

By Senator Artiles

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1                   A bill to be entitled  
 2           An act relating to the South Florida Regional  
 3           Transportation Authority; creating s. 343.545, F.S.;  
 4           defining terms; authorizing the South Florida Regional  
 5           Transportation Authority, in conjunction with the  
 6           operation of a certain commuter rail service, to have  
 7           the power to assume specified indemnification and  
 8           insurance obligations, subject to certain  
 9           requirements; amending s. 343.58, F.S.; requiring the  
 10          Department of Transportation to transfer specified  
 11          amounts annually from the State Transportation Trust  
 12          Fund to the authority; requiring that the transfer be  
 13          made through quarterly payments commencing at the  
 14          start of each fiscal year; prohibiting state funds  
 15          provided to the authority under this section from  
 16          being considered state financial assistance subject to  
 17          specified provisions; amending s. 341.302, F.S.;  
 18          authorizing the department to agree to assume certain  
 19          indemnification and insurance obligations under  
 20          certain circumstances; providing an effective date.

21  
 22 Be It Enacted by the Legislature of the State of Florida:

23  
 24           Section 1. Section 343.545, Florida Statutes, is created to  
 25           read:

26           343.545 Power to assume indemnification and insurance  
 27           obligations; definitions.—

28           (1) As used in this section, the term:

29           (a) "All Aboard Florida" or "AAF" means All Aboard Florida  
 30           Operations, LLC, or its successors and assigns.

31           (b) "AAF intercity rail passenger" means any person,  
 32           ticketed or unticketed, using the AAF intercity passenger rail

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33 service on the rail corridor:

34 1. On board trains, locomotives, rail cars, or rail  
35 equipment employed in AAF intercity passenger rail service or  
36 entraining thereon and detraining therefrom;

37 2. On or about the rail corridor for any purpose related to  
38 the AAF intercity passenger rail service, including parking or  
39 purchasing tickets therefor and coming to, waiting for, and  
40 leaving from locomotives, rail cars, or rail equipment; or

41 3. Meeting, assisting, or in the company of any person  
42 described in subparagraph 1. or subparagraph 2.

43 (c) "AAF rail corridor invitee" means any rail corridor  
44 invitee who is an AAF intercity rail passenger or is otherwise  
45 present on the rail corridor at the request of, pursuant to a  
46 contract with, or otherwise for the purpose of doing business  
47 with or at the behest of AAF, including persons who are vendors  
48 or employees of vendors at the MiamiCentral station or any other  
49 station that AAF may construct on the rail corridor. The term  
50 does not include patrons at any station, except those patrons  
51 who are also AAF's intercity rail passengers; commercial or  
52 residential tenants of the developments in and around the  
53 stations or their invitees; or any third parties performing work  
54 at a station or in the rail corridor, such as employees and  
55 invitees of PI or related entities, utilities, and fiber optic  
56 companies, or invitees or employees of the department or any  
57 county or municipality.

58 (d) "Commuter rail passenger" means any person, ticketed or  
59 unticketed, using the commuter rail service on the rail  
60 corridor:

61 1. On board trains, locomotives, rail cars, or rail

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62 equipment employed in commuter rail service or entraining  
63 thereon and detraining therefrom;

64 2. On or about the rail corridor for any purpose related to  
65 the commuter rail service, including parking or purchasing  
66 tickets therefor and coming to, waiting for, and leaving from  
67 locomotives, rail cars, or rail equipment; or

68 3. Meeting, assisting, or in the company of any person  
69 described in subparagraph 1. or subparagraph 2.

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

82 (f) "Existing IRIS crossing" means the existing, at-grade  
83 railroad crossing between the SFRC and the rail corridor located  
84 in Miami-Dade County.

85 (g) "Florida East Coast Railway" or "FECR" means Florida  
86 East Coast Railway, LLC, or its successors and assigns.

87 (h) "FECR rail corridor invitee" means any rail corridor  
88 invitee who is present on the rail corridor at the request of,  
89 pursuant to a contract with, or otherwise for the purpose of  
90 doing business with or at the behest of FECR. The term does not

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91 include patrons at any station; commercial or residential  
92 tenants of the developments in and around the stations or their  
93 invitees; or any third parties performing work at a station or  
94 in the rail corridor, such as employees and invitees of PI or  
95 related entities, utilities, and fiber optic companies or  
96 others, or invitees or employees of the department or any county  
97 or municipality.

98 (i) "Freight rail service" means any and all uses and  
99 purposes that are ancillary or related to current and future  
100 freight rail operations on, along, over, under, and across the  
101 rail corridor, including operating trains, rail cars, business  
102 cars, locomotives, hi-rail vehicles, and other rail equipment  
103 for the movement of freight in overhead and local service;  
104 interchanging rail cars with other freight railroads; providing  
105 pickups, setoffs, transloading services, or storage in transit;  
106 and any and all other activities that are ancillary or related  
107 to the transportation of freight on or along the rail corridor.

108 (j) "Intercity passenger rail service" means all passenger  
109 service on the rail corridor other than commuter rail service  
110 and is characterized by trains making less frequent stops along  
111 the rail corridor than the commuter rail service does.

112 (k) "Joint infrastructure" means any portion or segment of  
113 the rail corridor which does not contain tracks or  
114 infrastructure designated for the exclusive use of the  
115 authority, AAF, or FECR and portions of the MiamiCentral station  
116 used by both AAF and SFRTA, including, but not limited to,  
117 stairs, elevators, and escalators.

118 (l) "Limited covered accident" means:

119 1. A collision directly between the trains, locomotives,

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120 rail cars, or rail equipment of SFRTA and FECR only, where the  
121 collision is caused by or arising from the willful misconduct of  
122 FECR or its subsidiaries, agents, licensees, employees,  
123 officers, or directors, as adjudicated pursuant to a final and  
124 unappealable court order, or if punitive damages or exemplary  
125 damages are awarded due to the conduct of FECR or its  
126 subsidiaries, agents, licensees, employees, officers, or  
127 directors, as adjudicated pursuant to a final and unappealable  
128 court order; or

129 2. A collision directly between the trains, locomotives,  
130 rail cars, or rail equipment of SFRTA and AAF only, if the  
131 collision is caused by or arising from the willful misconduct of  
132 AAF or its subsidiaries, agents, licensees, employees, officers,  
133 or directors, as adjudicated pursuant to a final and  
134 unappealable court order, or if punitive damages or exemplary  
135 damages are awarded due to the conduct of AAF or its  
136 subsidiaries, agents, licensees, employees, officers, or  
137 directors, as adjudicated pursuant to a final and unappealable  
138 court order.

139 (m) "MiamiCentral" means the primary All Aboard Florida  
140 station located in downtown Miami, which includes exclusive  
141 areas used by the authority for commuter rail service.

142 (n) "Non-SFRTA commuter rail service" means AAF's  
143 operation, or an AAF third-party designee's operation, of trains  
144 in any commuter rail service on the rail corridor which is not  
145 SFRTA's commuter rail service. The term does not include:

146 1. Any service operated by the authority between the  
147 MiamiCentral station and any stations in Miami-Dade County,  
148 Broward County, Palm Beach County, or points north on the FECR

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149 rail corridor; and

150 2. SFRTA's commuter rail service on the South Florida Rail  
151 Corridor owned by the department.

152 (o) "Non-SFRTA commuter rail service operator" means the  
153 operator of any non-SFRTA commuter rail service.

154 (p) "Other train" means a train that is not SFRTA's train,  
155 FECR's train, AAF's train, a train of a non-SFRTA commuter rail  
156 service operator, or a train of any other operator of intercity  
157 rail passenger service and must be treated as a train of the  
158 entity that made the initial request for the train to operate on  
159 the rail corridor.

160 (q) "Passenger easement" means a permanent, perpetual, and  
161 exclusive easement on, along, over, under, or across the rail  
162 corridor for commuter rail service.

163 (r) "PI" means FDG Flagler Station II, LLC, which has an  
164 easement on the rail corridor for nonrail uses.

165 (s) "Rail corridor" means the portion of a linear  
166 contiguous strip of real property which is used for rail service  
167 and owned by FECR or owned or controlled by AAF. The term  
168 applies only when the authority has, by contract, assumed the  
169 obligation to forever protect, defend, indemnify, and hold  
170 harmless FECR, AAF, or their successors, in accordance with  
171 subsection (2), and acquired an easement interest, a lease, a  
172 right to operate, or a right of access. The term includes  
173 structures essential to railroad operations, including the land,  
174 structures, improvements, rights-of-way, easements, rail lines,  
175 rail beds, guideway structures, switches, yards, parking  
176 facilities, power relays, switching houses, rail stations, any  
177 ancillary development, and any other facilities or equipment

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178 used for the purposes of construction, operation, or maintenance  
179 of a railroad that provides rail service.

180 (t) "Rail corridor invitee" means any person who is on or  
181 about the rail corridor in which the AAF, SFRTA, or the non-  
182 SFRTA commuter rail service operator has an easement interest, a  
183 lease, a right to operate, or a right of access, and who is:

184 1. Present at the behest of an AAF, an SFRTA, a FECR, or  
185 the non-SFRTA commuter rail service operator for any purpose;

186 2. Otherwise entitled to be on or about the rail corridor;

187 or

188 3. Meeting, assisting, or in the company of a person  
189 described in subparagraph 1. or subparagraph 2.

190 (u) "SFRC" means South Florida Rail Corridor.

191 (v) "South Florida Regional Transportation Authority" or  
192 "SFRTA" means the authority.

193 (w) "SFRTA rail corridor invitee" means any rail corridor  
194 invitee who is SFRTA's commuter rail passenger or is otherwise  
195 present on the rail corridor at the request of, pursuant to a  
196 contract with, for the purpose of doing business with, or at the  
197 behest of SFRTA. The term does not include patrons at any  
198 station, except those patrons who are also SFRTA's commuter rail  
199 passengers; any person present on the rail corridor who is a  
200 patron of the non-SFRTA commuter rail service or is meeting or  
201 assisting a person who is a patron of the non-SFRTA commuter  
202 rail service; commercial or residential tenants of the  
203 developments in and around the stations or their invitees; or  
204 any third parties performing work at a station or in the rail  
205 corridor, such as employees and invitees of PI or related  
206 entities, utilities, and fiber optic companies or others, or

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207 invitees or employees of the department or any county or  
208 municipality.

209 (2) The authority, in conjunction with the operation of a  
210 commuter rail service on a rail corridor, has the power to  
211 assume the following obligations:

212 (a) To indemnify AAF and FECR in accordance with the terms  
213 specified in this paragraph for so long as AAF and FECR or their  
214 successors in interest agree to indemnify the authority in  
215 accordance with the terms specified in this paragraph.

216 1. Except as specifically provided in this paragraph, the  
217 authority shall protect, defend, indemnify, and hold harmless  
218 FECR, its officers, agents, employees, successors, and assigns  
219 from and against any liability, cost, and expense, including,  
220 but not limited to, SFRTA's commuter rail passengers and rail  
221 corridor invitees in, on, or about the rail corridor, regardless  
222 of whether the loss, damage, destruction, injury, or death  
223 giving rise to any such liability, cost, or expense is caused in  
224 whole or in part, and to whatever nature or degree, by the  
225 fault, failure, negligence, misconduct, nonfeasance, or  
226 misfeasance of FECR or its officers, agents, employees,  
227 successors, and assigns;

228 2. Except as specifically provided in this paragraph, the  
229 authority shall protect, defend, indemnify, and hold harmless  
230 AAF and its officers, agents, employees, successors, and assigns  
231 from and against any liability, cost, and expense, including,  
232 but not limited to, SFRTA commuter rail passengers and SFRTA  
233 rail corridor invitees in, on, or about the rail corridor,  
234 regardless of whether the loss, damage, destruction, injury, or  
235 death giving rise to any such liability, cost, or expense is

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236 caused in whole or in part, and to whatever nature or degree, by  
237 the fault, failure, negligence, misconduct, nonfeasance, or  
238 misfeasance of AAF or its officers, agents, employees,  
239 successors, and assigns; or

240 3. The assumption of liability by the authority may not in  
241 any instance exceed the following parameters of allocation of  
242 risk:

243 a. The authority shall be solely responsible for any loss,  
244 injury, or damage to SFRTA commuter rail passengers, or to SFRTA  
245 rail corridor invitees or trespassers, other than passengers or  
246 invitees of the non-SFRTA commuter rail service, regardless of  
247 circumstances or cause, subject to the terms and provisions of  
248 this paragraph.

249 b. FECR shall, with respect to a limited covered accident,  
250 protect, defend, and indemnify SFRTA for the amount of the self-  
251 insurance retention account.

252 c. AAF shall, with respect to a limited covered accident,  
253 protect, defend, and indemnify SFRTA for the amount of the self-  
254 insurance retention account.

255 d. When only one train is involved in an incident,  
256 including incidents with trespassers or at at-grade crossings,  
257 the authority shall be solely responsible for any loss, injury,  
258 or damage if the train is an SFRTA train.

259 e. When an incident occurs with only FECR's train involved,  
260 including incidents with trespassers or at at-grade crossings,  
261 FECR shall be solely responsible for any loss, injury, or  
262 damage, except for SFRTA's commuter rail passengers, SFRTA  
263 employees, and SFRTA rail corridor invitees.

264 f. When an incident occurs with only AAF's train involved,

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265 including incidents with trespassers or at at-grade crossings,  
266 AAF shall be solely responsible for any loss, injury, or damage,  
267 except for SFRTA's commuter rail passengers, SFRTA employees,  
268 and SFRTA rail corridor invitees.

269 g. For the purposes of this paragraph:

270 (I) An "other train" shall be treated as the train of the  
271 entity that made the initial request for the train to operate on  
272 the rail corridor.

273 (II) In an incident involving any other train that is not  
274 an SFRTA train, the other train shall be treated as an SFRTA  
275 train solely for purposes of any allocation of liability  
276 between:

277 (A) SFRTA and FECR. SFRTA and FECR shall share  
278 responsibility equally as to third parties outside the rail  
279 corridor who incur loss, injury, or damage as a result of any  
280 incident involving both SFRTA's train and FECR's train and the  
281 allocation as between SFRTA and FECR, regardless of whether the  
282 other train is treated as an SFRTA train, shall remain one-half  
283 each as to third parties outside the rail corridor who incur  
284 loss, injury, or damage as a result of the incident. The  
285 involvement of any other train shall not alter the sharing of  
286 equal responsibility as to third parties outside the rail  
287 corridor who incur loss, injury, or damage as a result of the  
288 incident.

289 (B) SFRTA and AAF. SFRTA and AAF shall share responsibility  
290 equally as to third parties outside the rail corridor who incur  
291 loss, injury, or damage as a result of any incident involving  
292 both an SFRTA train and AAF's train and the allocation as  
293 between SFRTA and AAF, regardless of whether the other train is

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294 treated as an SFRTA train, shall remain one-half each as to  
295 third parties outside the rail corridor who incur loss, injury,  
296 or damage as a result of the incident. The involvement of any  
297 other train shall not alter the sharing of equal responsibility  
298 as to third parties outside the rail corridor who incur loss,  
299 injury, or damage as a result of the incident.

300 h. When more than one train is involved in an incident:

301 (I) If only an SFRTA train and a FECR train, or only an  
302 other train that is an SFRTA train by definition and a FECR  
303 train, are involved in an incident, SFRTA shall be responsible  
304 for its property, all SFRTA's commuter rail passengers, SFRTA  
305 employees, and SFRTA rail corridor invitees. FECR shall be  
306 responsible for its property and all of its employees and FECR  
307 rail corridor invitees. SFRTA and FECR shall each share one-half  
308 responsibility as to the joint infrastructure and rail corridor  
309 invitees who are not SFRTA rail corridor invitees or FECR rail  
310 corridor invitees, including, but not limited to, trespassers or  
311 third parties outside the rail corridor who incur loss, injury,  
312 or damage as a result of the incident.

313 (II) If only an SFRTA train and an AAF train, or only an  
314 other train that is by definition an SFRTA train and an AAF  
315 train, are involved in an incident, SFRTA shall be responsible  
316 for its property, all SFRTA's commuter rail passengers, SFRTA  
317 employees, and SFRTA rail corridor invitees. AAF shall be  
318 responsible for its property and all of its employees, AAF's  
319 intercity rail passengers, and AAF rail corridor invitees. SFRTA  
320 and AAF shall each share one-half responsibility as to the joint  
321 infrastructure and rail corridor invitees who are not SFRTA rail  
322 corridor invitees or AAF rail corridor invitees, including, but

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323 not limited to, trespassers or third parties outside the rail  
324 corridor who incur loss, injury, or damage as a result of the  
325 incident.

326 (III) If a FECR train, an SFRTA train, and an AAF train are  
327 involved in an incident, SFRTA shall be responsible for its  
328 property, all SFRTA's commuter rail passengers, SFRTA employees,  
329 and SFRTA rail corridor invitees. AAF shall be responsible for  
330 its property and all of its employees, AAF's intercity rail  
331 passengers, and AAF rail corridor invitees. FECR shall be  
332 responsible for its property and all of its employees and FECR  
333 rail corridor invitees. SFRTA, FECR, and AAF shall each share  
334 one-third responsibility as to the joint infrastructure and rail  
335 corridor invitees who are not SFRTA rail corridor invitees, AAF  
336 rail corridor invitees, or FECR rail corridor invitees,  
337 including, but not limited to, trespassers or third parties  
338 outside the rail corridor who incur loss, injury, or damage as a  
339 result of the incident.

340 (IV) If an SFRTA train, a FECR train, and an AAF train are  
341 involved in an incident, the allocation of liability among  
342 SFRTA, FECR, and AAF shall be one-third each as to third parties  
343 outside the rail corridor who incur loss, injury, or damage as a  
344 result of the incident.

345 (V) If an SFRTA train, a FECR train, and any other train  
346 are involved in an incident, the allocation of liability among  
347 SFRTA, FECR, and the other train shall be one-third each as to  
348 third parties outside the rail corridor who incur loss, injury,  
349 or damage as a result of the incident.

350 (VI) If an SFRTA train, an AAF train, and any other train  
351 are involved in an incident, the allocation of liability among

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352 SFRTA, AAF, and the other train shall be one-third each as to  
353 third parties outside the rail corridor who incur loss, injury,  
354 or damage as a result of the incident.

355 i. Notwithstanding anything to the contrary set forth in  
356 this paragraph, SFRTA is not obligated to indemnify FECR and AAF  
357 for any amount in excess of the insurance coverage limit.  
358 Whether or not SFRTA maintains the insurance coverage required  
359 pursuant to paragraph (b) to cover the indemnification  
360 obligations of this paragraph, SFRTA shall remain responsible  
361 for the indemnification obligations set forth in this paragraph  
362 up to the insurance coverage limit.

363 j. If the non-SFRTA commuter rail service is provided by an  
364 entity under contract with AAF, SFRTA may elect, at its sole  
365 discretion, to provide the same insurance coverage and to  
366 indemnify and hold harmless any non-SFRTA commuter rail service  
367 operator to the same extent that it provides such insurance or  
368 indemnification to AAF pursuant to this section.

369 (b) To purchase railroad liability insurance of \$295  
370 million per occurrence, which amount shall be adjusted in  
371 accordance with applicable law up to the insurance coverage  
372 limit, with a \$5 million self-insurance retention account that  
373 shall be composed of and defined as the "SFRTA insurance  
374 program." The SFRTA insurance program may, at SFRTA's sole  
375 discretion, cover the obligations described in this section or  
376 any other service operated by SFRTA on a rail corridor. Because  
377 the self-insurance retention account is a part of the SFRTA  
378 insurance program, all definitions, terms, conditions,  
379 restrictions, exclusions, obligations, and duties included in  
380 any and all of the policies of insurance procured by SFRTA for

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381 the SFRTA insurance program shall apply to the self-insurance  
382 retention account and its application to claims against the  
383 applicable insureds. SFRTA shall name FECR and AAF as insureds  
384 on any policies it procures pursuant to this section at no cost  
385 to AAF and FECR and ensure that all policies shall have a waiver  
386 of exclusion for punitive damages and coverage for claims made  
387 pursuant to the Federal Employers Liability Act, 45 U.S.C. s. 51  
388 et seq. Such policies must also include terrorism coverage,  
389 pollution coverage, including, but not limited to, coverage  
390 applicable in the event of a railroad accident, a derailment, or  
391 an overturn, and evacuation expense coverage.

392 Section 2. Subsection (4) of section 343.58, Florida  
393 Statutes, is amended to read:

394 343.58 County funding for the South Florida Regional  
395 Transportation Authority.—

396 (4) Notwithstanding any other provision of law to the  
397 contrary and effective July 1, 2010, until as provided in  
398 paragraph (d), the department shall transfer annually from the  
399 State Transportation Trust Fund to the South Florida Regional  
400 Transportation Authority, in quarterly payments commencing at  
401 the start of each fiscal year, the amounts specified in  
402 subparagraph (a)1. or subparagraph (a)2.

403 (a)1. If the authority becomes responsible for maintaining  
404 and dispatching the South Florida Rail Corridor:

405 a. \$15 million from the State Transportation Trust Fund to  
406 the South Florida Regional Transportation Authority for  
407 operations, maintenance, and dispatch; and

408 b. An amount no less than the work program commitments  
409 equal to \$27.1 million for fiscal year 2010-2011, as of July 1,

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410 2009, for operating assistance to the authority and corridor  
411 track maintenance and contract maintenance for the South Florida  
412 Rail Corridor.

413 2. If the authority does not become responsible for  
414 maintaining and dispatching the South Florida Rail Corridor:

415 a. \$13.3 million from the State Transportation Trust Fund  
416 to the South Florida Regional Transportation Authority for  
417 operations; and

418 b. An amount no less than the work program commitments  
419 equal to \$17.3 million for fiscal year 2010-2011, as of July 1,  
420 2009, for operating assistance to the authority.

421 (b) Funding required by this subsection may not be provided  
422 from the funds dedicated to the Florida Rail Enterprise pursuant  
423 to s. 201.15(4) (a)4.

424 (c)1. Funds provided to the authority by the department  
425 under this subsection may not be committed by the authority  
426 without the approval of the department, which may not be  
427 unreasonably withheld. At least 90 days before advertising any  
428 procurement or renewing any existing contract that will rely on  
429 state funds for payment, the authority shall notify the  
430 department of the proposed procurement or renewal and the  
431 proposed terms thereof. If the department, within 60 days after  
432 receipt of notice, objects in writing to the proposed  
433 procurement or renewal, specifying its reasons for objection,  
434 the authority may not proceed with the proposed procurement or  
435 renewal. Failure of the department to object in writing within  
436 60 days after notice shall be deemed consent. This requirement  
437 does not impair or cause the authority to cancel contracts that  
438 exist as of June 30, 2012.

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439           2. To enable the department to evaluate the authority's  
440 proposed uses of state funds, the authority shall annually  
441 provide the department with its proposed budget for the  
442 following authority fiscal year and shall provide the department  
443 with any additional documentation or information required by the  
444 department for its evaluation of the proposed uses of the state  
445 funds.

446           3. State funds provided to the authority pursuant to this  
447 subsection beginning July 1, 2010, and thereafter may not be  
448 considered state financial assistance subject to s. 215.97 or s.  
449 215.971.

450           (d) Funding required by this subsection shall cease upon  
451 commencement of an alternate dedicated local funding source  
452 sufficient for the authority to meet its responsibilities for  
453 operating, maintaining, and dispatching the South Florida Rail  
454 Corridor. The authority and the department shall cooperate in  
455 the effort to identify and implement such an alternate dedicated  
456 local funding source before July 1, 2019. Upon commencement of  
457 the alternate dedicated local funding source, the department  
458 shall convey to the authority a perpetual commuter rail easement  
459 in the South Florida Rail Corridor and all of the department's  
460 right, title, and interest in rolling stock, equipment, tracks,  
461 and other personal property owned and used by the department for  
462 the operation and maintenance of the commuter rail operations in  
463 the South Florida Rail Corridor.

464           Section 3. Paragraph (d) is added to subsection (17) of  
465 section 341.302, Florida Statutes, to read:

466           341.302 Rail program; duties and responsibilities of the  
467 department.—The department, in conjunction with other

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468 governmental entities, including the rail enterprise and the  
469 private sector, shall develop and implement a rail program of  
470 statewide application designed to ensure the proper maintenance,  
471 safety, revitalization, and expansion of the rail system to  
472 assure its continued and increased availability to respond to  
473 statewide mobility needs. Within the resources provided pursuant  
474 to chapter 216, and as authorized under federal law, the  
475 department shall:

476 (17) In conjunction with the acquisition, ownership,  
477 construction, operation, maintenance, and management of a rail  
478 corridor, have the authority to:

479 (d) Without altering any of the rights granted to the  
480 department under this section, agree to assume the obligations  
481 to indemnify and insure, pursuant to s. 343.545, freight rail  
482 service, intercity passenger rail service, and commuter rail  
483 service on a department-owned rail corridor, whether ownership  
484 is in fee or by easement, or on a rail corridor where the  
485 department has the right to operate.

486  
487 Neither the assumption by contract to protect, defend,  
488 indemnify, and hold harmless; the purchase of insurance; nor the  
489 establishment of a self-insurance retention fund shall be deemed  
490 to be a waiver of any defense of sovereign immunity for torts  
491 nor deemed to increase the limits of the department's or the  
492 governmental entity's liability for torts as provided in s.  
493 768.28. The requirements of s. 287.022(1) shall not apply to the  
494 purchase of any insurance under this subsection. The provisions  
495 of this subsection shall apply and inure fully as to any other  
496 governmental entity providing commuter rail service and

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497 constructing, operating, maintaining, or managing a rail  
498 corridor on publicly owned right-of-way under contract by the  
499 governmental entity with the department or a governmental entity  
500 designated by the department. Notwithstanding any law to the  
501 contrary, procurement for the construction, operation,  
502 maintenance, and management of any rail corridor described in  
503 this subsection, whether by the department, a governmental  
504 entity under contract with the department, or a governmental  
505 entity designated by the department, shall be pursuant to s.  
506 287.057 and shall include, but not be limited to, criteria for  
507 the consideration of qualifications, technical aspects of the  
508 proposal, and price. Further, any such contract for design-build  
509 shall be procured pursuant to the criteria in s. 337.11(7).

510 Section 4. This act shall take effect July 1, 2017.