

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 695 South Florida Regional Transportation Authority
SPONSOR(S): Transportation & Tourism Appropriations Subcommittee, Transportation & Infrastructure Subcommittee; Santiago
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 842

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|------------------|---------|---------------------------------------|
| 1) Transportation & Infrastructure Subcommittee | 10 Y, 0 N, As CS | Johnson | Vickers |
| 2) Transportation & Tourism Appropriations Subcommittee | 10 Y, 0 N, As CS | Cobb | Davis |
| 3) Government Accountability Committee | | | |

SUMMARY ANALYSIS

The bill addresses insurance liability issues related to the South Florida Regional Transportation Authority (SFRTA) which operates commuter rail service in Palm Beach, Broward, and Miami-Dade counties.

The bill primarily addresses liability regarding the use of a rail corridor. The bill provides SFRTA's ability to indemnify the Florida East Coast Railway (FECR) and All Aboard Florida (AAF) under certain circumstances. The bill provides who is responsible for property damage and injury to certain persons associated with several scenarios involving rail accidents. The bill also provides an allocation of risk between the parties and includes provisions for passengers and other rail corridor invitees.

The bill authorizes SFRTA to purchase railroad liability insurance of \$295 million per occurrence, and allows it to adjust the limit in accordance with applicable law. The bill also requires SFRTA to maintain a \$5 million self-insurance retention account. To compare, current Florida law authorizes the Department of Transportation (DOT) to purchase railroad liability insurance for an amount not to exceed \$200 million, and establish a self-insurance retention fund not to exceed \$10 million.

The bill authorizes the DOT to indemnify and insure certain rail services on DOT-owned rail corridors.

CS/CS/HB 695 prohibits SFRTA from entering into a contract or other agreement, or renewing or extending any existing contract or other agreement, which may be funded, in whole or in part, with DOT provided funds without the DOT's prior review and written approval of SFRTA's proposed expenditures. The bill further clarifies that those DOT funds constitute state financial assistance while outlining the parameters for advancing such funds and reimbursing SFRTA invoices.

The bill is not expected to have a significant fiscal impact on state government. SFRTA may incur costs related to the purchase of liability insurance and the creation of a self-insurance retention fund. See Fiscal Comments for detail.

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Commuter Rail in Florida

In 1988, DOT and CSX Transportation, Inc., (CSX) entered into an agreement where DOT purchased approximately 81 miles of CSX track and right-of-way¹ in order to operate commuter rail in South Florida.² The commuter rail system (Tri-Rail) serves Miami-Dade, Broward, and Palm Beach counties.³ Pursuant to the agreement between DOT and CSX, the parties agreed to a no-fault allocation of liability. Specifically, CSX pays 100 percent of all freight damages, DOT pays 100 percent of all commuter rail damages, and both parties equally share the liability for third-party damages outside the corridor when both parties are involved.⁴ The agreement also required DOT to establish a \$5 million self-insurance fund and to obtain \$120 million of insurance, including punitive damage coverage.⁵

The Legislature authorized DOT to enter into the agreement through proviso language in the 1988 General Appropriations Act.⁶ While implementing the agreement, DOT realized that procuring the requisite insurance coverage posed some challenges. The Department of Management Services purchases insurance for state agencies.⁷ However, commuter rail liability insurance is a specialized offering available from relatively few insurance providers. In 1990, due to difficulties in obtaining this insurance domestically, the Legislature exempted the purchase of insurance for Tri-Rail (currently operated by SFRTA)⁸ from the statutory requirements for procuring insurance and contractual services.⁹ This allowed Tri-Rail to obtain insurance from international insurers. Subsequently, coverage was purchased from a variety of providers primarily located in London and Bermuda.¹⁰

Liability on Rail Corridors

Commuter rail is defined as “a type of public transit that is characterized by passenger trains operating on railroad tracks and providing regional service.”¹¹ Commuter rail operators often seek to use existing track or right-of-way, which is primarily owned by freight rail operators, due to the high cost of building new infrastructure.¹² Consequently, commuter rail operators need to enter into agreements with the freight rail operators regarding how commuter rail operators will access the right-of-way. The most common challenge that occurs during negotiations between the commuter rail operator and the freight rail operator is determining liability.¹³

¹ Commonly known as the South Florida Rail Corridor. Florida Department of Transportation, 2006 Florida Freight & Passenger Rail Plan, 2-1 n. 1, <http://www.fdot.gov/rail/Publications/Plans/2006/flrail06.pdf>.

² Florida Department of Transportation, 2006 Florida Freight & Passenger Rail Plan, 5-34 <http://www.fdot.gov/rail/Publications/Plans/2006/flrail06.pdf>.

³ Tri-Rail, *Destinations*, <http://www.tri-rail.com/destinations/broward-county/>; Tri-Rail, *Destinations*, <http://www.tri-rail.com/destinations/miami-dade-county/>; Tri-Rail, *Destinations*, <http://www.tri-rail.com/destinations/palm-beach-county/>.

⁴ *CSX Liability Issues*.

⁵ *CSX Liability Issues*.

⁶ See Chapter 87-98, Laws of Fla. (proviso accompanying Specific Appropriation 1700B).

⁷ FLA. STAT. § 287.022 (2017).

⁸ See Chapter 2003-159, Laws of Fla.

⁹ Chapter 90-136, s. 88, Laws of Fla.

¹⁰ *CSX Liability Issues*.

¹¹ U.S. General Accounting Office, *Commuter Rail: Information and Guidance Could Help Facilitate Commuter and Freight Rail Access Negotiations*, Report GAO-04-240, 5 (Jan. 2004), available at <http://www.gao.gov/new.items/d04240.pdf> (last visited March 5, 2009).

¹² *Id.* at 1.

¹³ *Id.* at 17.

Introducing commuter trains onto freight rail corridors inherently raises the freight operators' risk of liability due to the increased number of persons and trains present within the rail corridor. Accordingly, most freight rail operators want the commuter rail operator to assume all risks associated with the presence of the commuter rail service. Freight rail operators refer to this as the "but for" argument – "but for the presence of the commuter rail service, the freight railroad would not be exposed to certain risks; therefore, the freight railroads should be held harmless."¹⁴

South Florida Regional Transportation Authority (SFRTA) Power and Duties

In January 1989, the Tri-Rail was established to provide commuter rail service along a 67-mile corridor between the West Palm Beach Station in Palm Beach County and the Hialeah Market Station in Miami-Dade County. Between 1997 and 1998, Tri-Rail service was extended to the Mangonia Park Station in Palm Beach County and to the Miami Airport Station in Miami-Dade County.

In 2003, the Legislature created SFRTA, a tri-county federal public transit authority.¹⁵ The SFRTA Act defines terms related to SFRTA and expresses SFRTA's power and duties.¹⁶ Included in its powers and duties are provisions allowing SFRTA to contract for the procurement of various goods and services.¹⁷ SFRTA operates Tri-Rail in South Florida.¹⁸ The purpose for creating SFRTA was to expand cooperation between Tri-Rail commuter rail services and county transit operators and planning agencies within Miami-Dade, Broward, and Palm Beach counties.

SFRTA has plans to extend Tri-Rail service to the MiamiCentral station which will serve as downtown Miami's multimodal hub.¹⁹ At MiamiCentral, Tri-Rail passengers will be able to connect to All Aboard Florida (AAF), the Miami-Dade County bus system, Metrorail and Metromover.²⁰

South Florida Regional Transportation Authority (SFRTA) Funding

The statutory funding of SFRTA provides that effective July 1, 2010, until as provided below, DOT is required to annually transfer from the State Transportation Trust Fund (STTF) to SFRTA the amounts specified below:²¹

- If SFRTA becomes responsible for maintaining and dispatching the South Florida Rail Corridor:
 - \$15 million from the STTF to SFRTA for operations, maintenance, and dispatch; and
 - An amount no less than the work program commitments equal to \$27.1 million for fiscal year 2010-2011, as of July 1, 2009, for operating assistance to the authority and corridor track maintenance and contract maintenance for the South Florida Rail Corridor.
- If SFRTA does not become responsible for maintaining and dispatching the South Florida Rail Corridor:
 - \$13.3 million from the STTF to SFRTA for operations; and
 - An amount no less than the work program commitments equal to \$17.3 million for fiscal year 2010-2011, as of July 1, 2009, for operating assistance to the authority.

SFRTA is currently responsible for maintaining and dispatching on the South Florida Rail Corridor; therefore, the first funding scenario is in effect.

¹⁴ *Id.* at 18.

¹⁵ South Florida Regional Transportation Authority Act, FLA. STAT. § 343 (2017).

¹⁶ FLA. STAT. § 343.54 (2017).

¹⁷ FLA. STAT. § 343.54 (2017).

¹⁸ South Florida Regional Transportation Authority Act, FLA. STAT. § 343 (2017); *see also* Tri-Rail, *Destinations*, <http://www.tri-rail.com/destinations/broward-county/>; Tri-Rail, *Destinations*, <http://www.tri-rail.com/destinations/miami-dade-county/>; Tri-Rail, *Destinations*, <http://www.tri-rail.com/destinations/palm-beach-county/>.

¹⁹ Tri-Rail, *Tri-Rail Downtown Miami Link*, <http://tri-raildowntownmiamilink.com/>.

²⁰ *Id.*

²¹ FLA. STAT. § 343.58 (2017).

Funding required by s. 348.58(4), F.S. may not be provided from the funds dedicated to the Florida Rail Enterprise.²²

SFRTA may not commit these DOT-provided funds without DOT approval, which may not be unreasonably withheld. At least 90 days before advertising any procurement or renewing any existing contract that will rely on state funds for payment, SFRTA is required to notify DOT of the proposed procurement or renewal and the proposed terms of the procurement or renewal. If DOT, within 60 days after receiving the notice, objects in writing to the proposed procurement or renewal, specifying its reasons for objection, SFRTA may not proceed with the proposed procurement or renewal. Failure of DOT to object in writing within 60 days after notice is deemed consent.

To enable DOT to evaluate SFRTA's proposed uses of state funds, SFRTA annually provides DOT with its proposed budget for the following fiscal year and provides DOT with any additional documentation or information required by DOT for its evaluation of the proposed uses of the state funds.

The statutory required funding ceases upon commencement of an alternate dedicated local funding source sufficient for SFRTA to meet its responsibilities for operating, maintaining, and dispatching the South Florida Rail Corridor. SFRTA and DOT are required to cooperate in the effort to identify and implement such an alternate dedicated local funding source before July 1, 2019. Upon commencement of the alternate dedicated local funding source, DOT conveys to SFRTA a perpetual commuter rail easement in the South Florida Rail Corridor and all of DOT's right, title, and interest in rolling stock, equipment, tracks, and other personal property owned and used by DOT for the operation and maintenance of the commuter rail operations in the South Florida Rail Corridor.

In recent correspondence with SFRTA, DOT expressed concern regarding SFRTA's accountability for DOT-provided state funds used for SFRTA's operation and maintenance costs. This concern was heightened by the SFRTA's board's decision to award a long-term operations and maintenance contract after unilaterally rejecting all but one of the proposals submitted.²³

DOT Rail Liability

DOT is authorized to implement a statewide rail program.²⁴ In the event of an accident in a DOT-owned rail corridor, DOT may assume detailed obligations to specific parties who may be involved.²⁵ The provisions relate to DOT trains, the National Railroad Passenger Corporation (AMTRAK) trains, and freight trains.²⁶

DOT's duty to indemnify a freight rail operator or Amtrak is capped at \$200 million.²⁷ DOT is required to purchase up to \$200 million in liability insurance and establish a self-insurance retention fund to cover any deductible, provided that any parties covered under the insurance must pay a reasonable monetary contribution to cover the cost of the insurance.²⁸ The self-insurance fund or deductible is capped at \$10 million.²⁹ Neither the purchase of insurance nor the establishment of a self-insurance retention fund shall constitute a waiver of sovereign immunity.³⁰

²² Funds are dedicated to the Florida Rail Enterprise pursuant to s. 201.15(4)(a)4., F.S.

²³ Letter from DOT Secretary Jim Boxhold to Jack Stephens, Executive Director of SFRTA. January 27, 2017. Copy on file with Transportation & Infrastructure Subcommittee.

²⁴ FLA. STAT. § 341.302 (2017).

²⁵ FLA. STAT. § 341.302(17) (2017).

²⁶ FLA. STAT. § 341.302(17) (2017).

²⁷ FLA. STAT. § 341.302(17)(a)6. (2017).

²⁸ FLA. STAT. § 341.302(17)(a)6. (2017).

²⁹ FLA. STAT. § 341.302(17)(b) (2017).

³⁰ FLA. STAT. § 341.302(17) (2017).

Proposed Changes

The bill creates s. 343.545, F.S., allowing SFRTA to assume indemnification and insurance obligations in certain circumstances.

Definitions

The bill amends s. 343.52, F.S., defining “department” as the Department of Transportation. The bill also alphabetizes the definitions in that section.

The bill defines various terms, including the following:

AAF intercity rail passenger - Means any person, ticketed or unticketed, using the AAF intercity passenger rail service on the rail corridor:

- On board trains, locomotives, rail cars, or rail equipment employed in AAF intercity passenger rail service or entraining thereon and detraining therefrom;
- On or about the rail corridor for any purpose related to the AAF intercity passenger rail service, including parking or purchasing tickets therefor and coming to, waiting for, and leaving from locomotives, rail cars, or rail equipment; or
- Meeting, assisting, or in the company of any person described above.

AAF rail corridor invitee - Any rail corridor invitee who is an AAF intercity rail passenger or is otherwise present on the rail corridor at the request of, pursuant to a contract with, or otherwise for the purpose of doing business with or at the behest of AAF, including persons who are vendors or employees of vendors at the MiamiCentral³¹ station or any other station that AAF may construct on the rail corridor. The term does not include patrons at any station, except those patrons who are also AAF's intercity rail passengers; commercial or residential tenants of the developments in and around the stations or their invitees; or any third parties performing work at a station or in the rail corridor, such as employees and invitees of PI³² or related entities, utilities, and fiber optic companies, or invitees or employees of the department or any county or municipality.

Commuter rail passenger - Any person, ticketed or unticketed, using the commuter rail service on the rail corridor:

- On board trains, locomotives, rail cars, or rail equipment employed in commuter rail service or entraining thereon and detraining therefrom;
- On or about the rail corridor for any purpose related to the commuter rail service, including parking or purchasing tickets therefor and coming to, waiting for, and leaving from locomotives, rail cars, or rail equipment; or
- Meeting, assisting, or in the company of any person described above.

Commuter rail service - The operation of the authority's trains transporting passengers and making frequent stops within urban areas and their immediate suburbs along the rail corridor for the purpose of passengers entraining and detraining, and including the nonrevenue movement of trains for storage or maintenance. The term does not include the operation of trains by AAF transporting passengers in intercity passenger rail service between passenger rail stations established by AAF at Miami-Dade, Fort Lauderdale, West Palm Beach, or future stations but shall include the provision of non-SFRTA commuter rail service by AAF or a third party designated by AAF, including SFRTA.

FECR rail corridor invitee - Any rail corridor invitee who is present on the rail corridor at the request of, pursuant to a contract with, or otherwise for the purpose of doing business with or at the behest of FECR. The term does not include patrons at any station; commercial or residential tenants of the

³¹ The bill defines “MiamiCentral” as the primary AAF station located in downtown Miami, which includes exclusive areas used by the authority for commuter rail service.

³² The bill defines “PI” as FDG Flagler Station II, LLC, which has an easement on the rail corridor for nonrail uses.

developments in and around the stations or their invitees; or any third parties performing work at a station or in the rail corridor, such as employees and invitees of PI or related entities, utilities, and fiber optic companies or others, or invitees or employees of the department or any county or municipality.

Freight rail service - Any and all uses and purposes that are related to or ancillary to current and future freight rail operations on, along, over, under, and across the rail corridor, including operating trains, rail cars, business cars, locomotives, hi-rail vehicles, and other rail equipment for the movement of freight in overhead and local service; interchanging rail cars with other freight railroads; providing pickups, setoffs, transloading services, or storage in transit; and any and all other activities that are ancillary or related to the transportation of freight on or along the rail corridor.

Intercity passenger rail service - All passenger service on the rail corridor other than commuter rail service and is characterized by trains making less frequent stops along the rail corridor than the commuter rail service makes.

Joint infrastructure - Any portion or segment of the rail corridor which does not contain tracks or infrastructure designated for the exclusive use of the authority, AAF, or FECR and portions of the MiamiCentral station used by both AAF and SFRTA, including, but not limited to, stairs, elevators, and escalators.

Limited covered accident:

- A collision directly between the trains, locomotives, rail cars, or rail equipment of SFRTA and FECR only, where the collision is caused by or arising from the willful misconduct of FECR or its subsidiaries, agents, licensees, employees, officers, or directors, as adjudicated pursuant to a final and unappealable court order, or if punitive damages or exemplary damages are awarded due to the conduct of FECR or its subsidiaries, agents, licensees, employees, officers, or directors, as adjudicated pursuant to a final and unappealable court order; or
- A collision directly between the trains, locomotives, rail cars, or rail equipment of SFRTA and AAF only, if the collision is caused by or arising from the willful misconduct of AAF or its subsidiaries, agents, licensees, employees, officers, or directors, as adjudicated pursuant to a final and unappealable court order, or if punitive damages or exemplary damages are awarded due to the conduct of AAF or its subsidiaries, agents, licensees, employees, officers, or directors, as adjudicated pursuant to a final and unappealable court order.³³

Non-SFRTA commuter rail service - AAF's operation, or an AAF third-party designee's operation, of trains in any commuter rail service on the rail corridor which is not SFRTA's commuter rail service. The term does not include:

- Any service operated by the authority between the MiamiCentral station and any stations in Miami-Dade County, Broward County, Palm Beach County, or points north on the FECR rail corridor; and
- SFRTA's commuter rail service on the South Florida Rail Corridor owned by the department.

Other train - A train that is not SFRTA's train, FECR's train, AAF's train, a train of a non-SFRTA commuter rail service operator,³⁴ or a train of any other operator of intercity rail passenger service and must be treated as a train of the entity that made the initial request for the train to operate on the rail corridor.

Passenger easement - A permanent, perpetual, and exclusive easement on, along, over, under, or across the rail corridor for commuter rail service.

³³ DOT notes in its bill analysis that section 341.302, F.S., contains no requirement that willful misconduct be adjudicated. Department of Transportation, DOT House Bill 695 Bill Analysis, 7.

³⁴ The bill defines "non-SFRTA commuter rail service operator" as the operator of any non-SFRTA commuter rail service.

Rail corridor - The portion of a linear contiguous strip of real property which is used for rail service and owned by FECR or owned or controlled by AAF. The term applies only when the authority has, by contract, assumed the obligation to forever protect, defend, indemnify, and hold harmless FECR, AAF, or their successors, in accordance with the provisions below and acquired an easement interest, a lease, a right to operate, or a right of access. The term includes structures essential to railroad operations, including the land, structures, 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.

Rail corridor invitee - Any person who is on or about the rail corridor in which the AAF, SFRTA, or non-SFRTA commuter rail service operator has an easement interest, a lease, a right to operate, or a right of access and who is:

- Present at the behest of an AAF, an SFRTA, an FECR, or the non-SFRTA commuter rail service operator for any purpose;
- Otherwise entitled to be on or about the rail corridor; or
- Meeting, assisting, or in the company of a person described above.

SFRTA rail corridor invitee - Any rail corridor invitee who is SFRTA's commuter rail passenger or is otherwise present on the rail corridor at the request of, pursuant to a contract with, for the purpose of doing business with, or at the behest of SFRTA. The term does not include patrons at any station, except those patrons who are also SFRTA's commuter rail passengers; any person present on the rail corridor who is a patron of the non-SFRTA commuter rail service or is meeting or assisting a person who is a patron of the non-SFRTA commuter rail service; commercial or residential tenants of the developments in and around the stations or their invitees; or any third parties performing work at a station or in the rail corridor, such as employees and invitees of PI or related entities, utilities, and fiber optic companies or others or invitees or employees of the department or any county or municipality.

South Florida Regional Transportation Authority (SFRTA) Powers and Duties

The bill creates s. 343.54(4), F.S., prohibiting SFRTA from entering into a contract or other agreement, or renewing or extending any existing contract or other agreement, which may be funded, in whole or in part, with DOT provided funds without the DOT's prior review and written approval of SFRTA's proposed expenditures.

The bill amends s. 343.53(2)(d), F.S., conforming a cross reference.

South Florida Regional Transportation Authority (SFRTA) Funding

The bill amends s. 343.58(4)(c)1., F.S., by specifying that funds provided to the authority by DOT constitute state financial assistance for the purpose of carrying out certain state projects. DOT shall provide the funds in accordance with a written agreement to be entered into between the authority and DOT. This will allow DOT to review, approve, and audit the authority's expenditure of the funds. The agreement shall also include such other provisions required by applicable law. DOT is specifically authorized to agree to advance the authority one-fourth of the total funding provided in s. 343.58(4), F.S., for a state fiscal year at the beginning of each state fiscal year, with monthly payments over the fiscal year on a reimbursement basis and a reconciliation of the advance against remaining invoices in the last quarter of the fiscal year.

Rail Liability

The bill creates s. 343.545, F.S., authorizing SFRTA to enter into contractual indemnification agreements with AAF and FECR on a rail corridor owned by AAF or FECR and in which all three entities operate rail service. The bill provides for the creation of the type of no-fault allocation of liability

similar to what currently is provided in s. 341.302, F.S., between DOT, freight rail operators, and Amtrak.

SFRTA may indemnify FECR and AAF for any loss, injury, or damage to passengers or invitees, regardless of circumstances or cause, including negligence, misconduct, nonfeasance, or misfeasance. SFRTA's indemnification is capped at \$295 million. SFRTA must purchase up to \$295 million in liability insurance and establish a \$5 million self-insurance retention fund. The insurance policy must name FECR and AAF as insureds at no cost to FECR and AFF, and it must have a waiver of exclusion for punitive damages and the Federal Employers Liability Act.

The SFRTA's indemnification, however, is subject to the following parameters and exceptions:

- SFRTA is solely responsible for any loss, injury, or damage to its passengers, or to SFRTA rail corridor invitees, or trespassers, regardless of circumstances or cause.
- With respect to a limited covered accident, FECR and AAF are required to protect, defend, and indemnify SFRTA for the amount of the self-insurance retention account.

Single Train Incidents:

- When only one train is involved in an incident, and that train is an SFRTA train, SFRTA is solely responsible for any loss, injury, or damage.
- When an incident occurs with only FECR's train or only AAF's train, the train owner is solely responsible for any loss, injury, or damage. However, SFRTA's must pay for loss, injury, or damage to its commuter rail passengers, employees, and invitees.
- Any train that is neither SFRTA's train nor FECR's or AAF's train is considered an "other train." An incident involving only an "other train" is treated as an SFRTA train solely for purposes of allocation of liability between SFRTA and FECR or AAF, as long as SFRTA and FECR or AAF share responsibility equally as to third-parties injured outside the rail corridor.

Multi-Train Incidents:

- If only an SFRTA train (or an "other train" that is considered an SFRTA) and an FECR or an AAF train are involved in an incident, each entity is responsible for its own property, passengers, employees, and invitees. SFRTA and FECR or AAF, as the case may be, will share one-half responsibility as to the joint infrastructure and rail corridor invitees who are not SFRTA, FECR, or AAF rail corridor invitees.
- If an FECR train, an SFRTA train, and an AAF train are involved in an incident, each entity is responsible for its own property, passengers, employees, and invitees. SFRTA, FECR, and AAF will each share one-third responsibility as to the joint infrastructure and rail corridor invitees who are not SFRTA, AAF, or FECR rail corridor.

DOT Rail Liability

The bill amends DOT's rail liability provisions in s. 341.302(17), F.S., by creating s. 341.302(17)(d), F.S., providing that without altering any of the rights granted to DOT under s. 341.302, F.S., the obligations to indemnify and insure, pursuant to s. 343.545, F.S., freight rail service, intercity passenger rail service, and commuter rail service on a DOT-owned rail corridor, whether the ownership is in fee or by easement, or on a rail corridor where DOT has the right to operate.

B. SECTION DIRECTORY:

Section 1. Creates s. 343.545, F.S.; defines terms; authorizes the SFRTA to assume indemnification and insurance obligations.

Section 2. Amends s. 341.302, F.S., relating to rail programs; authorizes DOT to assume certain indemnification and insurance obligations.

Section 3. Amends s. 343.52, F.S.; defining the term "department"; alphabetizing the definitions.

Section 4. Amends s. 343.53, F.S.; conforming a cross reference.

Section 5. Amends s. 343.54, F.S.; prohibiting the authority from entering into agreements without DOT approval.

Section 6. Amends s. 343.58, F.S.; relating to the funding of SFRTA; authorizes the department to advance funds to the authority.

Section 7. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill authorizes SFRTA to purchase rail liability insurance of \$295 million per occurrence and a self-insurance retention fund of up to \$5 million. The cost of this insurance is not known at this time.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill addresses liability issues regarding the use of a rail corridor by multiple parties.

D. FISCAL COMMENTS:

The bill does not appear to impact or change the amount of damages an injured person would receive, but provides which party is liable and responsible for damages in certain circumstances.

This bill does not appear to impact or change the amount each county served by SFRTA must transfer to SFRTA.³⁵ These funds may be used for operations and maintenance.³⁶

According to DOT, the bill amends s. 341.302(17), F.S., providing that, without altering the rights of DOT, DOT agrees to assume and obligates to indemnify and ensure freight rail, intercity passenger rail, and commuter rail service on a DOT-owned rail corridor. Assuming the premium for their liability insurance is an arbitrary increase in state subsidization of SFRTA, it provides a financial advantage not offered to other authorities or transit operators. This may create a significant, indeterminate impact on DOT and sets a precedent for other passenger rail services owned and operated by regional transportation authorities.³⁷

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

³⁵ FLA. STAT. § 343.58(1) (2017).

³⁶ FLA. STAT. § 343.58(1) (2017).

³⁷ Department of Transportation, DOT House Bill 695 Bill Analysis, 7.

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill defines the term “existing IRIS crossing,” “Passenger easement,” and “SFRC.” These terms are either not used, or used in the definition of terms that are not used.

Additionally, SFRTA is currently defined in Florida statutes³⁸ and redefined in the bill.

The bill’s language relating to the “self-insurance retention account” parallels similar Florida Statutes relating to railroad insurance. However, the bill’s language providing SFRTA’s authority to indemnify other entities is not as explicit as the current statutory language providing DOT’s authority to indemnify other entities.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2017, the Transportation & Infrastructure Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed Section 2 of the bill, which required DOT to provide SFRTA with its statutorily required funding on a quarterly basis and provided that state funds provided to SFRTA are not state financial assistance subject to certain provisions of Ch. 215, F.S., relating to state financial matters, including the Single Audit Act.

On April 3, 2017, the Transportation and Tourism Appropriations Subcommittee adopted one amendment and reported CS/HB 695 favorably. The amendment alphabetizes the definitions in s. 343.52, F.S., and defines “department” as the Department of Transportation; prohibits SFRTA from entering into a contract or other agreement funded through DOT without prior review and approval of SFRTA’s proposed expenditures; and clarifies that DOT funds constitute state financial assistance while outlining the parameters for advancing funds and reimbursing SFRTA invoices.

This analysis is written to the committee substitute as amended.

³⁸ FLA. STAT. § 343.52 (2017).
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DATE: 4/5/2017