

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB EDCA 09-01 Public Transit  
**SPONSOR(S):** Economic Development & Community Affairs Policy Council  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1212

	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
Orig. Comm.:	Economic Development & Community Affairs Policy Council	13 Y, 3 N	Cater	Tinker
1)	_____	_____	_____	_____
2)	_____	_____	_____	_____
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**SUMMARY ANALYSIS**

The bill provides definitions relating to commuter rail service, rail corridors, and railroad operation for purposes of the rail program within the Department of Transportation (DOT). The bill also revises the time period within which the department must revise the rail system plan and requires a report to the Legislature regarding the status of this plan. Finally, the bill authorizes the department to indemnify and hold harmless a railroad company when the department acquires a rail corridor from the company. Specifically the bill:

- Provides definitions for commuter rail passenger or passengers, commuter rail service, rail corridor invitee, rail corridor, railroad operations, ancillary development, governmental entity and multi-use corridor, as these relate to this section of law.
- Authorizes DOT to include detailed regional components, consistent with regional transportation plans, as needed to ensure connectivity within the state’s regions in its required rail system plan that is currently developed and updated on the basis of a statewide transportation needs rail system plan analysis.
- Requires DOT to work closely with the Cities of Lakeland and Plant City along with Hillsborough and Polk Counties to identify and address anticipated impacts associated with an increase in rail freight traffic; to work with impacted local governments and CSX to identify and evaluate potential routes for through rail traffic destined for CSX’s Winter Haven terminal; to begin a project development and environmental study of the preferred alternative route so the negative impacts will be eliminated within eight years; and to provide technical assistance to a coalition of local governments in Central Florida to develop a regional rail system plan that addresses passenger and freight opportunities in the region.
- Provides the overall framework for commuter rail projects. As such, DOT would have the authority necessary for concluding the acquisition, ownership, construction, operation, maintenance and management of rail corridors by authorizing the purchase of insurance and establishment of a self-retention fund to insure against liability risks for DOT or other users of the rail corridors.

The bill authorizes DOT to purchase \$200 million in liability insurance related to a commuter rail project. The annual premium is expected to be approximately \$2 million. However, any party covered by the policy is required to provide a reasonable monetary contribution for the insurance to cover the cost.

The bill has an indeterminate positive fiscal impact to DOT from revenues generated by passenger and freight user fees. According to DOT, sufficient funds will be available from a combination of: 1) federal and local sources, 2) state funds included in the 5-year work program, and 3) passenger and freight user fee revenues to pay for the Central Florida Commuter Rail (SunRail) project if the project is implemented.

The bill is effective July 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Rail Program

Section 341.302, F.S., requires DOT, in conjunction with other governmental units and the private sector, to develop and implement a rail program of statewide application designed to ensure the proper maintenance, safety, revitalization, and expansion of the rail system to assure its continued and increased availability to respond to statewide mobility needs. Specifically DOT must:

- Provide the overall leadership, coordination, and financial and technical assistance necessary to assure the effective responses of the state's rail system to current and anticipated mobility needs;
- Promote and facilitate the implementation of advanced rail systems, including high-speed rail and magnetic levitation systems;
- Develop and periodically update the rail system plan, based on an analysis of statewide transportation needs. The plan is to be consistent with the Florida Transportation Plan. The rail system plan must include an identification of priorities, programs, and funding levels required to meet statewide needs. The rail system plan is to be developed in a manner that will assure the maximum use of existing facilities and the optimum integration and coordination of the various modes of transportation, public and private, in the most cost-effective manner possible. The rail system plan must be updated at least every 2 years and include plans for both passenger rail service and freight rail service;
- Formulate a specific program of projects and financing to respond to identified railroad needs as part of DOT's work program;
- Provide technical and financial assistance to units of local government to address identified rail transportation needs;
- Secure and administer federal grants, loans, and apportionments for rail projects within this state when necessary to further the statewide program;

- Develop and administer state standards concerning the safety and performance of rail systems, hazardous material handling, and operations. These standards are to be developed jointly with representatives of affected rail systems, with full consideration given to nationwide industry norms, and must define the minimum acceptable standards for safety and performance;
- Conduct, at a minimum, inspections of track and rolling stock; train signals and related equipment; hazardous materials transportation, including the loading, unloading, and labeling of hazardous materials at shippers', receivers', and transfer points; and train operating practices to determine adherence to state and federal standards. DOT personnel may enforce any safety regulation issued under the Federal Government's preemptive authority over interstate commerce;
- Assess penalties, in accordance with the applicable federal regulations, for the failure to adhere to the state standards;
- Administer rail operating and construction programs, which programs shall include the regulation of maximum train operating speeds, the opening and closing of public grade crossings, the construction and rehabilitation of public grade crossings, and the installation of traffic control devices at public grade crossings, the administering of the programs by DOT including participation in the cost of the programs;
- Coordinate and facilitate the relocation of railroads from congested urban areas to non-urban areas when relocation has been determined feasible and desirable from the standpoint of safety, operational efficiency, and economics;
- Implement a program of branch line continuance projects when an analysis of the industrial and economic potential of the line indicates that public involvement is required to preserve essential rail service and facilities;
- Provide new rail service and equipment when:
  - Pursuant to the transportation planning process, a public need has been determined to exist;
  - The cost of providing such service does not exceed the sum of revenues from fares charged to users, services purchased by other public agencies, local fund participation, and specific legislative appropriations;
  - Service cannot be reasonably provided by other governmental or privately owned rail systems. DOT may own, lease, and otherwise encumber facilities, equipment, and appurtenances to these, as necessary to provide new rail services; or DOT may provide such service by contracts with privately owned service providers;
- Furnish required emergency rail transportation service if no other private or public rail transportation operation is available to supply the required service and such service is clearly in the best interest of the people in the communities being served. Such emergency service may be furnished through contractual arrangement, actual operation of state-owned equipment and facilities, or any other means determined appropriate by the DOT secretary;
- Assist in the development and implementation of marketing programs for rail services and of information systems directed toward assisting rail systems users;
- Conduct research into innovative or potentially effective rail technologies and methods and maintain expertise in state-of-the-art rail developments; and

- Exercise other functions, powers, and duties in connection with the rail system plan, as are necessary to develop a safe, efficient, and effective statewide transportation system.

## Commuter Rail

In 1988, DOT and CSX entered into an agreement to allow commuter rail to operate in South Florida whereby DOT purchased 81 miles of rail corridor. Under the terms of the sale, CSX continued to operate its freight trains in the corridor; maintain the tracks, building, and signaling, and dispatches all of the trains using the tracks—its own, Tri-Rail, and Amtrak Trains. The Tri-Rail system serves Miami-Dade, Broward, and Palm Beach Counties.<sup>1</sup>

Pursuant to the agreement between DOT and CSX, the parties agreed to a contractual no fault allocation of liability whereby CSX pays 100 percent of all freight damage, DOT pays 100 percent of all commuter rail damage and the parties share equally in the liability of third parties harmed outside the corridor where both parties are involved in an accident. The agreement established a \$5 million self-insurance fund and \$120 million of insurance, which includes punitive damage coverage.

The Legislature authorized DOT to enter into the agreement via proviso language in the 1988 General Appropriations Act. During the implementation of the Agreement, it became apparent that procuring the requisite transit insurance coverage was difficult if not impossible in the United States. In 1990, DOT obtained legislation exempting Tri-Rail (the name of the commuter rail system) from ch. 287 requirements<sup>2</sup> and authorized the purchase of insurance locally, nationally, or internationally.

DOT has an agreement with CSX to purchase 61.5 miles of track in Central Florida. This track goes from Deland in Volusia County to Poinciana in Osceola County. DOT plans to use these existing freight tracks to provide commuter rail service, with CSX still operating freight trains on the corridor. The project, known as SunRail, is expected to begin passenger service in 2011.<sup>3</sup>

## Proposed Changes

The bill provides the overall framework for commuter rail. As such, DOT would have the authority necessary for concluding the acquisition, ownership, construction, operation, maintenance and management of the rail corridors by authorizing the purchase of insurance and establishment of a self-retention fund to insure against liability risks for DOT or other users of the rail corridors. The bill specifically:

- Defines rail corridor and the classes of people DOT intends to allow in the rail corridor. Those people being the passengers, people with the passengers, and people visiting or working in other developments within the corridor (i.e., food stands or kiosks at the station);
- Provides DOT with the authority to enter contracts with a freight operator from whom DOT has acquired a property interest in a rail corridor and provides the parameters DOT must stay within while negotiating terms of the contract;
- Provides that DOT may be solely responsible for any loss, injury or damage to commuter rail passengers, rail corridor invitees or trespassers, regardless of circumstances or cause. DOT may agree to pay for 100 percent of injuries to its passengers, its invitees, and trespassers if an accident occurs, subject to certain parameters:

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<sup>1</sup> Information about Tri-Rail, operated by the South Florida Regional Transportation Authority is available at <http://www.tri-rail.com/>.

<sup>2</sup> Chapter 287, F.S., relates to procurement by state agencies.

<sup>3</sup> Information about Sun-Rail is available at <http://sunrail.com/>.

- Provides that if only one train is involved in an incident, DOT may be solely responsible for any loss, injury or damage, if the train is a DOT train, or a train other than a DOT or freight rail operator's train. However, if in an instance when only a freight rail operator's train is involved the freight rail operator is solely responsible for any loss, injury, or damage, except for commuter rail passengers, rail corridor invitees and trespassers; and, the freight rail operator is solely responsible for its property and all of its people in any instance when its train is involved in an incident;
- Provides that if any train involved in an accident that is not a DOT train or freight operator train (other train), that train may be treated as if it is a DOT train when determining the allocation of liability between DOT and the freight operator;
- Provides that when more than one train is involved in an incident:
  - If a DOT train (or other train treated as a DOT train), and a freight operator train are involved in an incident, DOT and the freight operator may each be responsible for 100 percent of its property and the people on its train and DOT pays 100 percent of its property, passengers and people in the corridor. DOT and the freight operator will be equally responsible for damages to people and property outside the corridor.
  - If a DOT train, a freight operator train and a non-DOT train are all involved in an incident, the freight operator and DOT would still pay 100 percent of the damages to its property and people on their respective trains and DOT pays 100 percent of its property, passengers and people in the corridor. DOT and the freight operator would be equally responsible for damages to people and property outside the corridor. Any payment by the non-DOT/non-freight operator to those injured or damaged outside of the rail corridor does not reduce the equal sharing responsibility of the freight operator to below one-third of the total third party loss.
- Authorizes DOT to purchase \$200 million in liability insurance and establish the self-insurance retention fund for payment of the deductible limits of insurance, for several types of users of the rail corridor, and includes a provision that any of the parties covered under the insurance shall pay a reasonable monetary contribution to cover the cost.
- Provides that neither the assumption by contract to protect, defend, indemnify, and hold harmless, the purchase of insurance, nor the establishment of a self-insurance retention fund is a waiver of sovereign immunity or deemed to increase the limits of DOT's or a governmental entity's liability for torts under current law.
- Authorizes DOT to incur expenses for the purchase of advertisements, marketing, and promotional items.

In addition to the liability provisions, the bill:

- Provides that the rail system plan may contain detailed regional components, consistent with the regional transportation plans, as needed to ensure connectivity within the state's regions, and include regional needs in the plan.
- Revises the updating requirement from at least every two years to at least every five years and that it must be accompanied by a status report to the Legislature.
- Recognizes DOT's role in the enhancement of the state's rail system to improve freight and passenger mobility, and requires DOT to:

- Work closely with the cities of Lakeland and Plant City along with the counties of Hillsborough and Polk to identify and address anticipated impacts associated with an increase in rail freight traffic;
- Work with the impacted local governments and CSX Transportation Company to identify and evaluate potential alternative routes for through rail traffic destined for the CSX Intergrated Logistics Center in Winter Haven. As soon as possible following the completion of DOT's alternative rail traffic evaluation, DOT shall begin a project development and environmental study of the preferred alternative such that the negative impacts of commuter rail programs funded by the state, will be eliminated no later than eight years after commuter rail programs begin operation; to enhance regional passenger rail connectivity; and
- Requires DOT to provide technical assistance to a coalition of local governments in Central Florida, to develop a regional rail system plan that addresses passenger and freight opportunities in the region. This plan is to be consistent with the Florida Rail System Plan and the Long Range Transportation Plans of the impacted counties, incorporates appropriate elements of the Tampa Bay Area Regional Authority Master Plan, the Metroplan Orlando Regional Transit System Concept Plan, including the Sunrail project, and the Florida Department of Transportation Alternate Rail Traffic Evaluation. The coalition includes Brevard, Citrus, Hernando, Hillsborough, Lake, Marion, Orange, Osceola, Pasco, Pinellas, Polk, Manatee, Sarasota, Seminole, Sumter, and Volusia counties and the municipalities within those counties. The regional rail system plan may include the design and implementation of a multi-use corridor.

## B. SECTION DIRECTORY:

- Section 1. Amends s. 341.301, F.S., providing definitions relating to commuter rail service, rail corridors, and railroad operation for purposes of the rail program within the Department of Transportation.
- Section 2. Amends s. 341.302, F.S., revising certain citations; revising the time period within which the department must revise the rail system plan and requiring a report; providing additional duties for the department relating to a regional rail system plan; authorizing the department to assume certain liability on a rail corridor; authorizing the department to indemnify and hold harmless a railroad company when the department acquires a rail corridor from the company; providing allocation of risk; providing a specific cap on the amount of the contractual duty for such indemnification; authorizing the department to purchase and provide insurance in relation to rail corridors; authorizing marketing and promotional expenses; extending provisions to other governmental entities providing commuter rail service on public right-of-way.
- Section 3. Provides an effective date of July 1, 2009.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill will generate an indeterminate amount of revenues for DOT related to passenger and freight user fees in rail corridors owned by DOT. However, DOT will not receive any passenger fees until commuter rail begins operation.

2. Expenditures:

The bill authorizes DOT to purchase \$200 million in liability insurance related to a commuter rail corridor the department owns. The annual premium is expected to be approximately \$2 million. However, if the insurance coverage includes entities such as freight rail operators and ancillary development, any party covered by the policy is required to provide a reasonable monetary contribution for the insurance. These additional insureds may offset part of DOT's cost for liability insurance coverage.

The bill requires DOT to work with the cities of Lakeland and Plant City and the counties of Hillsborough and Polk to identify and address anticipated impacts associated with an increase in rail freight traffic. DOT is also required to work with impacted local governments and CSX to identify and evaluate potential alternative routes for through rail traffic destined for the CSX Integrated Logistics Center in Winter Haven. After DOT completes its alternative rail traffic evaluation, it is required to begin a project development and environmental study of the preferred alternative so that the negative impacts of commuter rail will be eliminated no later than eight years after the programs begin operation. Finally, DOT is required to provide technical assistance to a coalition of local governments in Central Florida to develop a regional rail system plan that addresses passenger and freight opportunities in the region, which may include the design and implementation of a multi-use corridor. At this time, DOT has not determined the costs associated with these provisions.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to DOT, if the SunRail commuter rail project is implemented, sufficient funds will be available from a combination of sources to fund the project. These sources include:

- 1) Federal and local sources,
- 2) State funds included in the 5-year work program, and
- 3) Passenger and freight user fee revenues.

If the SunRail project is implemented there would be direct economic benefits to Central Florida related to the construction of the SunRail system and ongoing operations and maintenance of the system. These benefits include job creation, materials purchase, and incremental business activity. Once SunRail is operational, users of the system will receive the benefit of an alternative form of transportation in Central Florida.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On February 18, 2009, the Economic Development & Community Affairs Policy Council adopted the following two amendments to the Proposed Council Bill:

Amendment 1      Defines "multi-use corridor."

Amendment 2      Makes changes to the DOT's requirements in working with local governments to address issues related to working with local governments concerning the impacts associated with commuter rail and developing a regional rail system plan. These changes specifically:

- Removed "to the extent practicable" language related to DOT working with the cities of Lakeland and Plant City and the counties of Hillsborough and Polk regarding identifying the impacts of increased freight rail traffic.
- Changed DOT's requirements from developing alternative routes to evaluating potential alternative routes.
- Removed references to intercity rail transportation projects.
- Clarified that DOT's project development and environmental study of the preferred alternative route would be designed such that the negative impacts of commuter rail programs funded by the state will be eliminated within eight years after the commuter rail programs begin operation to enhance passenger rail connectivity.
- Required the regional rail system plan to be consistent with the Long Range Transportation Plans of the impacted counties.
- Provided that the regional rail system plan may include the design and implementation of an multi-use corridor.

The Proposed Council Bill was then reported favorably as amended.