

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 269 High-Speed Passenger Rail
SPONSOR(S): Magar and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 386

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee		Johnson	Vickers
2) Transportation & Tourism Appropriations Subcommittee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

The bill creates the Florida High-Speed Passenger Rail Safety Act, and assigns various regulatory duties to the Department of Transportation (DOT) related to high speed passenger rail operations. The bill also establishes certain safety requirements applicable to high speed passenger rail and allocates responsibility for specified maintenance, repair, improvement and upgrade costs. Specifically, the bill provides:

- Definitions, a statement of public purpose and Legislative intent;
- For the applicability of the Act;
- Powers and duties of the DOT as it relates to the regulation of high-speed passenger rail;
- Reporting requirements for railroad companies regarding accidents and the transportation of liquefied natural gas (LNG) on rail corridors;
- Minimum safety standards for high-speed passenger rail including positive train control and remote health monitoring;
- For the maintenance and repair of certain rail facilities and requires the use of DOT's applicable requisition and procurement procedures for certain maintenance activities;
- For safety inspections of specified railroad facilities;
- Fencing requirements along certain portions of rail corridors;
- Responsibility for facility upgrades relating to high-speed passenger rail;
- For the imposition of specified administrative fines;
- Actions to enforce penalties and provides for attorney's fees; and
- Authorization for local governments to enact ordinances regulating the speed of railroad traffic.

According to DOT, due to the nature of railroad regulation, many of the bill's provisions may be preempted by federal law or regulation.

The bill has an indeterminate, but negative fiscal impact to DOT due to additional regulatory activities required by the bill. There is an indeterminate, but positive fiscal impact to local governments associated with reduced railroad-highway crossing maintenance and repair. The private sector will experience additional costs associated with various requirements contained in the bill. See Fiscal Analysis for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Federal Law

In general, if a railroad engages in transportation-related activities, federal law may preempt state and local government attempts to regulate railroad operations and safety. A number of federal laws control railroad operations, but three commonly found to preempt state and local attempts to regulate railroad activities are the Interstate Commerce Commission Termination Act of 1995, the Federal Railroad Safety Act of 1970, and the Noise Control Act of 1972.

The Interstate Commerce Commission Termination Act of 1995¹ (“ICCTA”) gave the Surface Transportation Board (STB) exclusive jurisdiction over transportation by rail carriers and the remedies provided with respect to rates, classifications, rules, practices, routes, services, and facilities of such carriers; and the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located entirely in one state. The ICCTA preempts state and local regulation of matters directly regulated by the STB, such as the construction, operation, and abandonment of rail lines. Determining whether or not a state or local regulation is preempted under the ICCTA requires a factual assessment of whether the action has the effect of preventing or unreasonably interfering with railroad transportation. Examples of preempted state laws and regulations include state tort and nuisance claims and regulations targeted at railroad operations.

The Federal Railroad Safety Act of 1970² (“FRSA”) is designed to “promote safety in every area of railroad operations and reduce railroad-related accidents and incidents.” The FRSA provides the Federal Railroad Administration (FRA) specific authority over all rail safety-related matters and authorizes the FRA to establish civil penalties for violations of regulations set forth by the FRSA. The FRSA includes a preemption provision that, among other things, allows state and local governments to regulate only those matters which the Secretary of the United States Department of Transportation (USDOT) has not yet regulated. Among the safety regulations preempted to the FRA are regulations of train speeds, safety devices and procedures, and routing of hazardous materials along rail lines through urban areas.

The Noise Control Act of 1972³ (“NCA”) establishes the maximum noise levels for rail cars engaged in interstate commerce. In general, if the noise generated by the train has a transportation purpose and is within the NCA’s noise limits, state and local regulation is preempted.

Federal law defines “high-speed rail” as all forms of nonhighway ground transportation that run on rails or electromagnetic guideways providing transportation service which is reasonably expected to reach sustained speeds of more than 125 miles per hour; and made available to members of the general public as passengers, but does not include rapid transit operations within an urban area that are not connected to the general rail system of transportation.⁴

Hazardous Material Transportation Requirements

The purpose of the Federal Hazardous Materials Transportation Law (HMTL) “is to protect against the risks to life, property, and the environment that are inherent in the transportation of hazardous material

¹ Pub. L. 104-88. 109 Stat. 803

² 49 U.S.C. s. 20109

³ P.L. 92-574 42 U.S.C. s. 4918

⁴ 49 U.S.C. S. 26105

in intrastate, interstate, and foreign commerce.⁵ The Secretary of the USDOT is charged with prescribing regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce.⁶ A number of federal agencies share enforcement. The FRA's primary emphasis is on the transportation or shipment of hazardous material by rail.⁷

The HMTL also contains express preemption provisions. Except as otherwise provided, a state or local requirement relating to rail safety or security is preempted if:

- Complying with the state or local requirement and a federal requirements is not possible;⁸
- A state or local requirement, as applied or enforced, is an obstacle to carrying out a federal safety requirement or regulation or security regulation or directive;⁹ or
- A state or local requirement relating to specified designation, packing, handling, documentation, and notification provisions is not substantively the same as a federal requirement.

Section 5125(d) of 49 U.S.C. authorizes a person (including a state, political subdivision of a state, or Indian tribe) directly affected by a requirement of the state, political subdivision or Indian tribe to apply to the Secretary of the USDOT for a determination of whether such a requirement is preempted.

A state, political subdivision, or Indian tribe may also in some cases apply to the Secretary for a waiver of preemption, and the Secretary may waive preemption if the given requirement provides the public at least as much protection as do the federal HMTL provisions and regulations and is not an unreasonable burden on commerce.¹⁰

State Law

Section 341.302, F.S., prescribes the duties and responsibilities of the Department of Transportation (DOT) relating to Florida's rail program. The statute directs DOT to coordinate with the railroads and develop and implement a statewide rail program to ensure the proper maintenance, safety, revitalization, and expansion of the rail system.

Currently, s. 341.8203(4), F.S., defines "high speed rail system" as any high-speed fixed guideway system for transporting people or goods, which system is, by definition of the USDOT, reasonably expected to reach speeds of at least 110 miles per hour, including, but not limited to, a monorail system, dual track rail system, suspended rail system, magnetic levitation system, pneumatic repulsion system, or other system approved by the Florida Rail Enterprise. The term includes a corridor, associated intermodal connectors, and structures essential to the operation of the line, including the land, structures, improvements, rights-of-way, easements, rail lines, rail beds, guideway structures, switches, yards, parking facilities, power relays, switching houses, and rail stations and also includes facilities or equipment used exclusively for the purposes of design, construction, operation, maintenance, or the financing of the high-speed rail system.

Section 351.37, F.S., provides that "[t]he state shall supplement and not replace the responsibility of the Federal Government in the inspection of physical conditions of railroad facilities within the state to ascertain compliance with federal standards and regulations."

Brightline

⁵ 49 U.S.C. 5101

⁶ 49 U.S.C. 5103

⁷ See the Pipeline and Hazardous Materials Safety Administration's overview available at:

<http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/Hazmat%20Law%20Overview.pdf>. (Last visited March 23, 2017.)

⁸ Labeled the "dual compliance" test. See Index to Preemption of State and Local Laws and Regulations Under the Federal Hazardous Material Transportation Law, available on the federal Pipeline and Hazardous Materials Safety Administration website at:

http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/Preemption_Index_January_2014_February_2017.pdf.

(Last visited March 23, 2017.)

⁹ Id.

¹⁰ 49 U.S.C. 5125

Florida East Coast Industries (FECI) was incorporated in 1983 and became the holding company for the Florida East Coast Railway (FECR).¹¹ In 2007, Fortress Investment Group acquired FECI.¹² All Aboard Florida (AAF) is a wholly owned subsidiary of FECI.¹³

AAF is currently developing an express train service, called “Brightline,” using the existing FECR corridor between Miami and Cocoa. AAF will build new track along State Road 528 between Cocoa and Orlando. Service between Miami and West Palm Beach is expected to be launched this year, with service from Miami to Orlando following. Improving the route between Miami and Cocoa, building out the route between Cocoa and Orlando, and constructing train stations in Miami, Fort Lauderdale, and West Palm Beach is to occur in the meantime. Station construction projects are at various stages.¹⁴

According to AAF, Brightline will travel at speeds between 79 and 125 miles per hour. Between Miami and West Palm, the trains will travel up to 79 mph; between West Palm to Cocoa, up to 110 mph; and from Cocoa to Orlando, up to 125 mph, with actual speed varying depending on corridor conditions and configurations.¹⁵ New signal systems, upgraded crossings, double tracking and other improvements for the existing rail corridor between Cocoa and Miami are included in the construction plans.¹⁶

Cities and counties along Florida’s east coast reportedly have existing crossing agreements with Florida East Coast Railway. Under those agreements, the local governments usually have financial responsibility for crossing signal installations, capital improvements for track beds and roadway surfaces, crossing maintenance costs, and pedestrian gates and sidewalks.¹⁷ AAF reportedly wishes to be named a third-party beneficiary in those agreements already in place.¹⁸

Proposed Changes

The bill creates the Florida High-Speed Passenger Rail Safety Act, assigning various duties to the FDOT related to certain privately owned high speed passenger rail operations. The bill requires installation of certain technology and equipment, and allocates costs and responsibility for certain rail corridor improvements. The bill contains provisions for penalties and suits to enforce them, and provides the act does not prohibit certain local ordinances.

Short Title (Section 1)

The bill creates ss. 341.601 through 341.615, F.S. to be known as “Florida High-Speed Passenger Rail Safety Act” (Act).

Definitions (Section 2)

The bill provides defines, including the following terms:

¹¹ See the Florida East Coast Railway website available at: <http://www.fecrwy.com/about/history>. (Last visited March 24, 2017.)

¹² See article *Fortress Buying Florida’s Flagler Development in \$3.5B Deal*, available at: [http://www.costar.com/News/Article/Fortress-Buying-Floridas-Flagler-Development-in-\\$35B-Deal/89781](http://www.costar.com/News/Article/Fortress-Buying-Floridas-Flagler-Development-in-$35B-Deal/89781). (Last visited March 24, 2017.)

¹³ See the AAF website available at: <http://www.allaboardflorida.com/>. (Last visited March 8, 2017.)

¹⁴ *Id.*

¹⁵ See video of the House Transportation & Infrastructure Subcommittee workshop on high-speed passenger rail, February 22, 2017, available at: http://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=2443575804_2017021306&committeeID=2914. (Last visited March 24, 2017.)

¹⁶ See the AAF website available at: <http://www.allaboardflorida.com/>. (Last visited March 24, 2017.)

¹⁷ See Martin County document, *Direct Costs to Treasure Coast from High-Speed Rail* (On file with the Transportation & Infrastructure Subcommittee).

¹⁸ See article, *Two votes today could clear way for All Aboard Florida*, available at: <http://realtime.blog.palmbeachpost.com/2014/10/21/does-all-aboard-floridas-fate-hinge-on-brevard-county-vote/>. (Last visited March 24, 2017.) See also article *Boynton May Sign Agreement With All Aboard*, available at:

<https://www.citizensagainsthetrain.com/content/boynton-may-sign-agreement-all-aboard>. (Last visited March 24, 2017.)

High-Speed Passenger Rail System - Any new intrastate passenger rail system that operates or proposes to operate its passenger trains at a maximum speed in excess of 80 miles per hour on or after July 1, 2017.

Pedestrian Grade Crossing - A separate sidewalk or pathway where pedestrians, but not vehicles, cross railroad tracks.

Public Railroad-Highway Grade Crossing - A location at which a railroad track is crossed at grade by a public road.

Rail Corridor - A linear, continuous strip of real property that is used for rail service. The term includes the corridor and structures essential to railroad operations, including the land, buildings, improvements, rights-of-way, easements, rail lines, rail beds, guideway structures, switches, yards, parking facilities, power relays, switching houses, rail stations, any ancillary development, and any other facilities or equipment used for the purposes of construction, operation, or maintenance of a railroad that provides rail service.

Railroad Company - Any individual, partnership, association, corporation, or company and its respective lessees, trustees, or receivers, appointed by a court, that develops or provides ground transportation that runs on rails, including, but not limited to:

- A high-speed passenger rail system;
- A freight railroad carrier;¹⁹ or
- A company that owns a rail corridor.

Public Purpose and Intent (Section 3)

The bill provides legislative intent to:

- Encourage the creation of safe and-cost effective transportation options for residents and visitors, including high-speed passenger rail systems.
- Promote and enhance the safety of high-speed passenger rail systems to protect the health, safety, and welfare of the public.

Applicability (Section 4)

The bill provides that the Act applies to any railroad company operating a high-speed passenger rail system, or any railroad company allowing a high-speed passenger rail system to operate on or within its rail corridor.

Powers and Duties of DOT (Section 5)

The bill authorizes DOT to regulate the state's railroad companies insofar such authority is not preempted by federal laws or regulations.

The bill authorizes DOT to obtain from any party all necessary information to enable it to perform its duties and carry out the Act's requirements.

The bill requires DOT keep records of all of its findings, decisions, determinations, and investigations carried out pursuant to the Act.

The bill provides that if a high-speed passenger rail system operates within the same rail corridor or on the same set of tracks as another railroad company transporting hazardous materials, DOT is required to offer the local communities and local emergency services located along the rail corridor training specifically designed to help them respond to an accident involving rail passengers or hazardous materials.

¹⁹ The bill defines "freight railroad carrier as any person, railroad corporation, or other legal entity in the business of providing freight rail transportation.

The bill requires DOT to adopt rules²⁰ relating to the Florida High-Speed Passenger Rail Safety Act.

Reporting Requirements (Section 6)

The bill requires a railroad company operating a high-speed passenger rail system to furnish DOT a copy of accident reports filed with FRA for each train accident that occurs within the rail corridor.

The bill requires DOT to annually publish on its website a report disclosing all of the fatalities, injuries, and accidents during the reporting timeframe which have occurred within a rail corridor where a high-speed passenger rail operates.

The bill requires railroad companies transporting liquefied natural gas (LNG) on the same tracks or within the same rail corridor as a high-speed passenger rail system to submit an annual report to DOT containing:

- All insurance carried by the railroad company covering any losses resulting in a reasonable worst-case unplanned release of LNG.
- Coverage amounts, limitations, and other conditions of the insurance identified above.
- The average and largest LNG train, as measured in metric tons, operated in the state by the railroad company in the previous calendar year.
- Information sufficient to demonstrate the railroad company's ability to pay the costs of remediating a reasonable worst-case unplanned release of LNG, including, but not limited to, insurance, reserve accounts, letters of credit, or other financial instruments or resources on which the company can rely on to pay all such costs. DOT, in coordination with FRA, and other public and private entities as necessary, is required to develop rules to determine applicable criteria for a reasonable worst-case unplanned release of LNG.

The bill provides that all reporting requirements are for informational purposes only and may not be used to economically regulate the railroad company.

Minimum Safety Standards for High-Speed Passenger Rail (Section 7)

The bill requires a railroad company operating a high-speed passenger rail system to comply with all federal laws and regulations administered by FRA.

The bill requires a railroad company operating a high-speed passenger rail system to install safety technology that has been approved by FRA or DOT as applicable. Safety technology at a minimum includes positive train control²¹ and remote health monitoring. The railroad company may be subject to civil or criminal penalties for an incident caused by the use of unapproved safety technology.

Before operating a high-speed passenger rail system, a railroad company is also required to:

- Install or realign crossing gates, including those at severely skewed acute-angle locations as identified by either DOT or FRA, so the gates are parallel to the tracks in accordance with the most recent edition of the Manual on Uniform Traffic Control Devices published by the Federal Highway Administration.²²
- Equip all automatic public railroad-highway grade crossing warning systems with remote health monitoring technology capable of:
 - Detecting false activations;
 - Detecting other crossing signal malfunctions; and
 - Notifying the train dispatchers and crossing signal maintenance personnel whenever such a malfunction is detected.

²⁰ This is pursuant to the Administrative Procedures Act contained in Ch. 120, F.S.

²¹ Positive Train Control (PTC) is an advanced system designed to automatically stop a train before certain accidents occur. In particular, PTC is designed to prevent, train-to-train collisions, derailments caused by excessive train speed, train movements through misaligned track switches, unauthorized train entry into work zones. PTC will not prevent vehicle-train accidents at grade crossings, or those due to track and equipment failures. http://www.up.com/media/media_kit/ptc/about-ptc/ (Last visited March 7, 2017).

²² The Manual on Uniform Traffic Control Devices is adopted by the state pursuant to s. 316.0745, F.S.

- Construct and maintain fencing in accordance with the provisions of this Act.

Maintenance and Repair of Roadbeds, Tracks, Culverts, and Certain Streets and Sidewalks (Section 8)

The bill provides that a railroad company constructing or operating a high-speed passenger rail system on tracks intersecting with a public street or highway at grade is required to, at its sole cost and expense, construct, maintain, renew, and repair all railroad roadbed, track, and railroad culverts within the confines of the public street or highway, and the streets or pedestrian grade crossings lying between the rails and for a distance outside the rails of one-foot beyond the end of the railroad ties.

If the railroad company constructs or operates a high-speed passenger rail system and it is required to install safety improvements that modify the width of a roadbed, it is responsible for ensuring that the impacted roadbed meets DOT's transitions requirements as set forth in the most recent edition of DOT's Design Standard and the Manual of Uniform Minimum Standards for Design, Construction, and Maintenance for Streets and Highways.²³

If a railroad company constructing or operating a high-speed passenger rail system enters into a contractual agreement with a governmental entity²⁴ requiring the governmental entity to reimburse a private entity for the installation or maintenance of the track improvements or crossing safety improvements necessary to operate a high-speed passenger rail system, the work is required to adhere to DOT's applicable requisition and procurement procedures.

The bill does not impair any existing contractual agreement between the railroad company operating a high-speed passenger rail system and a governmental entity.

Safety Inspections and Inspectors (Section 9)

The bill provides that in accordance with the State Rail Safety Participation Program,²⁵ which is designed to promote safety in all areas of railroad operations to reduce deaths, injuries, and damage to railroad property, DOT's railroad inspectors are required to be certified by the FRA and are coordinate their activities with federal railroad inspectors in compliance with 49 C.F.R. part 212²⁶ or any other federal regulations governing state participation.

The bill requires DOT's railroad inspectors to report in writing the results of their inspections in the manner and on forms prescribed by DOT. These reports are required to be made available on DOT's website.

Fencing and Separation Requirements to Protect the Public (Section 10)

The bill requires DOT to adopt rules identifying standards for conducting field surveys of rail corridors being used by a high-speed passenger rail system. The field survey is required to indicate areas where fencing is necessary for the health, safety, and welfare of the public.

At a minimum, the field survey should identify pedestrian traffic generators, including nearby schools and parks, and signs of pedestrian traffic currently crossing the railroad tracks. The bill requires DOT to hold at least one public meeting in each community where new or substantially modified fencing is proposed before designs and plans for such fencing is finalized.

Once it has been determined that a fence is necessary to protect the health, safety, and welfare of the surrounding community, the railroad company operating a high-speed passenger rail system is required to construct and maintain the fence on both sides of its railroad tracks sufficient to prevent intrusion.

²³ This is commonly known as Florida's Greenbook.

²⁴ The bill defines "governmental entity" as -the state, any of its agencies, or any of its political subdivisions.

²⁵ Rail State Safety Participation Program consists of states employing safety inspectors in the five rail safety inspection disciplines. State programs emphasize planned, routine compliance inspections; however, states may undertake additional investigative and surveillance activities consistent with overall program needs and individual state capabilities. <https://www.fra.dot.gov/Page/P0014> (Last visited March 7, 2017).

²⁶ 49 C.F.R. Part 212 are FRA's state safety participation regulations.

Fencing is required to be placed one-foot inside the edge of the railroad company's right-of way, except in locations where the railroad intersects with a highway or a road.

The fencing is required to be maintained by the railroad company operating a high-speed passenger rail system, unless maintenance is specifically addressed in a separate contract with a property owner or local government. The fence is required to be at least 4 ½ feet in height. Ornamental fencing is required within urban areas.²⁷ Chain-link fencing may be used in locations outside of urban areas.

If a railroad company neglects to construct or maintain a required fence, the railroad company is liable for all damages arising from its failure to construct or maintain such fence unless another entity is responsible for maintaining the fence.

Operation of a High-Speed Passenger Rail System over the Tracks of Another Railroad Company (Section 11)

The bill provides that railroad companies operating a high-speed passenger rail system are solely responsible for all rail corridor improvements or upgrades relating to the system's operation and safety. A local government or the state is not responsible for any costs associated with the construction and maintenance of the improvements necessary to operate a high-speed passenger rail system unless it expressly consents in writing.

To the extent that existing agreements place responsibility for any portion of the cost of such improvements or upgrades on the cities and counties, such responsibility appears to remain with the cities and counties under the contracts. In the absence of any such agreement or unless the state or local government consents in writing to responsibility, the bill would place the responsibility for such costs with the railroad company.

Administrative Fines (Section 12)

In addition to any administrative action authorized by the Administrative Procedures Act²⁸ or by other law, the bill authorizes DOT to impose a fine, which may not exceed \$10,000 for each violation, for a violation of this act or a violation of any rule adopted pursuant to this Act. DOT is required to provide notice of intent to impose a fine to the alleged violator. Each day a violation continues constitutes a separate violation.

In determining the amount of fine, if any, to be imposed for a violation, the following factors are to be considered:

- The gravity of the violation, including the probability that death or serious physical or emotional harm to any person will result or has resulted, the severity of the actual or potential harm, and the extent to which this Act or DOT rules were violated.
- Actions taken by the owner or operator to correct violations; and
- Any previous violations.

All fines collected under the Act are to be deposited into the State Transportation Trust Fund.

Action to Enforce Penalties (Section 13)

The bill provides that a suit to collect any damages, penalties, forfeitures, demurrage, or storage charges provided for in this Act may be brought in any court of the state having jurisdiction of the subject matter and parties. If a suit is adjudicated in favor of a plaintiff, the plaintiff is permitted to recover reasonable attorney fees and costs.

²⁷ Section 334.03(31), F.S., defines "urban area" as "a geographic region comprising as a minimum the area inside the United States Bureau of the Census boundary of an urban place with a population of 5,000 or more persons, expanded to include adjacent developed areas as provided for by Federal Highway Administration regulations."

²⁸ Chapter 120, F.S.

Ordinances; Speed Limits (Section 14)

The bill provides that this Act does not prevent local governments from enacting ordinances regulating the speed limits of railroad traffic due to local safety hazards not statewide in nature and not capable of being adequately encompassed within the national uniform standards.

B. SECTION DIRECTORY:

Section 1 creates s. 341.601, F.S., providing a short title.

Section 2 creates s. 341.602, F.S., providing definitions.

Section 3 creates s. 341.603, F.S., providing public purpose and intent.

Section 4 creates s. 341.604, F.S., providing applicability.

Section 5 creates s. 341.605, F.S., providing powers and duties of DOT; rules.

Section 6 creates s. 341.606, F.S., providing reporting requirements.

Section 7 creates s. 341.607, F.S., providing minimum safety standards for high-speed passenger rail.

Section 8 creates s. 341.608, F.S., providing for maintenance and repair of roadbeds, tracks, culverts, and certain streets and sidewalks.

Section 9 creates s. 341.609, F.S., providing for safety inspections and inspectors.

Section 10 creates s. 341.611, F.S., providing for fencing and separating requirements to protect the public.

Section 11 creates s. 341.612, F.S., providing for the operation of a high-speed passenger rail system over the tracks of another railroad company.

Section 12 creates s. 341.613, F.S., providing for administrative fines.

Section 13 creates s. 341.614, F.S., relating to action to enforce penalties; attorney fees.

Section 14 creates s. 341.615, F.S., relating to ordinances; speed limits.

Section 15 provides an effective date of July 1, 1017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill authorizes administrative fines for violations of the Act; to be deposited into the State Transportation Trust Fund. However; the exact amount of penalties which will be assessed is indeterminate.

2. Expenditures:

DOT will incur indeterminate costs to regulate, inspect, survey, report, and provide emergency response training to local governments. Additionally, DOT indicated that it does not have employees with the expertise to train local governments and would likely be required to contract out this service.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

To the extent that the bill allows a local government to reduce costs that would be incurred for railroad-highway grade crossing construction, maintenance and repairs, the local government would have an indeterminate positive fiscal impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Companies operating high-speed passenger rail systems will incur costs to adhere to the new safety standards, required construction and maintenance of fencing, infrastructure and improvements, reporting and applicable fines. The fiscal impact to railroads is largely indeterminate, depending on whether given provisions in the bill are federally preempted.

Railroad companies transporting LNG will incur an indeterminate cost associated with meeting reporting requirements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DOT to adopt rules related to the Act, specifically to identify standards for conducting field surveys on a rail corridor being used for a high-speed passenger rail system to determine whether or not fencing is necessary along the rail corridor.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The bill defines the term “governmental entity”; however, the bill also uses the term local government. It is not clear if these two terms are meant to describe the same entities.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES