

Amendment No. 1b

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Transportation & Highway  
2 Safety Subcommittee  
3 Representative Brandes offered the following:

4  
5 **Amendment to Amendment (581849) by Representative Brandes**  
6 **(with title amendment)**

7 Between lines 2520 and 2521 of the amendment, insert:  
8 Section 58. Subsection (7) of section 341.301, Florida  
9 Statutes, is amended to read:

10 341.301 Definitions; ss. 341.302-341.303.—As used in ss.  
11 341.302-341.303, the term:

12 (7) "Limited covered accident" means

13 (a) A a collision directly between the trains,  
14 locomotives, rail cars, or rail equipment of the department and  
15 the freight rail operator only, where the collision is caused by  
16 or arising from the willful misconduct of the freight rail  
17 operator or its subsidiaries, agents, licensees, employees,  
18 officers, or directors or where punitive damages or exemplary  
19 damages are awarded due to the conduct of the freight rail

Amendment No. 1b

20 operator or its subsidiaries, agents, licensees, employees,  
21 officers, or directors; or

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

31 Section 59. Paragraphs (a) and (b) of subsection (17) of  
32 section 341.302, Florida Statutes, are amended to read:

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

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

46 (a)1. Assume the obligation by contract to forever  
47 protect, defend, indemnify, and hold harmless the freight rail

Amendment No. 1b

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

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

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

473995 - h1399-line 2520a1-2.docx

Published On: 1/30/2012 6:12:09 PM

Amendment No. 1b

76 shall not in any instance exceed the following parameters of  
77 allocation of risk:

78 ~~a.1.~~ The department may be solely responsible for any  
79 loss, injury, or damage to commuter rail passengers, or rail  
80 corridor invitees, or trespassers, regardless of circumstances  
81 or cause, subject to subparagraphs 2., 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  
103 department for the amount of the deductible or self-insurance

473995 - h1399-line 2520a1-2.docx

Published On: 1/30/2012 6:12:09 PM

Amendment No. 1b

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 ~~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 National Railroad  
116 Passenger Corporation train involved, including incidents with  
117 trespassers or at grade crossings, National Passenger Rail  
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,

122 a. Any ~~any~~ train involved in an incident that is neither  
123 the 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  
131 freight rail operator train, and the allocation as between the

473995 - h1399-line 2520a1-2.docx

Published On: 1/30/2012 6:12:09 PM

Amendment No. 1b

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 National Railroad Passenger Corporation's  
142 train, hereinafter referred to in this subsection as "other  
143 train," may be treated as a department train, solely for purposes  
144 of any allocation of liability between the department and  
145 National Passenger Railroad Corporation only, but only if the  
146 department and National Railroad Passenger Corporation share  
147 responsibility equally as to third parties outside the rail  
148 corridor who incur loss, injury, or damage as a result of any  
149 incident involving both a department train and a National  
150 Railroad Passenger Corporation train, and the allocation as  
151 between the department and National Railroad Passenger  
152 Corporation, regardless of whether the other train is treated as  
153 a department train, shall remain one-half each as to third  
154 parties outside the rail corridor who incur loss, injury, or  
155 damage as a result of the incident. The involvement of any other  
156 train shall not alter the sharing of equal responsibility as to  
157 third parties outside the rail corridor who incur loss, injury,  
158 or damage as a result of the incident.

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

473995 - h1399-line 2520a1-2.docx

Published On: 1/30/2012 6:12:09 PM

Amendment No. 1b

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

171        (ii) If only a department train and National Railroad  
172 Passenger Corporation's train, or only an other train as  
173 described in subparagraph 4a. 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  
187 rail operator, regardless of whether the other train is treated

Amendment No. 1b

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  
215 the incident, the allocation of credit between the department



Amendment No. 1b

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 paragraph to less than one-third of the total third party  
220 liability.

221 6. Any such contractual duty to protect, defend,  
222 indemnify, and hold harmless such a freight rail operator or  
223 National Passenger Rail Corporation shall expressly include a  
224 specific cap on the amount of the contractual duty, which amount  
225 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.

Amendment No. 1b

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

473995 - h1399-line 2520a1-2.docx

Published On: 1/30/2012 6:12:09 PM

Amendment No. 1b

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

284

285

286

287

-----

288

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

289

Remove line 3885 of the amendment and insert:

290

of the department's adopted work program; amending s. 341.301,

291

F.S.; revising the definition of "limited coverage accident"

292

amending s. 341.302, F.S.; ; providing parameters within which

293

the department may by contract indemnify against loss by

294

National Railroad Passenger Corporation; authorizing the

295

department to purchase liability insurance including coverage

296

for the department, National Railroad Passenger Corporation,

297

commuter rail service providers, governmental entities, or any

298

ancillary development and establish a self-insurance retention

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1399 (2012)

Amendment No. 1b

299 | fund; limiting the amount of the insurance and self-insurance  
300 | retention fund; providing that the insureds must make payments  
301 | for the coverage; providing that the insurance may provide  
302 | coverage for all damages and be maintained to provide a fund to  
303 | cover liabilities arising from rail corridor ownership and  
304 | operations; amending  
305 |