

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Homan offered the following:

2
3 **Amendment (with title amendment)**

4 Between lines 1287 and 1288, insert:

5 Section 19. Subsection (2) of section 335.141, Florida
6 Statutes, is amended to read:

7 335.141 Regulation of public railroad-highway grade
8 crossings; reduction of hazards.--

9 (2) (a) The department, in cooperation with the several
10 railroad companies operating in the state, shall develop and
11 adopt a program for the expenditure of funds available for the
12 construction of projects for the reduction of the hazards at
13 public railroad-highway grade crossings. The department and the
14 railroad companies are not liable for any action or omission in
15 the development of such program or for the priority given to any
16 crossing improvement.

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17 (b) Every railroad company maintaining a public railroad-
18 highway grade crossing shall, upon reasonable notice from the
19 department, install, maintain, and operate at such crossing
20 traffic control devices to provide motorists with warning of the
21 approach of trains. The department shall base its notice on its
22 adopted program for the reduction of hazards at such grade
23 crossings and on construction efficiency considerations relating
24 to the geographical proximity of crossings included in such
25 program. The design of the grade crossing traffic control
26 devices must be approved by the department, and the cost of
27 their purchase and installation must be paid from the funds
28 described in paragraph (a).

29 (c) Any public railroad-highway grade crossing opened on
30 or after July 1, 1972, shall be maintained by the railroad
31 company at its own expense. Any public railroad-highway grade
32 ~~railroad~~ crossing opened prior to July 1, 1972, shall be
33 maintained by the railroad company at its own expense, unless
34 the maintenance has been provided for in another manner by
35 contractual agreement entered into prior to October 1, 1982. If
36 the railroad company fails to maintain the crossing, the unit of
37 government with jurisdiction over the public road that is
38 crossed, after notifying the railroad company of the needed
39 repairs and after giving the company 30 days after the date of
40 receipt of the notice to make the repairs, shall proceed to make
41 the repairs. The cost of repairs shall thereupon become a lien
42 upon the railroad and its rolling stock, which lien shall be
43 enforceable by an ordinary suit at law. Any judgment rendered
44 under this paragraph shall include a reasonable attorney's fee.

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45 The responsibility of a railroad company to comply with federal
46 requirements of maintenance and inspection of public railroad-
47 highway grade signal crossings and the public policy of the
48 state that such responsibility be carried out by the railroad
49 company at its own expense shall not be abrogated, transferred,
50 or nullified by contract or administrative rule.

51 (d) Prior to commencing the construction, rehabilitation,
52 or maintenance of the railroad grade or highway approaches at a
53 public railroad-highway grade crossing, the railroad company or
54 governmental entity initiating the work shall notify the other
55 party in order to promote the coordination of activities and to
56 ensure a safe crossing with smooth pavement transitions from the
57 grade of the railroad to the highway approaches.

58 (e) The department shall amend rule 14-57.011(3)(a),
59 Florida Administrative Code, to delete the provision for
60 department participation in the cost of maintaining grade
61 crossing traffic control devices located on the State Highway
62 System.

63 Section 20. Section 351.31, Florida Statutes, is created
64 to read:

65 351.31 Access to railroad property by government
66 officials; conditions of access prohibited.--

67 (1) For purposes of this section, the term:

68 (a) "Jurisdictional governmental entity" means any public
69 body vested with the power to exercise eminent domain over the
70 property for which access is sought.

71 (b) "Substantial impairment of railroad operations" means
72 that it has been established by clear and convincing evidence

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73 that the granting of access for the purpose or activity intended
74 would significantly delay or prevent the scheduled operation of
75 any train, as defined in s. 341.301.

76 (2) Subject to the procedure provided in subsection (6),
77 access to railroad real property that is adjacent to, abutting,
78 or intersecting public lands, roadways, or highways is
79 authorized for governmental entities and their agents for all
80 purposes necessary to plan, facilitate, and complete road or
81 highway construction, improvement, or repair projects. The
82 access authorized under this section shall apply during the
83 period of time that the road or highway construction,
84 improvement or repair project undertaken by or on behalf of the
85 jurisdictional governmental entity is in progress. Access
86 authorized under this section does not give authority to any
87 governmental entity or its agent to destroy, injure, damage, or
88 remove any private property belonging to the railroad or to make
89 any physical improvements to or conduct any excavation of any
90 real property belonging to the railroad without first obtaining
91 written permission of the railroad company.

92 (3) No railroad company or railroad company representative
93 shall refuse access to railroad real property authorized under
94 subsection (2). Entry onto railroad property authorized by this
95 section does not constitute trespass and neither governmental
96 entities nor their agents shall be liable to arrest or to a
97 civil action for trespass by reason of such entry.

98 (4) A governmental entity or its agent authorized to enter
99 railroad property under this section shall do so in compliance
100 with all federal, state, and local laws, as well as agency rules

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101 pertaining to premises security and other health and safety
102 requirements applicable to such property.

103 (5) A railroad company is not liable to any third party
104 for civil or criminal acts or damages that result from the
105 negligent or intentional conduct of any agent of a governmental
106 entity who is on railroad property under the authority granted
107 under this section.

108 (6) (a) Prior to entry onto railroad property by a
109 governmental entity or its agent pursuant to this section, the
110 governmental entity must deliver to the railroad company written
111 notice of its intended entry not less than 5 days before the
112 date of entry. The notice must include:

113 1. The full name of each individual who is authorized to
114 enter railroad property on its behalf as well as the name of his
115 or her employer and immediate supervisor.

116 2. The name of the governmental entity on whose behalf the
117 entering agents are acting.

118 3. The location, size, and area of the property to which
119 access will be required.

120 4. The name of the work project for which access is
121 required.

122 5. The estimated time required for access.

123 6. A description of the work or other activity to be
124 performed which makes access to railroad property necessary.

125 (b) Within 72 hours after delivery of the written notice,
126 a railroad company may file an action stating its objection in
127 the circuit court of the jurisdiction in which the railroad
128 property to be accessed is located. If no objection is filed by

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129 the railroad company within 72 hours after delivery of the
130 written notice, access as specified in the written notice is
131 authorized. Upon receipt of an objection, the circuit court
132 shall set a hearing to determine the basis for the objection. A
133 timely filed objection shall suspend authority to access
134 railroad property granted under this section for 10 days unless,
135 before the end of the 10-day period, a hearing has been
136 scheduled and a stay has been issued in which event authority to
137 access the railroad property shall remain suspended pending
138 resolution by order of the circuit court.

139 (c) At the hearing, the circuit court shall have for
140 review the following issues:

141 1. Whether or not the access to railroad property is
142 necessary in scope, duration, and purpose for the planning,
143 facilitation, and completion of a road or highway construction,
144 improvement, or repair project;

145 2. Whether or not the location of the property or the
146 purpose for which entry is sought is of such a nature that
147 denial of access is necessary to avoid a substantial risk of
148 physical harm to persons or railroad property;

149 3. Whether or not, based on the description of the work or
150 activity to be done on the property, access to the property for
151 the work or activity described would be in violation of federal,
152 state, or local laws or agency rules pertaining to premises
153 security or other health and safety requirements applicable to
154 such property;

155 4. Whether or not, based on the description of the work or
156 activity to be done on the property, there is a reasonable

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157 probability that railroad property would be damaged, destroyed,
158 injured, or removed or real property excavated without
159 permission of the railroad company.

160 5. Whether, based on the description of the work or
161 activity to be done on the property, the activity to be done
162 would cause a substantial impairment of railroad operations.

163 6. Whether or not granting the access requested would
164 constitute a taking of property under the Fifth Amendment to the
165 United States Constitution or s. 6, Art. X of the State
166 Constitution.

167 a. In determining whether or not granting access to the
168 property constitutes a taking, the court shall consider to what
169 extent, if any, granting the requested access would:

170 (I) Prevent the railroad from using the property for the
171 purpose or in the manner in which it is ordinarily used; or

172 (II) Deprive the railroad of its beneficial use of the
173 property at issue for the period of time access is granted.

174 b. If the court finds that granting access would result in
175 a taking, the amount of compensation shall be limited to cover
176 only the period of time for which access is authorized.

177 (d) At the hearing, the court may order such conditions on
178 granting access to railroad property as it determines necessary
179 to mitigate the risk of harm to persons or property, except that
180 this section shall not be construed to authorize the court to
181 require the governmental entity or its agent to procure the
182 services of railroad employees as a condition of authorizing
183 entry onto such property. In issuing its order, the court may
184 limit the number of persons granted access and the duration of

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185 such access authorized under this section. In addition, the
186 court may limit the activities that may be conducted on the
187 railroad property as well as the time, place, and manner in
188 which those activities are conducted.

189 (7) A railroad company may not compel or require the use
190 of flagging or other services provided by railroad company
191 employees by contract, agreement, or otherwise as a condition of
192 allowing access to their property as authorized in subsection
193 (2).

194 (8) This section does not authorize access to railroad
195 property in violation of the requirements of federal law or to
196 an employee of a railroad or a contractor to a railroad who is
197 performing work within the definition of roadway worker as
198 defined in 49 C.F.R. s. 214.7.

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201 **T I T L E A M E N D M E N T**

202 Remove line 89 and insert:

203 independent mixer; provides exemptions; amending s. 335.141,
204 F.S.; requiring public railroad-highway grade crossings opened
205 after a certain date to be maintained by the railroad company at
206 its own expense; providing that certain responsibilities of a
207 railroad company to maintain and inspect public railroad-highway
208 grade signal crossings shall not be abrogated, transferred, or
209 nullified by contract or administrative rule; directing the
210 Department of Transportation to amend specified rules to delete
211 the provision for department participation in the cost of
212 maintaining grade crossing traffic control devices located on
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213 the State Highway System; creating s. 351.31, F.S.; providing
214 authorization for governmental entities to access railroad real
215 property adjoining public property as necessary to plan,
216 facilitate, and complete road or highway construction,
217 improvement, or repair projects, subject to specified
218 procedures; prohibiting a railroad company from refusing such
219 access; providing that entry pursuant to such authorization is
220 not trespass; requiring the governmental entity or its agent to
221 comply with laws and rules; limiting liability of the railroad
222 company for conduct of the agent; providing procedures to be
223 followed by the governmental entity prior to entry onto the
224 railroad property; requiring notification; providing procedures
225 for the railroad company to object; providing for filing of the
226 objection in court; providing specifications for court review
227 and findings; providing for compensation if the court finds that
228 granting access would result in a taking; authorizing the court
229 to order such conditions on granting access and certain
230 limitations on activities as it deems necessary; providing that
231 the railroad company may not condition access on the use of
232 services provided by railroad company employees by contract,
233 agreement, or otherwise; providing for applicability; amending
234 s.