to exist;

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

237 (c) Service cannot be reasonably provided by other
 238 governmental or privately owned rail systems.

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240 The department may own, lease, and otherwise encumber
 241 facilities, equipment, and appurtenances thereto, as necessary
 242 to provide new rail services; or the department may provide such
 243 service by contracts with privately owned service providers.

244 (14) Furnish required emergency rail transportation
 245 service if no other private or public rail transportation
 246 operation is available to supply the required service and such
 247 service is clearly in the best interest of the people in the
 248 communities being served. Such emergency service may be
 249 furnished through contractual arrangement, actual operation of
 250 state-owned equipment and facilities, or any other means
 251 determined appropriate by the secretary.

252 (15) Assist in the development and implementation of

253 marketing programs for rail services and of information systems
 254 directed toward assisting rail systems users.

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

258 (17) In conjunction with the acquisition, ownership,
 259 construction, operation, maintenance, and management of a rail
 260 corridor, have the authority to:

261 (a) Assume the obligation by contract to forever protect,
 262 defend, and indemnify and hold harmless the freight rail
 263 operator, or its successors, from whom the department has
 264 acquired a real property interest in the rail corridor, and that
 265 freight rail operator's officers, agents, and employees, from
 266 and against any liability, cost, and expense, including, but not
 267 limited to, commuter rail passengers, rail corridor invitees,
 268 and trespassers in the rail corridor, regardless of whether the
 269 loss, damage, destruction, injury, or death giving rise to any
 270 such liability, cost, or expense is caused in whole or in part
 271 and to whatever nature or degree by the fault, failure,
 272 negligence, misconduct, nonfeasance, or misfeasance of such
 273 freight rail operator, its successors, or its officers, agents,
 274 and employees, or any other person or persons whomsoever,
 275 provided that such assumption of liability of the department by
 276 contract shall not in any instance exceed the following
 277 parameters of allocation of risk:

278 1. The department may be solely responsible for any loss,
 279 injury, or damage to commuter rail passengers, rail corridor
 280 invitees, or trespassers, regardless of circumstances or cause,

281 subject to subparagraphs 2., 3., and 4.

282 2. When only one train is involved in an incident, the
 283 department may be solely responsible for any loss, injury, or
 284 damage if the train is a department train or other train
 285 pursuant to subparagraph 3., but only if in an instance when
 286 only a freight rail operator train is involved, the freight rail
 287 operator is solely responsible for any loss, injury, or damage,
 288 except for commuter rail passengers, rail corridor invitees, and
 289 trespassers, and the freight rail operator is solely responsible
 290 for its property and all of its people in any instance when its
 291 train is involved in an incident.

292 3. For the purposes of this subsection, any train involved
 293 in an incident that is neither the department's train nor the
 294 freight rail operator's train, hereinafter referred to in this
 295 subsection as an "other train," may be treated as a department
 296 train, solely for purposes of any allocation of liability
 297 between the department and the freight rail operator only, but
 298 only if the department and the freight rail operator share
 299 responsibility equally as to third parties outside the rail
 300 corridor who incur loss, injury, or damage as a result of any
 301 incident involving both a department train and a freight rail
 302 operator train, and the allocation as between the department and
 303 the freight rail operator, regardless of whether the other train
 304 is treated as a department train, shall remain one-half each as
 305 to third parties outside the rail corridor who incur loss,
 306 injury, or damage as a result of the incident, and the
 307 involvement of any other train shall not alter the sharing of
 308 equal responsibility as to third parties outside the rail

309 corridor who incur loss, injury, or damage as a result of the
 310 incident.

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

312 a. If only a department train and freight rail operator's
 313 train, or only another train as described in subparagraph 3. and
 314 a freight rail operator's train, are involved in an incident,
 315 the department may be responsible for its property and all of
 316 its people, all commuter rail passengers, rail corridor
 317 invitees, and trespassers, but only if the freight rail operator
 318 is responsible for its property and all of its people, and the
 319 department and the freight rail operator share responsibility
 320 one-half each as to third parties outside the rail corridor who
 321 incur loss, injury, or damage as a result of the incident.

322 b. If a department train, a freight rail operator train,
 323 and any other train are involved in an incident, the allocation
 324 of liability between the department and the freight rail
 325 operator, regardless of whether the other train is treated as a
 326 department train, shall remain one-half each as to third parties
 327 outside the rail corridor who incur loss, injury, or damage as a
 328 result of the incident; the involvement of any other train shall
 329 not alter the sharing of equal responsibility as to third
 330 parties outside the rail corridor who incur loss, injury, or
 331 damage as a result of the incident; and, if the owner, operator,
 332 or insurer of the other train makes any payment to injured third
 333 parties outside the rail corridor who incur loss, injury, or
 334 damage as a result of the incident, the allocation of credit
 335 between the department and the freight rail operator as to such
 336 payment shall not in any case reduce the freight rail operator's

PCB EDCA 09-01

ORIGINAL

2009

337 third-party-sharing allocation of one-half under this paragraph
338 to less than one-third of the total third party liability.

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

355 (b) Purchase liability insurance, which amount shall not
356 exceed \$200 million, and establish a self-insurance retention
357 fund for the purpose of paying the deductible limit established
358 in the insurance policies it may obtain, including coverage for
359 the department, any freight rail operator as described in
360 paragraph (a), commuter rail service providers, governmental
361 entities, or ancillary development; however, the insureds shall
362 pay a reasonable monetary contribution to the cost of such
363 liability coverage for the sole benefit of the insured. Such
364 insurance and self-insurance retention fund may provide coverage

365 for all damages, including, but not limited to, compensatory,
 366 special, and exemplary, and be maintained to provide an adequate
 367 fund to cover claims and liabilities for loss, injury, or damage
 368 arising out of or connected with the ownership, operation,
 369 maintenance, and management of a rail corridor.

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

372
 373 Neither the assumption by contract to protect, defend,
 374 indemnify, and hold harmless; the purchase of insurance; nor the
 375 establishment of a self-insurance retention fund shall be deemed
 376 to be a waiver of any defense of sovereign immunity for torts
 377 nor deemed to increase the limits of the department's or the
 378 governmental entity's liability for torts as provided in s.
 379 768.28. The requirements of s. 287.022(1) shall not apply to the
 380 purchase of any insurance hereunder. The provisions of this
 381 subsection shall apply and inure fully as to any other
 382 governmental entity providing commuter rail service and
 383 constructing, operating, maintaining, or managing a rail
 384 corridor on publicly owned right-of-way under contract by the
 385 governmental entity with the department or a governmental entity
 386 designated by the department.

387 (18) (17) Exercise such other functions, powers, and duties
 388 in connection with the rail system plan as are necessary to
 389 develop a safe, efficient, and effective statewide
 390 transportation system.

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