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20 (b) A collision directly between the trains, locomotives,
21 rail cars, or rail equipment of the department and National
22 Railroad Passenger Corporation only, where the collision is
23 caused by or arising from the willful misconduct of National
24 Railroad Passenger Corporation or its subsidiaries, agents,
25 licensees, employees, officers, or directors or where punitive
26 damages or exemplary damages are awarded due to the conduct of
27 National Railroad Passenger Corporation or its subsidiaries,
28 agents, licensees, employees, officers, or directors.

29 Section 4. Subsection (17) of section 341.302, Florida
30 Statutes, is amended to read:

31 341.302 Rail program; duties and responsibilities of the
32 department.—The department, in conjunction with other
33 governmental entities, including the rail enterprise and the
34 private sector, shall develop and implement a rail program of
35 statewide application designed to ensure the proper maintenance,
36 safety, revitalization, and expansion of the rail system to
37 assure its continued and increased availability to respond to
38 statewide mobility needs. Within the resources provided pursuant
39 to chapter 216, and as authorized under federal law, the
40 department shall:

41 (17) In conjunction with the acquisition, ownership,
42 construction, operation, maintenance, and management of a rail
43 corridor, have the authority to:

44 (a) Assume obligations pursuant to the following:

45 1.a. The department may assume the obligation by contract
46 to forever protect, defend, indemnify, and hold harmless the
47 freight rail operator, or its successors, from whom the

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48 department has acquired a real property interest in the rail
49 corridor, and that freight rail operator's officers, agents, and
50 employees, from and against any liability, cost, and expense,
51 including, but not limited to, commuter rail passengers and rail
52 corridor invitees in the rail corridor, regardless of whether
53 the loss, damage, destruction, injury, or death giving rise to
54 any such liability, cost, or expense is caused in whole or in
55 part, and to whatever nature or degree, by the fault, failure,
56 negligence, misconduct, nonfeasance, or misfeasance of such
57 freight rail operator, its successors, or its officers, agents,
58 and employees, or any other person or persons whomsoever; ~~or~~

59 b. The department may assume the obligation by contract to
60 forever protect, defend, indemnify, and hold harmless National
61 Railroad Passenger Corporation, or its successors, and National
62 Railroad Passenger Corporation's officers, agents, and
63 employees, from and against any liability, cost, and expense,
64 including, but not limited to, commuter rail passengers and rail
65 corridor invitees in the rail corridor, regardless of whether
66 the loss, damage, destruction, injury, or death giving rise to
67 any such liability, cost, or expense is caused in whole or in
68 part, and to whatever nature or degree, by the fault, failure,
69 negligence, misconduct, nonfeasance, or misfeasance of National
70 Railroad Passenger Corporation, its successors, or its officers,
71 agents, and employees, or any other person or persons
72 whomsoever.

73 2. However, ~~Provided that~~ such assumption of liability of
74 the department by contract as to either sub-subparagraph 1.a. or

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75 sub-subparagraph 1.b. may ~~shall~~ not in any instance exceed the
76 following parameters of allocation of risk:

77 a.1. The department may be solely responsible for any
78 loss, injury, or damage to commuter rail passengers, or rail
79 corridor invitees, or trespassers, regardless of circumstances
80 or cause, subject to sub-subparagraph b. and subparagraphs ~~2.,~~
81 3., 4., 5., and 6.

82 b.(I)2. In the event of a limited covered accident, the
83 authority of the department to protect, defend, and indemnify
84 the freight operator for all liability, cost, and expense,
85 including punitive or exemplary damages, in excess of the
86 deductible or self-insurance retention fund established under
87 paragraph (b) and actually in force at the time of the limited
88 covered accident exists only if the freight operator agrees,
89 with respect to the limited covered accident, to protect,
90 defend, and indemnify the department for the amount of the
91 deductible or self-insurance retention fund established under
92 paragraph (b) and actually in force at the time of the limited
93 covered accident.

94 (II) In the event of a limited covered accident, the
95 authority of the department to protect, defend, and indemnify
96 National Railroad Passenger Corporation for all liability, cost,
97 and expense, including punitive or exemplary damages, in excess
98 of the deductible or self-insurance retention fund established
99 under paragraph (b) and actually in force at the time of the
100 limited covered accident exists only if National Railroad
101 Passenger Corporation agrees, with respect to the limited
102 covered accident, to protect, defend, and indemnify the

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103 department for the amount of the deductible or self-insurance
104 retention fund established under paragraph (b) and actually in
105 force at the time of the limited covered accident.

106 3. When only one train is involved in an incident, the
107 department may be solely responsible for any loss, injury, or
108 damage if the train is a department train or other train
109 pursuant to subparagraph 4., but only if;

110 a. When an incident occurs with only a freight train
111 involved, including incidents with trespassers or at grade
112 crossings, the freight rail operator is solely responsible for
113 any loss, injury, or damage, except for commuter rail passengers
114 and rail corridor invitees; or

115 b. When an incident occurs with only a National Railroad
116 Passenger Corporation train involved, including incidents with
117 trespassers or at grade crossings, National Railroad Passenger
118 Corporation is solely responsible for any loss, injury, or
119 damage, except for commuter rail passengers and rail corridor
120 invitees.

121 4. For the purposes of this subsection:7

122 a. Any train involved in an incident that is neither the
123 department's train nor the freight rail operator's train,
124 hereinafter referred to in this subsection as an "other train,"
125 may be treated as a department train, solely for purposes of any
126 allocation of liability between the department and the freight
127 rail operator only, but only if the department and the freight
128 rail operator share responsibility equally as to third parties
129 outside the rail corridor who incur loss, injury, or damage as a
130 result of any incident involving both a department train and a

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131 freight rail operator train, and the allocation as between the
132 department and the freight rail operator, regardless of whether
133 the other train is treated as a department train, shall remain
134 one-half each as to third parties outside the rail corridor who
135 incur loss, injury, or damage as a result of the incident. The
136 involvement of any other train shall not alter the sharing of
137 equal responsibility as to third parties outside the rail
138 corridor who incur loss, injury, or damage as a result of the
139 incident; or

140 b. Any train involved in an incident that is neither the
141 department's train nor the National Railroad Passenger
142 Corporation's train, hereinafter referred to in this subsection
143 as an "other train," may be treated as a department train,
144 solely for purposes of any allocation of liability between the
145 department and National Railroad Passenger Corporation only, but
146 only if the department and National Railroad Passenger
147 Corporation share responsibility equally as to third parties
148 outside the rail corridor who incur loss, injury, or damage as a
149 result of any incident involving both a department train and a
150 National Railroad Passenger Corporation train, and the
151 allocation as between the department and National Railroad
152 Passenger Corporation, regardless of whether the other train is
153 treated as a department train, shall remain one-half each as to
154 third parties outside the rail corridor who incur loss, injury,
155 or damage as a result of the incident. The involvement of any
156 other train shall not alter the sharing of equal responsibility
157 as to third parties outside the rail corridor who incur loss,
158 injury, or damage as a result of the incident.

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

160 a.(I) If only a department train and freight rail
161 operator's train, or only an other train as described in sub-
162 subparagraph 4.a. ~~subparagraph 4.~~ and a freight rail operator's
163 train, are involved in an incident, the department may be
164 responsible for its property and all of its people, all commuter
165 rail passengers, and rail corridor invitees, but only if the
166 freight rail operator is responsible for its property and all of
167 its people, and the department and the freight rail operator
168 each share one-half responsibility as to trespassers or third
169 parties outside the rail corridor who incur loss, injury, or
170 damage as a result of the incident; or

171 (II) If only a department train and a National Railroad
172 Passenger Corporation train, or only an other train as described
173 in sub-subparagraph 4.b. and a National Railroad Passenger
174 Corporation train, are involved in an incident, the department
175 may be responsible for its property and all of its people, all
176 commuter rail passengers, and rail corridor invitees, but only
177 if National Railroad Passenger Corporation is responsible for
178 its property and all of its people, all National Railroad
179 Passenger Corporation's rail property, and the department and
180 National Railroad Passenger Corporation each share one-half
181 responsibility as to trespassers or third parties outside the
182 rail corridor who incur loss, injury, or damage as a result of
183 the incident.

184 b.(I) If a department train, a freight rail operator
185 train, and any other train are involved in an incident, the
186 allocation of liability between the department and the freight

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187 rail operator, regardless of whether the other train is treated
188 as a department train, shall remain one-half each as to third
189 parties outside the rail corridor who incur loss, injury, or
190 damage as a result of the incident; the involvement of any other
191 train shall not alter the sharing of equal responsibility as to
192 third parties outside the rail corridor who incur loss, injury,
193 or damage as a result of the incident; and, if the owner,
194 operator, or insurer of the other train makes any payment to
195 injured third parties outside the rail corridor who incur loss,
196 injury, or damage as a result of the incident, the allocation of
197 credit between the department and the freight rail operator as
198 to such payment shall not in any case reduce the freight rail
199 operator's third-party-sharing allocation of one-half under this
200 paragraph to less than one-third of the total third party
201 liability; or

202 (II) If a department train, a National Railroad Passenger
203 Corporation train, and any other train are involved in an
204 incident, the allocation of liability between the department and
205 National Railroad Passenger Corporation, regardless of whether
206 the other train is treated as a department train, shall remain
207 one-half each as to third parties outside the rail corridor who
208 incur loss, injury, or damage as a result of the incident; the
209 involvement of any other train shall not alter the sharing of
210 equal responsibility as to third parties outside the rail
211 corridor who incur loss, injury, or damage as a result of the
212 incident; and, if the owner, operator, or insurer of the other
213 train makes any payment to injured third parties outside the
214 rail corridor who incur loss, injury, or damage as a result of

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215 the incident, the allocation of credit between the department
216 and National Railroad Passenger Corporation as to such payment
217 shall not in any case reduce National Railroad Passenger
218 Corporation's third-party-sharing allocation of one-half under
219 this sub-subparagraph to less than one-third of the total third
220 party liability.

221 6. Any such contractual duty to protect, defend,
222 indemnify, and hold harmless such a freight rail operator or
223 National Railroad Passenger Corporation shall expressly include
224 a specific cap on the amount of the contractual duty, which
225 amount shall not exceed \$200 million without prior legislative
226 approval, and the department to purchase liability insurance and
227 establish a self-insurance retention fund in the amount of the
228 specific cap established under this subparagraph, provided that:

229 a. No such contractual duty shall in any case be effective
230 nor otherwise extend the department's liability in scope and
231 effect beyond the contractual liability insurance and self-
232 insurance retention fund required pursuant to this paragraph;
233 and

234 b. The freight rail operator's compensation to the
235 department for future use of the department's rail corridor
236 shall include a monetary contribution to the cost of such
237 liability coverage for the sole benefit of the freight rail
238 operator. National Railroad Passenger Corporation's compensation
239 to the department for future use of the department's rail
240 corridor shall include a monetary contribution to the cost of
241 such liability coverage for the sole benefit of National
242 Railroad Passenger Corporation.

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243 (b) Purchase liability insurance, which amount shall not
244 exceed \$200 million, and establish a self-insurance retention
245 fund for the purpose of paying the deductible limit established
246 in the insurance policies it may obtain, including coverage for
247 the department, any freight rail operator as described in
248 paragraph (a), National Railroad Passenger Corporation, commuter
249 rail service providers, governmental entities, or any ancillary
250 development, which self-insurance retention fund or deductible
251 shall not exceed \$10 million. The insureds shall pay a
252 reasonable monetary contribution to the cost of such liability
253 coverage for the sole benefit of the insured. Such insurance and
254 self-insurance retention fund may provide coverage for all
255 damages, including, but not limited to, compensatory, special,
256 and exemplary, and be maintained to provide an adequate fund to
257 cover claims and liabilities for loss, injury, or damage arising
258 out of or connected with the ownership, operation, maintenance,
259 and management of a rail corridor.

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

262
263 Neither the assumption by contract to protect, defend,
264 indemnify, and hold harmless; the purchase of insurance; nor the
265 establishment of a self-insurance retention fund shall be deemed
266 to be a waiver of any defense of sovereign immunity for torts
267 nor deemed to increase the limits of the department's or the
268 governmental entity's liability for torts as provided in s.
269 768.28. The requirements of s. 287.022(1) shall not apply to the
270 purchase of any insurance under this subsection. The provisions

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271 of this subsection shall apply and inure fully as to any other
272 governmental entity providing commuter rail service and
273 constructing, operating, maintaining, or managing a rail
274 corridor on publicly owned right-of-way under contract by the
275 governmental entity with the department or a governmental entity
276 designated by the department. Notwithstanding any law to the
277 contrary, procurement for the construction, operation,
278 maintenance, and management of any rail corridor described in
279 this subsection, whether by the department, a governmental
280 entity under contract with the department, or a governmental
281 entity designated by the department, shall be pursuant to s.
282 287.057 and shall include, but not be limited to, criteria for
283 the consideration of qualifications, technical aspects of the
284 proposal, and price. Further, any such contract for design-build
285 shall be procured pursuant to the criteria in s. 337.11(7).
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288
289

290 -----
291 **T I T L E A M E N D M E N T**

292 Remove line 2 and insert:

293 An act relating to mitigation and Department of Transportation
294 duties; amending s. 373.4137, F.S.; revising legislative intent
295 to encourage the use of other mitigation options that satisfy
296 state and federal requirements; providing the Department of
297 Transportation or a transportation authority the option of
298 participating in a mitigation project; requiring the Department

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 599 (2012)

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299 of Transportation or a transportation authority to submit lists
300 of its projects in the adopted work program to the water
301 management districts; requiring a list rather than a survey of
302 threatened or endangered species and species of special concern
303 affected by a proposed project; providing conditions for the
304 release of certain environmental mitigation funds; prohibiting a
305 mitigation plan from being implemented unless the plan is
306 submitted to and approved by the Department of Environmental
307 Protection; providing additional factors that must be explained
308 regarding the choice of mitigation bank; removing a provision
309 requiring an explanation for excluding certain projects from the
310 mitigation plan; providing criteria that the Department of
311 Transportation must use in determining which projects to include
312 in or exclude from the mitigation plan; amending s. 373.4135,
313 F.S.; authorizing a governmental entity to create or provide
314 mitigation for projects other than its own under specified
315 circumstances; providing applicability; amending s. 341.302,
316 F.S.; providing parameters within which the department may by
317 contract indemnify against loss by National Railroad Passenger
318 Corporation; authorizing the department to purchase liability
319 insurance including coverage for the department, National
320 Railroad Passenger Corporation, commuter rail service providers,
321 governmental entities, or any ancillary development and
322 establish a self-insurance retention fund; limiting the amount
323 of the insurance and self-insurance retention fund; providing
324 that the insureds must make payments for the coverage; providing
325 that the insurance may provide coverage for all damages and be
326 maintained to provide a fund to cover liabilities arising from

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 599 (2012)

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327 rail corridor ownership and operations; providing an effective

328 date.

329