

CHAPTER 2025-119

Committee Substitute for House Bill No. 867

An act relating to indemnification and insurance obligations of commuter rail transportation providers; creating part III of ch. 343, F.S., entitled “Coastal Link Commuter Rail Service Act,”; creating s. 343.811, F.S.; providing a short title; providing definitions; authorizing agencies, in conjunction with the operation of certain commuter rail services, to assume certain indemnification and insurance obligations, subject to certain requirements; providing construction; reenacting s. 341.302(17)(d), F.S., relating to the rail program and duties and responsibilities of the Department of Transportation, to incorporate the enactment of part III of ch. 343, F.S., in a reference thereto; providing an effective date.

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

Section 1. Part III of chapter 343, Florida Statutes, consisting of section 343.811, is created and entitled “Coastal Link Commuter Rail Service Act.”

Section 2. Section 343.811, Florida Statutes, is created to read:

343.811 Power to assume indemnification and insurance obligations.—

(1) SHORT TITLE.—This section may be cited as the “Coastal Link Commuter Rail Service Act.”

(2) DEFINITIONS.—As used in this section, the term:

(a) “Agency” means a state, county, municipality, district, authority, or other separate unit of government created or established by law which has entered into an agreement with Brightline, which agreement permits it to operate commuter rail service on the Coastal Link corridor.

(b) “Brightline” means Brightline Trains Florida, LLC, or its successors and assigns, or any of its affiliates that is a party to an agreement with an agency in connection with the Coastal Link corridor. For the purposes of its status as an indemnitee, the term “Brightline” includes Florida East Coast Dispatch, LLC, or its successors or assigns.

(c) “Coastal Link corridor” means the rail transit system, including the intercity passenger rail service stations and vehicle maintenance facilities, located on or adjacent to FECR and Brightline rail corridor in Miami-Dade County, Broward County, and Palm Beach County. The term includes structures essential to railroad operations, including 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.

(d) “Commuter rail service” means the operation of trains transporting passengers and making frequent stops within urban areas and the immediate suburbs along the rail corridor for the purpose of transporting passengers, including boarding and alighting and the nonrevenue movement of passenger trains for storage, maintenance, or repairs. The term does not include the operation of trains by Brightline transporting passengers in intercity passenger rail service between Brightline stations. As used in this paragraph, “Brightline stations” means the Brightline-owned intercity passenger rail service stations in Miami located near Aventura, Fort Lauderdale, Boca Raton, and West Palm Beach, as well as any future stations developed by Brightline in connection with its intercity passenger rail service.

(e) “FECR” means Florida East Coast Railway, LLC, or its successors and assigns. For the purposes of its status as an indemnitee, the term “FECR” includes Florida East Coast Dispatch, LLC, or its successors and assigns.

(f) “Intercity passenger rail service” means all passenger service on the Coastal Link corridor other than commuter rail service and is characterized by trains making less frequent stops along the Coastal Link corridor than the commuter rail service makes.

(g) “Joint infrastructure” means any portion or segment of the Coastal Link corridor which does not contain tracks or infrastructure designated for the exclusive use of an operator. Train stations, including, but not limited to, pedestrian bridges, stairs, or conveyance systems, do not constitute part of the joint infrastructure.

(h) “Limited covered accident” means a collision directly between the trains, locomotives, rail cars, or rail equipment of more than one operator on the Coastal Link corridor, where the collision is caused by or arising from the willful misconduct of one of the responsible operators, as adjudicated pursuant to a final and unappealable court order, or if punitive damages or exemplary damages are awarded due to the conduct of the responsible operator, as adjudicated pursuant to a final and unappealable court order. For purposes of this paragraph, “responsible operator” means an operator or its subsidiaries, agents, licensees, employees, officers, or directors which has caused a collision as a result of its willful misconduct.

(i) “Operator” means:

1. Brightline, including any passenger rail operators that access the Coastal Link corridor pursuant to a contract with Brightline, other than an agency;

2. FECR, including Amtrak or any freight rail operators that access the Coastal Link corridor pursuant to a contract with FECR;

3. An agency, including any commuter rail operators that access the Coastal Link corridor pursuant to a contract with an agency; or

4. SFRTA, with respect to its operations contemplated under s. 343.545.

(j) “Passenger” means, with respect to intercity passenger rail service or commuter rail service, a person, ticketed or unticketed, using the intercity passenger rail service or commuter rail service on the Coastal Link corridor:

1. Onboard trains, locomotives, rail cars, or rail equipment employed in such intercity passenger rail service or commuter rail service or boarding or alighting therefrom;

2. On or about the Coastal Link corridor for any purpose related to such intercity passenger rail service or 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 a person described in subparagraph 1. or subparagraph 2.

(k) “Proportionate share” means, with respect to a loss, injury, or damage for which operators share responsibility, a percentage in proportion to the number of operators involved in the relevant incident.

1. When one or more agencies are jointly operating a commuter rail service, such agencies are considered a single operator for purposes of computing and assessing the proportionate share of such loss, injury, or damage.

2. When two operators are involved in the incident, each is responsible for one-half of such loss, injury, or damage; when three operators are involved in the incident, each is responsible for one-third of such loss, injury, or damage, and so on.

3. When more than one agency shares responsibility with respect to any loss, injury, or damage, each such agency is considered a separate entity for purposes of determining its proportionate share.

(l) “Rail corridor invitee” means a person who is on or about the Coastal Link corridor who is a passenger or who is otherwise present on the Coastal Link corridor at the request of, pursuant to a contract with, or otherwise for the purpose of doing business with or at the behest of an operator. The term does not include patrons at any station who are not also passengers, commercial or residential tenants at any station or the developments in and around the stations or their invitees, or third parties performing work at a station or in the Coastal Link corridor, including any utilities or fiber optic companies.

1. A rail corridor invitee of an agency may not be considered a rail corridor invitee of Brightline or FECR.

2. A rail corridor invitee of Brightline or FECR may not be considered a rail corridor invitee of an agency.

3. An employee of an operator is not a rail corridor invitee of such operator at any time the employee is a passenger or is otherwise present on the Coastal Link corridor at the request of, pursuant to a contract with, or otherwise for the purpose of doing business with or at the behest of another operator.

4. When a passenger is transferring from the service of one operator to another, the passenger is a rail corridor invitee of the first operator until the passenger has left the first operator's platform, at which time the passenger is then a rail corridor invitee of the other operator.

(m) "Self-insurance retention amount" means an amount equal to \$5 million.

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

(3) ASSUMPTION OF OBLIGATIONS; PURCHASE OF INSURANCE. In conjunction with the development or operation of a commuter rail service on the Coastal Link corridor, an agency may:

(a) Assume obligations pursuant to the following:

1.a. The agency may assume the obligation by contract to protect, defend, indemnify, and hold harmless FECR and its officers, agents, and employees from and against:

(I) Any liability, cost, and expense, including, but not limited to, the agency's passengers and other rail corridor invitees in, on, or about the Coastal Link 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 such freight rail operator, its successors, or its officers, agents, and employees, or any other person or persons whomsoever.

(II) Any loss, injury, or damage incurred by other rail corridor invitees up to the amount of the self-insurance retention amount with respect to limited covered accidents caused by the agency.

b. The agency may assume the obligation by contract to protect, defend, indemnify, and hold harmless Brightline and its officers, agents, and employees from and against:

(I) Any liability, cost, and expense, including, but not limited to, the agency's passengers and rail corridor invitees in the Coastal Link 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 Brightline, its successors, or its officers, agents, and employees, or any other person or persons whomsoever.

(II) Any loss, injury, or damage incurred by other rail corridor invitees up to the amount of the self-insurance retention amount with respect to limited covered accidents caused by the agency.

2. The assumption of liability of the agency by contract pursuant to sub-subparagraph 1.a. or sub-subparagraph 1.b. may not in any instance exceed the following parameters of allocation of risk:

a. The agency may be solely responsible for any loss, injury, or damage to the agency's passengers, or rail corridor invitees, third parties, or trespassers, regardless of circumstances or cause, subject to sub-subparagraph b. and subparagraphs 3., 4., and 5.

b.(I) In the event of a limited covered accident caused by FECR, the authority of an agency to protect, defend, and indemnify FECR for all liability, cost, and expense, including punitive or exemplary damages, in excess of the self-insurance retention amount exists only if FECR agrees, with respect to such limited covered accident caused by FECR, to protect, defend, and indemnify the agency for the amount of the self-insurance retention amount.

(II) In the event of a limited covered accident caused by Brightline, the authority of an agency to protect, defend, and indemnify Brightline for all liability, cost, and expense, including punitive or exemplary damages, in excess of the self-insurance retention amount exists only if Brightline agrees, with respect to such limited covered accident, to protect, defend, and indemnify the agency for the amount of the self-insurance retention amount.

3. When only one train is involved in an incident and:

a. The train is an agency's train, including an incident with trespassers or at-grade crossings, the agency may be solely responsible for any loss, injury, or damage.

b. The train is FECR's train, including an incident with trespassers or at-grade crossings, FECR is solely responsible for any loss, injury, or damage, except for the agency's passengers and other rail corridor invitees, which are the responsibility of the agency, and Brightline's passengers and other rail corridor invitees, which are the responsibility of Brightline.

c. The train is Brightline's train, including an incident with trespassers or at-grade crossings, Brightline is solely responsible for any loss, injury, or damage, except for the agency's passengers or rail corridor invitees, which

are the responsibility of the agency, and FECR's rail corridor invitees, which are the responsibility of FECR.

4. When an incident involves more than one operator, each operator is responsible for:

a. Its property; passengers; employees, excluding employees who are, at the time of the incident, rail corridor invitees of another operator; and other rail corridor invitees.

b. Its proportionate share of any loss or damage to the joint infrastructure.

c. Its proportionate share of any loss, injury, or damage to:

(I) Rail corridor invitees who are not rail corridor invitees of operators, provided that the agency shall always be responsible for its passengers and its rail corridor invitees regardless of whether the agency was involved in the incident.

(II) Trespassers or third parties outside the Coastal Link corridor as a result of the incident.

5. Any such contractual duty to protect, defend, indemnify, and hold harmless FECR or Brightline with respect to claims by rail passengers shall expressly include a specific cap on the amount of the contractual duty, which amount may not exceed \$323 million per occurrence and shall be adjusted so that the per-occurrence insurance requirement is equal to the aggregate allowable awards to all rail passengers, against all defendants, for all claims, including claims for punitive damages, arising from a single accident or incident in accordance with 49 U.S.C. s. 28103, or any successor provision, without prior legislative approval.

6. Notwithstanding any provision of this section to the contrary, the liabilities of the agency to the state or any other agency shall be as set forth in an agreement among such entities and limited by s. 768.28(19).

(b) Purchase liability insurance, which amount may not exceed \$323 million per occurrence, which amount shall be adjusted so that the per-occurrence insurance requirement is equal to the aggregate allowable awards to all rail passengers, against all defendants, for all claims, including claims for punitive damages, arising from a single accident or incident in accordance with 49 U.S.C. s. 28103, or any successor provision, and establish a self-insurance retention fund for the purpose of paying the deductible limit established in the insurance policies it may obtain, including coverage for a county agency, any freight rail operator as described in paragraph (a), Brightline, commuter rail service providers, governmental entities, or any ancillary development, which self-insurance retention fund or deductible shall not exceed the self-insurance retention amount.

1. Such insurance and self-insurance retention fund may provide coverage for all damages, including, but not limited to, compensatory, special, and exemplary, and be maintained to provide an adequate fund to cover claims and liabilities for loss, injury, or damage arising out of or connected with the ownership, operation, maintenance, and management of the Coastal Link corridor.

2. Any self-insured retention account shall be a segregated account of the agency and shall be subject to the same conditions, restrictions, exclusions, obligations, and duties included in any and all of the policies of liability insurance purchased under this paragraph.

3. Unless otherwise specifically provided by general law, FECR and Brightline, and their respective officers, agents, and employees, are not officers, agents, employees, or subdivisions of the state and are not entitled to sovereign immunity.

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 tort claims or deemed to increase the limits of the agency's liability for tort claims as provided in s. 768.28.

Section 3. For the purpose of incorporating the enactment of part III of chapter 343, Florida Statutes, in a reference thereto, paragraph (d) of subsection (17) of section 341.302, Florida Statutes, is reenacted 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 4. This act shall take effect July 1, 2025.

Approved by the Governor June 4, 2025.

Filed in Office Secretary of State June 4, 2025.