

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 759
Judiciary I Committee Substitute Adopted 4/23/01
House Committee Substitute Favorable 5/22/01

Short Title: Rail Transportation Liability.

(Public)

Sponsors:

Referred to:

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE LIMITATIONS ON RAIL TRANSPORTATION
LIABILITY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 26 of Chapter 160A of the General Statutes is amended
by adding a new section to read:

"§ 160A-626. Limitations on rail transportation liability.

(a) As used in this section:

(1) 'Claim' means a claim, action, suit, or request for damages, whether
compensatory, punitive, or otherwise, made by any person or entity
against:

a. The Authority, a railroad, or an operating rights railroad; or

b. An officer, director, trustee, employee, parent, subsidiary, or
affiliated corporation as defined in G.S. 105-130.6, or agent of:
the Authority, a railroad, or an operating rights railroad.

(2) 'Passenger rail services' means the transportation of rail passengers by
or on behalf of the Authority and all services performed by a railroad
pursuant to a contract with the Authority in connection with the
transportation of rail passengers, including, but not limited to, the
operation of trains; the use of trackage, public or private roadway and
rail crossings, equipment, or station areas or appurtenant facilities; the
construction, reconstruction, or maintenance of rail-related equipment,
tracks, and any appurtenant facilities; and the provision of access
rights over or adjacent to lines owned by the Authority or a railroad, or
otherwise occupied by the Authority or a railroad, pursuant to charter
grant, fee-simple deed, lease, easement, license, trackage rights, or
other form of ownership or authorized use.

1 (3) 'Railroad' means a railroad corporation or railroad company, including
2 a State-Owned Railroad Company as defined in G.S. 124-11, that has
3 entered into any contracts or operating agreements of any kind with the
4 Authority concerning passenger rail services.

5 (4) 'Operating rights railroad' means a railroad corporation or railroad
6 company that, prior to January 1, 2001, was granted operating rights
7 by a State-Owned Railroad Company or operated over the property of
8 a State-Owned Railroad Company under a claim of right over or
9 adjacent to facilities used by or on behalf of the Authority.

10 (b) Contracts Allocating Financial Responsibility Authorized. — The Authority
11 may contract with any railroad to allocate financial responsibility for passenger rail
12 services claims, notwithstanding any other statutory, common law, public policy, or
13 other prohibition against same, and regardless of the nature of the claim or the conduct
14 giving rise to such claim.

15 (c) Insurance Required. —

16 (1) If the Authority enters into any contract authorized by subsection (b)
17 of this section, the contract shall require the Authority to secure and
18 maintain, upon and after the commencement of the operation of trains
19 by or on behalf of the Authority, a liability insurance policy covering
20 the liability of the parties to the contract and an operating rights
21 railroad for all claims for property damage, personal injury, bodily
22 injury, and death arising out of or related to passenger rail services.
23 The policy shall name the parties to the contract and an operating
24 rights railroad as named insureds and shall have policy limits of not
25 less than two hundred million dollars (\$200,000,000) per single
26 accident or incident, and may include a self-insured retention in an
27 amount of not more than five million dollars (\$5,000,000).

28 (2) If the Authority does not enter into any contract authorized by
29 subsection (b) of this section, upon and after the commencement of the
30 operation of trains by or on behalf of the Authority, the Authority shall
31 secure and maintain a liability insurance policy, with policy limits and
32 a self-insured retention consistent with subdivision (1) of this
33 subsection, for all claims for property damage, personal injury, bodily
34 injury, and death arising out of or related to passenger rail services.

35 (d) Liability Limit. — The aggregate liability of the Authority, the parties to the
36 contract or contracts authorized by subsection (b) of this section, and an operating rights
37 railroad for all claims arising from a single accident or incident related to passenger rail
38 services for property damage, personal injury, bodily injury, and death is limited to two
39 hundred million dollars (\$200,000,000) per single accident or incident or to any
40 proceeds available under any insurance policy secured pursuant to subsection (c) of this
41 section, whichever is greater.

1 (e) Effect on Other Laws. — This section shall not affect the damages that may
2 be recovered under the Federal Employers' Liability Act, 45 U.S.C. § 51, et seq.,
3 (1908); or under Article 1 of Chapter 97 of the General Statutes."

4 **SECTION 2.** If any provision of this act or its application is held invalid, the
5 invalidity does not affect other provisions or applications of this act that can be given
6 effect without the invalid provisions or applications, and to this end the provisions of
7 this act are severable.

8 **SECTION 3.** This act is effective when it becomes law.