

CHAPTER 2017-138

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 695

An act relating to the South Florida Regional Transportation Authority; creating s. 343.545, F.S.; defining terms; authorizing the South Florida Regional Transportation Authority, in conjunction with the operation of a certain commuter rail service, to have the power to assume specified indemnification and insurance obligations, subject to certain requirements; amending s. 341.302, F.S.; authorizing the Department of Transportation to agree to assume certain indemnification and insurance obligations under certain circumstances; amending s. 343.52, F.S.; defining the term “department”; amending s. 343.53, F.S.; conforming a cross-reference; amending s. 343.54, F.S.; prohibiting the authority from entering into certain contracts or agreements without department approval of the authority’s expenditures; amending s. 343.58, F.S.; providing that certain funds provided to the authority constitute state financial assistance; requiring a written agreement for provision of such funds; authorizing the department to advance a certain amount of funds under certain circumstances; providing an effective date.

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

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

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

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

(a) “All Aboard Florida” or “AAF” means All Aboard Florida Operations, LLC, or its successors and assigns.

(b) “AAF intercity rail passenger” means any person, ticketed or unticketed, using the AAF intercity passenger rail service on the rail corridor:

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

2. 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

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

(c) “AAF rail corridor invitee” means 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 MiamiCentral 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 PI or related entities, utilities, and fiber optic companies, or invitees or employees of the department or any county or municipality.

(d) “Commuter rail passenger” means any person, ticketed or unticketed, using the commuter rail service on the rail corridor:

1. On board trains, locomotives, rail cars, or rail equipment employed in commuter rail service or entraining thereon and detraining therefrom;

2. 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

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

(e) “Commuter rail service” means 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.

(f) “Florida East Coast Railway” or “FECR” means Florida East Coast Railway, LLC, or its successors and assigns.

(g) “FECR rail corridor invitee” means 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 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.

(h) “Freight rail service” means 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.

(i) “Intercity passenger rail service” means 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.

(j) “Joint infrastructure” means 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.

(k) “Limited covered accident” means:

1. 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

2. 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.

(l) “MiamiCentral” means the primary All Aboard Florida station located in downtown Miami, which includes exclusive areas used by the authority for commuter rail service.

(m) “Non-SFRTA commuter rail service” means 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:

1. 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

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

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

(o) "Other train" means a train that is not SFRTA's train, FECR's train, AAF's train, a train of a non-SFRTA commuter rail service operator, 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.

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

(q) "Rail corridor" means 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 subsection (2), 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.

(r) "Rail corridor invitee" means 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:

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

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

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

(s) "SFRTA" means the South Florida Regional Transportation Authority.

(t) "SFRTA rail corridor invitee" means 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.

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

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

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

2. Except as specifically provided in this paragraph, the authority shall protect, defend, indemnify, and hold harmless AAF and its officers, agents, employees, successors, and assigns from and against any liability, cost, and expense, including, but not limited to, SFRTA commuter rail passengers and SFRTA rail corridor invitees in, on, or about the rail corridor, regardless of whether the loss, damage, destruction, injury, or death giving rise to any such liability, cost, or expense is caused in whole or in part, and to whatever nature or degree, by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of AAF or its officers, agents, employees, successors, and assigns; and

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

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

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

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

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

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

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

g. For the purposes of this paragraph:

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

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

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

(B) SFRTA and AAF. SFRTA and AAF shall share responsibility equally as to third parties outside the rail corridor who incur loss, injury, or damage as a result of any incident involving both SFRTA's train and AAF's train, and the allocation as between SFRTA and AAF, regardless of whether the other train is treated as an SFRTA train, shall remain one-half each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident. The involvement of any other train shall not alter the sharing of equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

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

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

(II) If only an SFRTA train and an AAF train, or only an other train that is by definition an SFRTA train and an AAF train, are involved in an incident, SFRTA shall be responsible for its property and all SFRTA's commuter rail passengers, SFRTA employees, and SFRTA rail corridor invitees. AAF shall be responsible for its property and all of its employees, AAF's intercity rail passengers, and AAF rail corridor invitees. SFRTA and AAF shall each share one-half responsibility as to the joint infrastructure and rail corridor invitees who are not SFRTA rail corridor invitees or AAF rail corridor invitees, including, but not limited to, trespassers or third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

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

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

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

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

train shall be one-third each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

i. Notwithstanding anything to the contrary set forth in this paragraph, SFRTA is not obligated to indemnify FECR and AAF for any amount in excess of the insurance coverage limit. Regardless of whether SFRTA maintains the insurance coverage required pursuant to paragraph (b) to cover the indemnification obligations of this paragraph, SFRTA shall remain responsible for the indemnification obligations set forth in this paragraph up to the insurance coverage limit.

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

(b) To purchase railroad liability insurance of \$295 million per occurrence, which amount shall be adjusted in accordance with applicable law up to the insurance coverage limit, with a \$5 million self-insurance retention account that shall be composed of and defined as the “SFRTA insurance program.” The SFRTA insurance program may, at SFRTA’s sole discretion, cover the obligations described in this section or any other service operated by SFRTA on a rail corridor. Because the self-insurance retention account is a part of the SFRTA insurance program, all definitions, terms, conditions, restrictions, exclusions, obligations, and duties included in any and all of the policies of insurance procured by SFRTA for the SFRTA insurance program shall apply to the self-insurance retention account and its application to claims against the applicable insureds. SFRTA shall name FECR and AAF as insureds on any policies it procures pursuant to this section at no cost to AAF and FECR and ensure that all policies shall have a waiver of exclusion for punitive damages and coverage for claims made pursuant to the Federal Employers Liability Act, 45 U.S.C. ss. 51 et seq. Such policies must also include terrorism coverage, pollution coverage, including, but not limited to, coverage applicable in the event of a railroad accident, a derailment, or an overturn, and evacuation expense coverage.

Section 2. Paragraph (d) is added to subsection (17) of section 341.302, Florida Statutes, to read:

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

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

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

Neither the assumption by contract to protect, defend, indemnify, and hold harmless; the purchase of insurance; nor the establishment of a self-insurance retention fund shall be deemed to be a waiver of any defense of sovereign immunity for torts nor deemed to increase the limits of the department's or the governmental entity's liability for torts as provided in s. 768.28. The requirements of s. 287.022(1) shall not apply to the purchase of any insurance under this subsection. The provisions of this subsection shall apply and inure fully as to any other governmental entity providing commuter rail service and constructing, operating, maintaining, or managing a rail corridor on publicly owned right-of-way under contract by the governmental entity with the department or a governmental entity designated by the department. Notwithstanding any law to the contrary, procurement for the construction, operation, maintenance, and management of any rail corridor described in this subsection, whether by the department, a governmental entity under contract with the department, or a governmental entity designated by the department, shall be pursuant to s. 287.057 and shall include, but not be limited to, criteria for the consideration of qualifications, technical aspects of the proposal, and price. Further, any such contract for design-build shall be procured pursuant to the criteria in s. 337.11(7).

Section 3. Section 343.52, Florida Statutes, is amended to read:

343.52 Definitions.—As used in this part, the term:

~~(1)(3)~~ “Area served” means Miami-Dade, Broward, and Palm Beach Counties. However, this area may be expanded by mutual consent of the authority and the board of county commissioners of Monroe County. The authority may not expand into any additional counties without the department's prior written approval.

~~(2)(1)~~ “Authority” means the South Florida Regional Transportation Authority.

~~(3)(2)~~ “Board” means the governing body of the authority.

~~(4)~~ “Department” means the Department of Transportation.

~~(5)(7)~~ “Feeder transit services” means a transit system that transports passengers to or from stations within or across counties.

(6) “Member” means the individuals constituting the board.

(7)(5) “Transit facilities” means property, avenues of access, equipment, or buildings built and installed in Miami-Dade, Broward, and Palm Beach Counties which are required to support a transit system.

(8)(4) “Transit system” means a system used for the transportation of people and goods by means of, without limitation, a street railway, an elevated railway having a fixed guideway, a commuter railroad, a subway, motor vehicles, or motor buses, and includes a complete system of tracks, stations, and rolling stock necessary to effectuate passenger service to or from the surrounding regional municipalities.

Section 4. Paragraph (d) of subsection (2) of section 343.53, Florida Statutes, is amended to read:

343.53 South Florida Regional Transportation Authority.—

(2) The governing board of the authority shall consist of 10 voting members, as follows:

(d) If the authority’s service area is expanded pursuant to s. ~~343.54(6)~~ ~~343.54(5)~~, the county containing the new service area shall have two members appointed to the board as follows:

1. The county commission of the county shall elect a commissioner as that commission’s representative on the board. The commissioner must be a member of the county commission when elected and for the full extent of his or her term.

2. The Governor shall appoint a citizen member to the board who is not a member of the county commission but who is a resident and a qualified elector of that county.

Section 5. Subsections (4) and (5) of section 343.54, Florida Statutes, are renumbered as subsections (5) and (6), respectively, and a new subsection (4) is added to that section to read:

343.54 Powers and duties.—

(4) Notwithstanding any other provision of this part, the authority may not enter into, extend, or renew any contract or other agreement that may be funded, in whole or in part, with funds provided by the department without the prior review and written approval by the department of the authority’s proposed expenditures.

Section 6. Paragraph (c) of subsection (4) of section 343.58, Florida Statutes, is amended to read:

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

(4) Notwithstanding any other provision of law to the contrary and effective July 1, 2010, until as provided in paragraph (d), the department shall transfer annually from the State Transportation Trust Fund to the South Florida Regional Transportation Authority the amounts specified in subparagraph (a)1. or subparagraph (a)2.

~~(c)1. Funds provided to the authority by the department under this subsection constitute state financial assistance provided to a nonstate entity to carry out a state project subject to ss. 215.97 and 215.971. The department shall provide the funds in accordance with the terms of a written agreement to be entered into between the authority and the department, which shall provide for department review, approval, and audit of authority expenditure of such funds and shall include such other provisions as are required by applicable law. The department is specifically authorized to agree to advance the authority 25 percent of the total funds provided under this subsection for a state fiscal year at the beginning of each state fiscal year, with monthly payments over the fiscal year on a reimbursement basis as supported by invoices and such additional documentation and information as the department may reasonably require and a reconciliation of the advance against remaining invoices in the last quarter of the fiscal year may not be committed by the authority without the approval of the department, 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, the authority shall notify the department of the proposed procurement or renewal and the proposed terms thereof. If the department, within 60 days after receipt of notice, objects in writing to the proposed procurement or renewal, specifying its reasons for objection, the authority may not proceed with the proposed procurement or renewal. Failure of the department to object in writing within 60 days after notice shall be deemed consent. This requirement does not impair or cause the authority to cancel contracts that exist as of June 30, 2012.~~

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

Section 7. This act shall take effect July 1, 2017.

Approved by the Governor June 23, 2017.

Filed in Office Secretary of State June 23, 2017.