

Bill as
Introduced

HB 575 - AS INTRODUCED

1999 SESSION

99-0159

04/01

HOUSE BILL **575**

AN ACT limiting railroad liability for passenger and tourist rail service.

SPONSORS: Rep. G. Katsakiores, Rock 13; Rep. Whittemore, Merr 13; Rep. Akins, Graf 14;
Rep. R. Nowe, Rock 3; Rep. Peter Cote, Hills 32; Sen. Russman, Dist 19;
Sen. Cohen, Dist 24

COMMITTEE: Judiciary

ANALYSIS

This bill limits railroad liability to \$75,000,000 for any and all claims arising out of passenger rail service, establishes a limit of \$5,000,000 on tourist rail services, and establishes certain criteria regarding railroad liability insurance coverage.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord One Thousand Nine Hundred and Ninety-Nine

AN ACT limiting railroad liability for passenger and tourist rail service.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Liability Limitation Added. Amend RSA 377:3 to read as follows:

2 377:3 Penalty. If any railroad shall not comply with the provisions of RSA 377:1 or 377:2, it
3 shall be for each offense guilty of a felony, and shall be liable to the party injured for [his] damages
4 in an action on the case *subject to RSA 377:22*.

5 2 New Subdivision; Railroad Liability for Passenger Rail Service Limited. Amend RSA 377 by
6 inserting after section 21 the following new subdivision:

7 Limitation of Liability for Passenger and Tourist Rail Service

8 377:22 Passenger Rail Service; Liability Limitation.

9 I. In this section:

10 (a) "Railroad" means any person, railroad corporation, or other legal entity in the
11 business of providing passenger rail service pursuant to an agreement with this or any other state,
12 or with any official agency or authority of this or any other state.

13 (b) "Passenger rail service" means all services or acts performed by a railroad in
14 connection with the transportation of rail passengers including, but not limited to, the operation of
15 trains, trackage and equipment, or the construction, reconstruction or maintenance of railroad
16 equipment, tracks and any appurtenant facilities, or the provision of trackage rights over lines
17 owned by any such railroad.

18 II. Any operator seeking to use either state owned or privately owned rail corridors for
19 passenger rail service shall secure and maintain a railroad protective liability insurance policy
20 covering the liability of the owner and the operator for property damage, personal injury, bodily
21 injury, and death arising out of such passenger rail services. Such policy shall:

22 (a) Name the owner as named insured and the operator as an additional insured.

23 (b) Have policy limits of not less than \$75,000,000 per occurrence annually and
24 \$75,000,000 in the aggregate annually.

25 (c) Be subject to self-insured retention as may be determined by the parties.

26 III. In no event shall the owner or the operator be liable in excess of the coverage limits of
27 such insurance policy for any and all claims for damage, whether compensatory or punitive, for
28 property damage, personal injury, bodily injury, or death arising out of such passenger rail service.

29 377:23 Tourist Railroad Operations; Liability Limitation.

30 I. In this section:

1 (a) "Tourist railroad" means any person, railroad, corporation or other entity engaged in
2 "tourist rail operations".

3 (b) "Tourist rail operations" means all services and activities by a tourist railroad in
4 connection with the transportation of passengers for purposes of tourism or excursions, including,
5 but not limited to, the operation of trains, trackage and equipment, or the use or maintenance of
6 railroad equipment, tracks and any appurtenant facilities, including equipment, tracks, or facilities
7 of a rail facility provider.

8 (c) "Rail facility provider" means any person, railroad, corporation, or other entity
9 providing rail facilities for use by a tourist railroad for purposes of tourist rail operations.

10 II. Agreements between a tourist railroad and a rail facility provider for the conduct of
11 tourist rail operations shall provide that the tourist railroad shall secure and maintain a
12 comprehensive general liability insurance policy covering the liability of the tourist railroad and the
13 rail facility provider for any and all property damage, personal injury, bodily injury and death
14 arising out of any cause whatsoever, regardless of the degree of fault, in the performance of such
15 tourist operations. Such policy shall:

16 (a) Include coverage for employees subject to the provisions of the federal Employer's
17 Liability Act, 45 U.S.C. sec. 51 et seq.

18 (b) Name the tourist railroad and the rail facility provider as named insureds.

19 (c) Have policy limits of not less than \$5,000,000 per occurrence annually and
20 \$5,000,000 in the aggregate annually.

21 (d) Be subject to reasonable self-insured retention as may be determined by the
22 parties.

23 III. In no event shall the tourist railroad or the rail facility provider be liable in excess of the
24 mandatory coverage limits of \$5,000,000 of such insurance policy for any and all claims for damage,
25 whether compensatory or punitive, for property damage, personal injury, bodily injury and death
26 arising out of such tourist rail operations.

27 3 Effective Date. This act shall take effect 60 days after its passage.

Committee Minutes



State of New Hampshire

HOUSE OF REPRESENTATIVES

CONCORD

MEMORANDUM

TO: Interim Study Committee Members, HB 575
Rep. Janet G. Wall Rep. Dennis J. Withee
Rep. McKim W. Mitchell Rep. Nancy M. Ford
Rep. Martha S. Solow

FROM: Rep. Peter F. Bergin
PO Box 105
Amherst NH 03031-3315
603/673-1885 email: pfbergin@aol.com

DATE: August 15, 2000

RE: Organizational Meeting
Limiting railroad liability for passenger and tourist rail service.

Meetings for the interim study of re-referred HB 575: limiting railroad liability for passenger and tourist rail service, are scheduled as follows:

Wednesday, September 6, 2000, at 10 a.m. in Room 208 of the Legislative Office Building

Wednesday, September 20, 2000, at 10 a.m. in Room 302 of the Legislative Office Building

Please don't hesitate to contact me with any questions or comments prior to the meetings.

PFB/jal

Cc: Jim Marshall, NHDOT
Paul W. Chapman, NHRRA
Roger Hawk, Director of Nashua
Community Development
Rep. Ralph L. Akins

Andrew Singelakis, Nashua Regional Planning
Robert P. Blaisdell, The Demers Group
David Fink, Executive VP Guilford Railroad
Rep. George N. Katsakiores
Rep. James A. Whittemore

*Mailed 8/16/00
jal*

<p style="text-align: center;">Judiciary Committee Subcommittee Assignments for 1999 Re-Referred Bills</p>
--

Subcommittee on "Judicial Reform"

CACR 2 relating to supreme court rules. Providing that supreme court rules shall be subject to review and approval by a special legislative committee.

CACR 22 relating to 7-year terms for state judges. Providing that all state judges appointed on or after January 1, 2001 be commissioned for 7-year terms, which may be renewed.

HB 53 establishing a process for reviewing judges.

HB 568 establishing a review panel to review judicial officers.

<u>Members:</u>	Rep. Mock, Chair	Rep. Craig
	Rep. Rowe	Rep. Soltani
	Rep. Jean	Rep. Keans
	Rep. Lasky	Rep. Woods
	Rep. Wall	Rep. Picconi

✓ **Subcommittee on HB 575** limiting railroad liability for passenger and tourist rail service.

<u>Members:</u>	Rep. Bergin, Chair	Rep. Ford
	Rep. Withee	Rep. Mock
	Rep. Solow	Rep. Wood
	Rep. Mitchell	

Subcommittee on SB 85-FN including the judiciary as a public employer under the public employee labor relations act.

<u>Members:</u>	Rep. Dokmo, Chair	Rep. Keans
	Rep. Picconi	Rep. Craig
	Rep. Jean	Rep. Mock

Speakers

Fill in ONLY if Speaking on Bill

Bill # HB 575 Date 3-16-99

Committee Judiciary

I support the bill ☒

I oppose the bill ☐

I have written testimony ☐

(Number of copies) ☐

Time needed to speak: 3 1/2

Name Leon Kornison

Address Hazen Dr
Concord NH

Phone 271-3734

Representing NH DOT

Fill in ONLY if Speaking on Bill

Bill # HB 575 Date 3-16-99

Committee Judiciary

I support the bill ☒

I oppose the bill ☐

I have written testimony ☐

(Number of copies) ☐

Time needed to speak: 2 min

Name By James A. Whittemore

Address Franklin

Phone 934-2648

Representing Franklin

Fill in ONLY if Speaking on Bill

Bill # 575 Date 3/16/99

Committee

I support the bill ☒

I oppose the bill ☐

I have written testimony ☐

(Number of copies) ☐

Time needed to speak: 1 minute

Name ANDREW SINGARAKIS

Address 115 MAIN ST (W)
PO BOX 847 NASHUA 03061

Phone 883 3360

Representing NASHUA REGIONAL
PLANNING COMMISSION

Fill in ONLY if Speaking on Bill

Bill # 575 Date 3/16/99

Committee JUDICIARY

I support the bill ☒

I oppose the bill ☐

I have written testimony ☐

(Number of copies) ☐

Time needed to speak: 3 MIN.

Name ROGER HAWK

Address COMMUNITY DEVELOPMENT
DIRECTOR
CITY OF NASHUA

Phone 594-3379

Representing CITY OF NASHUA

Fill in ONLY if Speaking on Bill

Bill # HB 575 Date 3/16/99

Committee JUDICIARY

I support the bill _____

I oppose the bill ✓

I have written testimony _____

(Number of copies) _____

Time needed to speak: 3 min.

Name Rick Newman

Address _____

Phone 226-9600

Representing NH TRIAL LAWYERS ASSOC -

Fill in ONLY if Speaking on Bill

Bill # 575 Date 3/16/99

Committee _____

I support the bill ✓

I oppose the bill _____

I have written testimony ✓

(Number of copies) 4

Time needed to speak: 5 min.

Name PAUL W. CHAPMAN

Address 3 OLESEN ROAD

DERRY NH 03038

Phone 432-1845

Representing NEW HAMPSHIRE RAILROAD REVITALIZATION ASSN.

Fill in ONLY if Speaking on Bill

Bill # HB 575 Date 3/16/99

Committee JUDICIARY

I support the bill ✓

I oppose the bill _____

I have written testimony _____

(Number of copies) _____

Time needed to speak: 5 MIN

Name REP. DEBBIE KATANKIDES

Address 1 BRADFORD ST

DERRY

Phone 434-9587

Representing SELF

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # AB 575 Date 3/16/99

Committee Infectious

**** Please Print All Information ****

[illegible]

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 575

BILL TITLE: limiting railroad liability for passenger and tourist rail service.

DATE: 3/16/99

LOB ROOM: 208 **Time Public Hearing Called to Order:** 10:00

Time Adjourned: 11:26

(please circle if present)

Committee Members: Reps. ~~Moch~~, ~~Peterson~~, ~~Jacobson~~, ~~Kearney~~, ~~Bergin~~, ~~Dokmo~~, ~~L. Jean~~, ~~Rowe~~, ~~Fora~~, Withee, ~~Dudley~~, ~~Picconi~~, Soltani, ~~Woods~~, ~~Wah~~, DePecol, ~~J. Pratt~~, Craig, ~~Lasky~~, ~~Mitchell~~, Solow and Wood.

Bill Sponsors: Reps. Katsakiores, Whittemore, Akins, R. Nowe, Peter Cote, Sens. Russman, Cohen

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Katsakiores – sponsor, supporting

-Gave brief outline of the bill, also a historical perspective. Spoke to the decline and recent revitalization of rail services. Cited need for liability exposure to railroad with limits. Bill drafted with study inputs from other states which reflects a norm for railroad the size of those that operate in New Hampshire. Bill covers New Hampshire Cog railway. In response to a question, the sponsor indicated that the \$75,000,000, or \$5,000,000 would be per incident or per year in aggregate (in other words it would not be over 75 million per year per incident.

Sen. Cohen – co-sponsor, supporting

-Cited a need for passenger rail service. A degree of protection for the railroad is needed to encourage rail service in New Hampshire also as a boon to our economy. Passenger rail service would be a plus, also healthy for the environment. Responded briefly to questions. Sen Cohen stated that it was his impression that lack of protection from limited liability has curtailed expansion of railroad passenger extension into this state.

Rep. Whittemore, co-sponsor – supporting

-Interested in railroad revitalization – spoke in general support

Leon Kenison, State Department of Transportation – spoke in favor of bill

-"It's a matter of economics" spoke of plans to extend Lowell to Manchester service. Favors limits to liability exposure. Cited high costs of this if not limited. State now requested at least a 5 million policy for railroad operating on state owned right-of way. Agreed 75 million cap is per occurrence. Rail maintenance is negotiated. Answered questions as to cog railway the company itself maintains. Rep. Keans cited poor maintenance record by Guilford Trains. Reiterated that

Guilford will not be held completely harmless, just capped. **Rep. Pratt** questioned whether or not a 75 million cap would free more funds for track management and maintenance. Asked about self-insured and why there was no minimum. Commissioner did not know. Questions and answered that freight trains are now covered for liability by existing law. Responded that the Concord-Tilton freight served light service once a week has 3 million in coverage. **Rep. Peterson** asked about the limit to gross negligence, the Commissioner Kenison did not have an answer. Commissioner Kenison responded to further questions. He again spoke of the economics of the issue. He stated that the 75 million dollars was for both entities – the operator/owner.

Roger Harek, Community Development, Nashua – supporting

Spoke in favor for the Nashua Region. Stated that Guilford Transportation could not accept unlimited liability. Therefore, the option of passenger service would not be open. Question about environmental liability – did not have an answer.

Andrew Singelakis, Nashua Regional Planning Commission – spoke very briefly in support

***Paul Chapman, NH RR Revitalization Assoc. – spoke in favor – submitted written text**

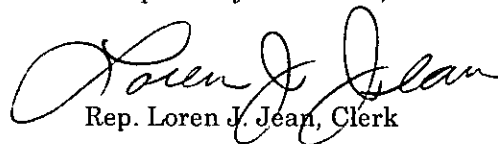
The major sticking point to extending passenger rail service into NH has been the unlimited liability. Suggested definition language of tourist/passenger be further developed and amended to the bill

Rick Newman – NH Trial Lawyers Assn. – spoke in opposition

Explained that the 75 million is in the aggregate annually. Suggested that in a catastrophic occurrence it could exceed 75 million if the liability is in aggregate per year – citing the possibility of a January – May – Dec. series of accidents or major environmental damage. Mr. Newman questioned the wisdom of the “no event” language of the bill. Suggested a per occurrence clause and 200 million cap as a minimum to improve the bill

Commissioner Kenison – suggested interim study on this bill – Re-Refer for Interim Study

Respectfully submitted,



Rep. Loren J. Jean, Clerk

HOUSE COMMITTEE ON JUDICIARY

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Time Adjourned: 11:26

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Bill Sponsors: Rep. McCarthy, Hills 41

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep Katsakouras: Sponsor: Gave brief outline of bill also a historical perspective. Spoke to the decline + the recent revitalization of rail service. Cited need for liability exposure to R.R. with limits. Bill drafted with study inputs from other states, which reflects a norm for R.R. of the size of those that operate in N.H. Bill covers N.H. cog rail. in response to a? Sponsor indicated that the 75,000,000 or 5,000,000 would be per incident a per year in aggregate (in other words it would not be over 75 mill per year per incident).

Sen Cohen Co Sponsor

Cited need for passenger rail service. A degree of protection for R.R. is needed to encourage rail service in NH, not also as a boon to our economy. Passenger rail service would be a plus also good for environment.

Responded briefly to? Sen Cohen stated that it was his impression that lack of protection from limited liability has curtailed expansion of R.R. passenger extension into this state.

Rep Whittemore Co Sponsor:

Interested in R.R. revitalization. Spoke in general support.

Leon Lussier, State Dept of Transportation Spoke in favor

"It's a matter of Economics" spoke of plans to extend Lowell to Manchester service. Favours limits to liability exposure. Cited high costs of ins if not limited. State now repays at least a \$5 mill policy for R.R. operating on State owned Right of way. Cited 75 mill cog. is per occurrence. Rail maintenance is negotiated. Assumed? as to cog railway the company itself maintains.

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Roger Hawk community Development - Nashua. Spoke in favor for the Nashua Region. Stated that Guilford Trains. could not accept unlimited liability. Therefore the option of passenger service would not be open. ? about environmental liability? did not have an answer.

Andrew Smigelakis Nashua Regional planning commission. Spoke very briefly in support

Paul Chapman NH RR Revitalization Assoc.

Spoke in favor. Submitted written test. The major sticking point to extending pass. rail service into NH. has been the unlimited liability. Suggested definition language of tourist / passenger be further clarified and amended to the bill

Rick Newen: NH Trial lawyers assoc. Spoke in opposition. Explained that the "75 mill is in the aggregate annually". Suggested that in a catastrophic occurrence could exceed 75 mill. if the liability is in aggregate per year

Citing the possibility of a Jan - May
Dec series of accidents or major
environmental damage, Mr Newson
→ the wisdom of the "no event" language of
the bill. Suggested a per occurrence clause
and 200 million cap as a minimum to
improve bill

Mr Kenison suggest interim study on this
bill. Want RE-Refer

HB 575 - AS INTRODUCED

1999 SESSION

99-0159

04/01

HOUSE BILL 575

AN ACT limiting railroad liability for passenger and tourist rail service.

SPONSORS: Rep. G. Katsakiores, Rock 13; Rep. Whittemore, Merr 13; Rep. Akins, Graf 14; Rep. R. Nowe, Rock 3; Rep. Peter Cote, Hills 32; Sen. Russman, Dist 19; Sen. Cohen, Dist 24

COMMITTEE: Judiciary

ANALYSIS

This bill limits railroad liability to \$75,000,000 for any and all claims arising out of passenger rail service, establishes a limit of \$5,000,000 on tourist rail services, and establishes certain criteria regarding railroad liability insurance coverage.

Explanation: Matter added to current law appears in *bold italics*.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

99-0159

04/01

*RS 377:1 = Reasonable + equal service
Wooden cars prohibited without DOT consent*

STATE OF NEW HAMPSHIRE

In the Year of Our Lord One Thousand Nine Hundred and Ninety-Nine

AN ACT limiting railroad liability for passenger and tourist rail service.

Be it Enacted by the Senate and House of Representatives in General Court convened:

-1 Liability Limitation Added. Amend RSA 377:3 to read as follows:

377:3 Penalty. If any railroad shall not comply with the provisions of RSA 377:1 or 377:2, it shall be for each offense guilty of a felony, and shall be liable to the party injured for [his]

damages in an action on the case **subject to RSA 377:22.**

(2) New Subdivision; Railroad Liability for Passenger Rail Service Limited. Amend RSA 377 by inserting after section 21 the following new subdivision:

Limitation of Liability for Passenger ~~and Tourist~~ Rail Service

377:22 Passenger Rail Service; Liability Limitation.

I. ~~In this section:~~ *Definitions*

(a) "Railroad" means any person, railroad corporation, or other legal entity in the business of providing passenger rail service pursuant to an agreement with this or any other state, or with any official agency or authority of this or any other state.

(b) "Passenger rail service" means all services or acts performed by a railroad in connection with the transportation of rail passengers including, but not limited to, the operation of trains, trackage and equipment, or the construction, reconstruction or maintenance of railroad equipment, tracks and any appurtenant facilities, or the provision of trackage rights over lines owned by any such railroad.

Insert d. e. *Applicability*
II. Any operator seeking to use either state owned or privately owned rail corridors for passenger rail service shall secure and maintain a ~~railroad protective liability~~ insurance policy covering the liability of the owner and the operator for property damage, personal injury, bodily injury, and death arising out of such passenger rail services. Such policy shall:

(a) Name the owner as named insured and the operator as an additional insured.

(b) Have policy limits of not less than \$75,000,000 per occurrence annually and \$75,000,000 in the aggregate annually.

(c) Be subject to self-insured retention as may be determined by the parties.

OWNER LIABILITY
III. ~~In no event~~ *Except in case of gross negligence, in no event* shall the owner or the operator be liable in excess of the coverage limits of such insurance policy for any and all claims for damage, whether compensatory or punitive, for property damage, personal injury, bodily injury, or death arising out of such passenger rail service.

~~377:23 Tourist Railroad Operations; Liability Limitation~~

Out
~~I. In this section:~~

(a) "Tourist railroad" means any person, railroad, corporation or other entity engaged in "tourist rail operations".

(b) "Tourist rail operations" means all services and activities by a tourist railroad in connection with the transportation of passengers for purposes of tourism or excursions, including, but not limited to, the operation of trains, trackage and equipment, or the use or maintenance of railroad equipment, tracks and any appurtenant facilities, including equipment, tracks, or facilities of a

rail facility provider.

(c) "Rail facility provider" means any person, railroad, corporation, or other entity providing rail facilities for use by a tourist railroad for purposes of tourist rail operations.

II. Agreements between a tourist railroad and a rail facility provider for the conduct of tourist rail operations shall provide that the tourist railroad shall secure and maintain a comprehensive general liability insurance policy covering the liability of the tourist railroad and the rail facility provider for any and all property damage, personal injury, bodily injury and death arising out of any cause whatsoever, regardless of the degree of fault, in the performance of such tourist operations. Such policy shall:

(a) Include coverage for employees subject to the provisions of the federal Employer's Liability Act, 45 U.S.C. sec. 51 et seq.

(b) Name the tourist railroad and the rail facility provider as named insureds.

(c) Have policy limits of not less than \$5,000,000 per occurrence annually and \$5,000,000 in the aggregate annually.

(d) Be subject to reasonable self-insured retention as may be determined by the parties.

III. In no event shall the tourist railroad or the rail facility provider be liable in excess of the mandatory coverage limits of \$5,000,000 of such insurance policy for any and all claims for damage, whether compensatory or punitive, for property damage, personal injury, bodily injury and death arising out of such tourist rail operations.

-3 Effective Date. This act shall take effect 60 days after its passage.

EXEMPTION

IV

For the purpose of this ~~act~~ ^{legislation} ~~operations are exempt~~ ^{tourist RR, & tourist RR and} ~~all privately owned~~ ^{& rail facility provider} ~~are exempt~~ ^{are exempt}.

from Kevin



The **Demers Group** Inc.

Robert P. Blaisdell
Government Affairs Specialist

copy of Amendment to HB575

31B So. Main St., Suite D
Concord, NH 03301

(w) 603-228-1498
(h) 603-627-5416
FAX 603-228-3963
email: RobtB@aol.com

(603) 654-9647

29 Stagecoach Rd
~~RTD #1 BOX 186~~
WILTON, NH 03086

THOMAS B. GREENMAN
CONSULTANT-SUPPORT

For copy of bill - Please

BBA UNIVERSITY OF MINN.
BSME UNIVERSITY OF MINN.

MBA HARVARD UNIVERSITY
P.E. MASSACHUSETTS

- *Wick Bouley*
- *Jim Marshall, DOT*

Sub-Committee Minutes



State of New Hampshire

HOUSE OF REPRESENTATIVES

Legislative Office Building, 33 North State Street
Concord, NH 03301-6328

TEL: (603) 271-3184

TDD Access: Relay NH 1-800-735-2964

COMMITTEE ON JUDICIARY

MEMORANDUM

TO: Subcommittee on Re-referred HB 575

Rep. Dennis J. Withee

Rep. Martha S. Solow

Rep. McKim W. Mitchell

Rep. Nancy M. Ford

Rep. Henry P. Mock

Rep. Jane Wood

FROM: Rep. Peter F. Bergin, Subcommittee Chair

PO Box 105, Amherst, NH 03031-3315

(603) 673-1885 / pfbergin@aol.com

DATE: July 28, 1999

SUBJ: Re-referred, HB 575, an act limiting railroad liability for passenger and tourist rail service.

I have scheduled Thursdays, September 2, 9 and 23 at 10:00 a.m. for us to meet on HB 575 in Room 208 of the Legislative Office Building. Please let me know if you cannot make any of these meetings or cannot serve on this subcommittee.

Thank you and I look forward to hearing from you.

PFB/laz

Enclosure (HB 575)

cc: Rep. G. Katsakiores, Rock 13 (sponsor)

Rep. Whittemore, Merr 13 (sponsor)

Rep. Akins, Graf 14 (sponsor)

Rep. R. Nowe, Rock 3 (sponsor)

Rep. Peter Cote, Hills 32 (sponsor)

Sen. Russman, Dist 19 (sponsor)

Sen. Cohen, Dist 24 (sponsor)

Kevin Moquin, Committee Researcher

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4 connection with the transportation of passengers for purposes of tourism or excursions, including,
5 but not limited to, the operation of trains, trackage and equipment, or the use or maintenance of
6 railroad equipment, tracks and any appurtenant facilities, including equipment, tracks, or facilities
7 of a rail facility provider.

8 (c) "Rail facility provider" means any person, railroad, corporation, or other entity
9 providing rail facilities for use by a tourist railroad for purposes of tourist rail operations.

10 II. Agreements between a tourist railroad and a rail facility provider for the conduct of
11 tourist rail operations shall provide that the tourist railroad shall secure and maintain a
12 comprehensive general liability insurance policy covering the liability of the tourist railroad and the
13 rail facility provider for any and all property damage, personal injury, bodily injury and death
14 arising out of any cause whatsoever, regardless of the degree of fault, in the performance of such
15 tourist operations. Such policy shall:

16 (a) Include coverage for employees subject to the provisions of the federal Employer's
17 Liability Act, 45 U.S.C. sec. 51 et seq.

18 (b) Name the tourist railroad and the rail facility provider as named insureds.

19 (c) Have policy limits of not less than \$5,000,000 per occurrence annually and
20 \$5,000,000 in the aggregate annually.

21 (d) Be subject to reasonable self-insured retention as may be determined by the
22 parties.

23 III. In no event shall the tourist railroad or the rail facility provider be liable in excess of the
24 mandatory coverage limits of \$5,000,000 of such insurance policy for any and all claims for damage,
25 whether compensatory or punitive, for property damage, personal injury, bodily injury and death
26 arising out of such tourist rail operations.

27 3 Effective Date. This act shall take effect 60 days after its passage.

HB 575 RE-REFERRED
REP. BERGIN, SUBCOM CHAIR
NEW 07/26/99

HON PETER F BERGIN
PO BOX 105
AMHERST NH 03031-3315

HON NANCY M FORD
56 RAYMOND ST
NASHUA NH 03064-1925

HON MCKIM W MITCHELL
PO BOX 6
CHESTERFIELD NH 03443-0006

HON HENRY P MOCK
PO BOX 237
JACKSON NH 03846-0237

HON MARTHA S SOLOW
11 RAYTON RD
HANOVER NH 03755-2211

HON DENNIS J WITHEE
88 BEALS RD
BEDFORD NH 03110-5002

HON JANE WOOD
717 SHORE DR
LACONIA NH 03246-2946

Kevin Moquin
Committee Researcher

HON GEORGE N KATSAKIORES
1 BRADFORD STREET
DERRY NH 03038-4258

HON JAMES A WHITTEMORE
PO BOX 6058
FRANKLIN NH 03235-6058

HON RALPH L AKINS
29 FAIRVIEW AVE
LEBANON NH 03766-1206

HON RONALD J NOWE
74 DEPOT ROAD
EPPING NH 03042-3101

HON PETER R COTE
68 BOWERS STREET
NASHUA NH 03060-3927

HON RICHARD L RUSSMAN
18 BEACH DRIVE
KINGSTON NH 03848

HON BURTON J COHEN
PO BOX 208
NEW CASTLE NH 03854-0208

Subcommittee Work Session
HB 575
(limiting railroad liability for passenger and tourist rail service)
Room 208 (LOB) - 10:00 a.m.
September 2, 1999
Minutes

Present: Representatives Mitchell, Wood, Ford, Solow, and Mock; Jonathan Page, Aide to Senator Russman

Testimony:

(1) Rep. Katsakiores, prime sponsor: Similar legislation proposed three years ago. Railroad folks in favor. Trial lawyers opposed. Railroad will not run service unless there's a liability cap. Amtrak = 3 claims in the last 12 years. None ran over \$60 million. \$75 million cap coincides with Mass cap. Bill is inept to encourage rail travel in keeping with national trend. With cap: economic benefit for New Hampshire; railroads more easily can get funding; only 2 sections in New Hampshire law apply only to owners and operators; small railroad operators will be out of business with claims over the cap.

Rep. Mock: Who is responsible for state-leased railroads?

Answer: Ask Kip Morgan.

Rep. Ford: Inquired about Mass. cap. Who does inspections for safety?

Answer: Ask Kip Morgan.

Rep. Bergin: Asked for specifics regarding Massachusetts law.

Rep. Mock: New Hampshire courts have been striking down caps as unconstitutional.

Answer: Economic benefit would outweigh, i.e., not an individual benefit, but a greater good in this case.

Rep. Bergin: What if HB 575 is not passed?

Answer: New Hampshire might lose funding for future major railroad lines. Boston/Portland = Amtrak. Gilford owns corridor.

Question: Is there liability cap on that line?

Answer: Don't know.

Rep. Solow: What if annual aggregate limit is reached early in the year?

Answer: Don't know.

(2) Christopher Morgan, Administrator of Rail and Transit, Department of Transportation: Four railroad lines are under consideration. MBTA/Gilford own line. Without cap, New Hampshire would be responsible for providing insurance for Gilford and liability would be unlimited. Amtrak employees operate MBTA line. Total claims of MBTA = \$10 million only. (Morgan read statistics of claims.) Tourist rail has only \$5 million cap based on history of claims.

Rep. Mitchell: How often does state enforce the railroad's responsibilities for safety?

Answer: State inspects several times per year. State lowers speed limit for more poorly maintained lines, e.g., 40 mph = freight and 60 mph = passenger (class 3). When lines are rehabilitated, speed allowance can be increased.

Rep. Ford: If Gilford wants to be completely indemnified, would the state pick up the cost?

Answer: Yes.

Rep. Ford: Should Gilford pay for \$5 million?

Answer: Gilford won't run if it must pay.

Rep. Mock: Had a question regarding profit for railroads.

Answer: If state wants passenger rail, New Hampshire must pay expenses including profit.

Question: How much would it cost?

Answer: Service doesn't pay for itself; must be subsidized. New Hampshire has 400 miles of active rail. Amtrak has right to operate on any freight rail.

Rep. Bergin: Should New Hampshire enact the same for New Hampshire?

Answer: Unconstitutional.

Rep. Wood: What benefit/cost analysis?

Answer: Air quality improvements.

Rep. Solow: Who sets fares?

Answer: MBTA would negotiate with New Hampshire.

Rep. Mock: What costs to New Hampshire? \$610,000/year insurance is for Massachusetts' entire system.

Answer: \$300,000-500,000/year maintenance, parking, dispatch, service to Nashua. MBTA policy would cover operations in New Hampshire.

Rep. Bergin: This proposal is least expensive.

Rep. Mitchell: Cost/benefit analysis? Increased revenue for tourism, less use of roads, etc.

Answer: No specifics available. Operator must purchase insurance.

Rep. Bergin: Are there any other subsidies in New Hampshire for operation?

Answer: No. Hope to negotiate for New Hampshire to pay capital costs and MBTA to pay operating costs.

Rep. Ford: Can the cost come out of highway funds?

Answer: If seen as mitigation for highway projects.

Rep. Mock: Maine – who pays for insurance?

Answer: Amtrak.

Question: Who owns Amtrak?

Answer: Federal government. Seventeen miles on coast is Amtrak.

Rep. Wood: Question for committee is limited to liability issue.

Against: Being "held up" by Gilford. Cost to state: \$300,000-500,000. Court opposition to caps. Tourist train = amusement.

For: All transportation in United States is subsidized. Environmentally sound. Success of southern New Hampshire is link to Boston. Gives DOT opportunity to pursue rail travel; alleviate sprawl and negative impact of highways. Rail = safer and more reliable. Cost avoidance for highway upgrade; cost avoidance with fewer car accidents.

Other: Gilford should have some responsibility. Sponsor suggests getting testimony from Dave Fink, Gilford; Conway Scenic Railroad; Trial Lawyers Association; Peter Griffin, Railroad Association. Section II (b) – limits of \$75 million; cap of \$75 million.

Respectfully submitted,



Representative Martha S. Solow
Subcommittee Clerk

SUBCOMMITTEE WORK SESSION

COMMITTEE: **Judiciary Committee**

BILL NUMBER: **HB 575**

TITLE: **limiting railroad liability for passenger and tourist rail service.**

DATE: **September 9, 1999**

LOB ROOM: **208**

TIME CALLED TO ORDER: **10:00 a.m.**

TIME ADJOURNED:

MEMBERS PRESENT: **Reps. Bergin (Chair), Withee, Solow, Mitchell, Mock and Wood**

MEMBERS ABSENT: **Rep. Ford**

OTHERS PRESENT: **Rep. Whittemore, Rep. G. Katsakiores, Rep. R. Nowe, David Fink (Gilford Transportation), Peter Griffin (President, NHRRA), Stephen Flanders (NHRRA), Kimberly Kirkland (NH Trial Lawyers), Russ Seybold (Conway Scenic Railroad), James Marshall (NH DOT), Christopher Morgan (NH DOT), Kristen Sheppard (The Dupont Group)**

David Fink, Gilford Transportation, testified Gilford will not carry passenger liability insurance, freight only. MBTA is the operator, not Gilford. Gilford will not operate passenger service unless the state buys insurance. Rep. Bergin requested a copy of the MBTA contract. Mr. Fink described the current and potential passenger lines in New Hampshire. Mr. Fink cited as obstacles to be overcome if they allow passenger service as; up to \$5 million in insurance; the state or other entity to pay for operating costs; and the state or other entity to upgrade the tracks from freight to passenger specifications.

Peter Griffin, President of the NH Railroad Revitalization, spoke in favor.

Kimberly Kirkland, NH Trial Lawyers, is an attorney with Upton, Sanders and expressed concern with the liability caps in general. She said the incentive to operate safely is removed by damage caps. She cited a 1991 case (134 NH 50 Brannigan) where caps violated equal protection clause of US Constitution.

Russ Seybold, Conway Scenic Railroad, operates a scenic, not passenger railroad. He provides a \$5 million policy as mandated by the state, at a cost of \$25,000. He favors liability cap, but would continue operation without it.

James Marshall, NH Department of Transportation, favors a cap in order to promote railroad use. He weighs the public benefit against the limitation of liability. He said Amtrak claims in

highest year (1991), they were well below the cap figure. He compared an arrangement with DRED to carry insurance up to \$2 million for snowmobile riders on private property trails to proposed agreement with railroad line owner.

Rep. James A. Whittemore, Merr. 13, testified we have got to do this now if we want railroad passenger service in the state.

Rep. George N. Katsakiores, Rock. 13, spoke in favor of the bill.

Stephen Flanders, NH Railroad Revitalization, spoke in favor of the bill.

The next meeting is scheduled for Thursday, September 23, 1999 at 10:00 a.m.

RECOMMENDATION TO THE FULL COMMITTEE:

☐ See Below
☐ No Recommendation Yet

RESPECTFULLY SUBMITTED,

Rep. Martha S. Solow, Clerk
For the Subcommittee

Rev. 7/99

SubCommittee on HB575

9-9-99

Present: Reps Mitchell Wood Bergrin
Wether, Mock Solow

Testimony:

① David Fink, Gilford Transportation:

Gilford will not carry passenger liability insurance; freight only. MBTA is the operator, not Gilford. Gilford will not operate passenger service unless NH State bump insurance.

Rep Bergrin requested copy of MBTA contract. Mr Fink described the current & potential passenger lines in NH.

Mr Fink cited as obstacles to be overcome if they ^{allow} operate passenger service:

② \$0 to \$5 mil insurance.

⑥ State or other entity to pay operating costs

⑦ State or other entity to upgrade tracks from freight to passenger specifications

② Peter Griffin, Pres NH RR Revitalization spoke in favor

③ Kimberly Kirkland, atty w Lipton Sanders. Expressed concern w liability caps in general.

Said incentive to operate safely is removed by damage caps.

Cited 1991 case, 134 NH 50 Brownington where caps violate equal protection clause of US Const.

④ Russ Seybold, Conway Scenic RR
Operates scenic, not passenger railroad.
Provides \$5 mil policy as mandated by State at cost of \$25K.
Favors liability cap, but would continue operation without it.

⑤ James Marshall, NH DOT, Public Works Transp.

Favors cap in order to promote RR use.
Weighs public benefit ag. limitation of liability.

Said Amtrak claims in highest year (1991) were way below cap figure.

Compared arrangement w DRED to carry ins up to \$2 mil for automobile riders on private property trails to proposed agreement w RR line owner.

⑥ Rep. James Whittemore, Franklin

"We've got to do this now if we want RR passenger service in the state."

⑦ Also Testifying in favor were
Stephen Koudas, we are
Gen. Katsakioris, Derry

Martha Solow
Clerk

Next mtg 9/23/99 10 AM

Sign Up Sheet

Name		Organization	
• Peter B. B. B. T		NHRRRA	✓
• DAVID F. F. T		GRS	✓
Kristen Sheppard T		The Dupont Group 6K8	✓
Kimberly Kirkland T		New Hampshire Trial Lawyers	✓
Guss V. V. T		Conway Senior Railroad	✓
Christopher Morgan		NH DOT	✓
James Marshall T		NH DOT	✓
Rep. James J. J. T	Wh. Hermore	Franklin	✓
Stephen J. J. T	Ware	NHRRRA	✓
George N. N. T	DERRY	NH. HOUSE	✓
Rep. Norve T			✓

SUBCOMMITTEE WORK SESSION

COMMITTEE: Judiciary Committee

BILL NUMBER: HB 575

TITLE: limiting railroad liability for passenger and tourist rail service.

DATE: September 23, 1999

LOB ROOM: 208

TIME CALLED TO ORDER: 10:00 a.m.

TIME ADJOURNED:

MEMBERS PRESENT: Reps. Bergin (Chair), Ford, Withee, Solow, Mock and Wood

MEMBERS ABSENT: Rep. Mitchell

OTHERS PRESENT: Tom Greenman, James Marshall (NH DOT), Dick Bouley, representing the Mt. Washington Hotel and Cog Railway

Tom Greenman, testified his interest is Lowell/Nashua railroad. Fixing rails and financing is in place. Only issue to be resolved is liability. He supports the bill.

James Marshall, Department of Transportation, testified the MBTA pays \$610 K premium for entire system. There will be no direct cost to the state, i.e., no annual subsidy. The cost to New Hampshire would be to upgrade the track. The federal money may be available. In response to the question of whether New Hampshire allows punitive damages and should the aggregate cap be the same amount as occurrence cap, the answer is this is similar to Massachusetts law. Should there be an exception to liability cap in the case of gross negligence and Mr. Marshall agrees, but that may not be acceptable to Gilford.

The committee agreed to add in Section II "except in cases of gross negligence." A discussion ensued regarding tourist rail operations.

Dick Bouley, representing the Mt. Washington Hotel and Cog Railway, testified he favors the bill. The state requires insurance of not less than \$5 million. Mr. Bouley wants liability cap.

Rep. Solow commented the reasons to drop tourist railroad liability cap from bill is (1) not relevant to general purpose of promoting passenger rail, and (2) should not provide cap for private industry unless for a public purpose.

The committee agreed and revised the bill accordingly. The draft revisions will be attached to the minutes and mailed to subcommittee members. There was a question of the difference between "negligence" and "gross negligence." Kevin will mail definitions to committee.

The next meeting is scheduled for Wednesday, September 29, 1999 at 10:00 a.m. in Room 208.

RECOMMENDATION TO THE FULL COMMITTEE:

☐ See Below
☐ No Recommendation Yet

RESPECTFULLY SUBMITTED,

Martha S. Solow *clerk*

Rep. Martha S. Solow, Clerk
For the Subcommittee

Rev. 7/99

2000 SESSION

HOUSE BILL 575 – ***PROPOSED DRAFT REVISION***

AN ACT limiting railroad liability for passenger and tourist rail service.

SPONSORS:

COMMITTEE:

ANALYSIS

This bill limits railroad liability to \$75,000,000 for any and all claims arising out of passenger rail service, and establishes certain criteria regarding railroad liability insurance coverage.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in
regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord One Thousand Nine Hundred and Ninety-Nine

AN ACT limiting railroad liability for passenger and tourist rail service.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Liability Limitation Added. Amend RSA 377:3 to read as follows:

377:3 Penalty. If any railroad shall not comply with the provisions of RSA 377:1 or 377:2, it shall be for each offense guilty of a felony, and shall be liable to the party injured for [his] damages in an action on the case *subject to RSA 377:22*.

2 New Subdivision; Railroad Liability for Passenger Rail Service Limited. Amend RSA 377

by inserting after section 21 the following new subdivision:

Limitation of Liability for Passenger Rail Service

377:22 Passenger Rail Service; Liability Limitation.

I. Definitions:

(a) "Railroad" means any person, railroad corporation, or other legal entity in the business of providing passenger rail service pursuant to an agreement with this or any other state, or with any official agency or authority of this or any other state.

(b) "Passenger rail service" means all services or acts performed by a railroad in connection with the transportation of rail passengers including, but not limited to, the operation of trains, trackage and equipment, or the construction, reconstruction or maintenance of railroad equipment, tracks and any appurtenant facilities, or the provision of trackage rights over lines owned by any such railroad.

(c) “Tourist railroad” means any person, railroad, corporation or other entity engaged in “tourist rail operations”.

(d) "Tourist rail operations" means all services and activities by a tourist railroad in connection with the transportation of passengers for purposes of tourism or excursions.

including, but not limited to, the operation of trains, trackage and equipment, or the use or maintenance of railroad equipment, tracks and any appurtenant facilities, including equipment, tracks, or facilities of a rail facility provider.

(e) "Rail facility provider" means any person, railroad, corporation, or other entity providing rail facilities for use by a tourist railroad for purposes of tourist rail operations.

II. Applicability:

Any operator seeking to use either state owned or privately owned rail corridors for passenger rail service shall secure and maintain a liability insurance policy covering the liability of the owner and the operator for property damage, personal injury, bodily injury, and death arising out of such passenger rail services. Such policy shall:

(a) Name the owner as named insured and the operator as an additional insured.

(b) Have policy limits of not less than \$75,000,000 per occurrence annually and \$75,000,000 in the aggregate annually.

(c) Be subject to self-insured retention as may be determined by the parties.

III. Owner Liability:

Except in cases of gross negligence, in no event shall the owner or the operator be liable in excess of the coverage limits of such insurance policy for any and all claims for damage, whether compensatory or punitive, for property damage, personal injury, bodily injury, or death arising out of such passenger rail service.

IV. Exemptions:

For the purpose of this legislation, tourist railroads, tourist railroad operations, and rail facility providers are exempt.

3 Effective Date. This act shall take effect 60 days after its passage.

9-23-99

HB 575 Subcommittee

Present: P. Berge, N. Ford, M. Solow,
D.J. Wither, J. Wood, H. Mock

Testimony:

Tom Greenman: His interest is Lowell/Nashua
RR. Fixing rails + financing is in place.
Only issue to be resolved is liability. He
supports The Bill

James Marshall DOT: MBTA pays \$610K
premium for entire system. There will
be no direct cost to The State; i.e., no annual
subsidy. Cost to NH would be to upgrade
the track. Federal money may be available.
In response to question: NH does not
allow punitive damages.

Question: Should aggregate cap be same
amount as occurrence cap?

Ans: This is similar to Mass. law ^{to liability cap}

Question: Should There be an exception ~~for~~
in the case of gross negligence?

Ans: Marshall agrees, but That may not
be acceptable to Gilford

Committee agreed to add in Sec II "except
in cases of gross negligence"

Discussion re Tourist Rail Operations
Testimony from Dick Bouley representing
Mt. Washington Hotel and Cog Railway - favors bill
State requires insurance of not less than
\$5 mil Bouley wants liability cap.

Solow: Reasons to drop tourist ^{RR} liability cap
from bill ① not relevant to general purpose
of promoting passenger rail and ② should
not provide cap for private industry unless
for a public purpose

Committee agreed + revised bill
accordingly. Draft revision will be
sent to subcommittee members.

Question: Difference between "negligence"
and "gross negligence". Kevin will mail
definitions to committee

Next Meeting Wed 9/29/99 at 10 AM in 208

Maitha Solow

**House Judiciary Committee
Interim Study Subcommittee Final Report
HB 575**

(Limiting railroad liability for passenger and tourist rail service)

Members: Rep. Peter F. Bergin: Chair
Rep. Nancy M. Ford
Rep. McKim W. Mitchell
Rep. Martha S. Solow
Rep. Janet G. Wall
Rep. Dennis J. Withee

The committee met on September 6 and 20th. We heard from the following people: Bob Blaisdell, Jim Demers and Leslie Nixon of the N.H. Trail lawyers Association, Jim Marshall and Kit Morgan of the Department of Transportation, Jim Monahan, representing Guilford Transportation, Andrew Singelakis of the Nashua Regional Planning Commission, Roger Hawks of the Nashua Regional Community Development, Stephen Pesci of the Strafford Regional Planning Commission and Mary Nelson, Mayor's Office City of Nashua.

The original bill limited liability in passenger and tourism (e.g., cog railroad) at \$5M and \$ 75 M per occurrence and \$ 75 M aggregate. Testimony given a year ago convinced the committee to eliminate tourist railroad liability from the bill, as it was not necessary to have a cap on tourism rail. The liability caps were changed to \$75 M per occurrence and \$100 M aggregate. The judiciary committee voted Refer to Committee for Interim Study and it was voted on by the full House in January 2000.

The Interim Study Subcommittee's duty was to evaluate the need for a liability cap and if needed recommend future legislation. Testimony was given that the MBTA would run commuter rail into Nashua and other boarder towns and cities. The train would be supplied by the state of New Hampshire and there would upgrade the track to meet all federal and state regulation for commuter rail. The track is owned by Guildford Industries and they would give the state and the MBTA permission to run commuter trains on their tracks.

Guildford Industries would be responsible for maintaining the tracks. They would come under the mandatory inspection guidelines and regulations of the Federal Railroad Administration and NH DOT.

Currently, the MBTA by Massachusetts's law has a limited liability cap of 75 M per occurrence and \$75 M aggregate. The annual premium is \$610,000 and the largest single incident claim occurred in 1991 involving a commuter rail crash. Total payments were \$6 million. Average annual claim payments for the entire MBTA system, including buses, are \$10 million. If the MBTA becomes the operator of passenger rail service in New Hampshire, their \$75 M policy would cover their operation on Guilford's tracks.

The time line for commuter rail coming into New Hampshire is for the year 2003. Construction would begin in 2002. All of the parties listed at the beginning of the report are currently working on who will be responsible for the various elements to make commuter rail service work. Part of this process is to have a cap on the liability insurance. However this can only be made possible by the Legislature passing a liability cap. In addition, some of the concerns raised during our study will be answered if this bill comes before the committee in the future. The committee felt that future legislation should be filed. A copy of the bill is attached. The vote was 4 to 0.

SUBCOMMITTEE WORK SESSION

COMMITTEE: **Judiciary Committee**

BILL NUMBER: **HB 575**

TITLE: **limiting railroad liability for passenger and tourist rail service.**

DATE: **September 29, 1999**

LOB ROOM: **208**

TIME CALLED TO ORDER: **10:00 a.m.**

TIME ADJOURNED:

MEMBERS PRESENT: **Reps. Bergin (Chair), Ford, Withee, Solow and Wood**

MEMBERS ABSENT: **Reps. Mitchell and Mock**

OTHERS PRESENT: **Kevin Moquin (Committee Researcher), Jim Demers (NH Trial Lawyers Association), David Slawsky (Concord Attorney), David Fink (Executive Vice President of Gilford Railroad), Director Jim Marshall (Department of Transportation), and Jim Monahan (Gilford Railroad).**

Chairman Bergin reviewed changes from the original bill.

Jim Demers, NH Trial Lawyers Association, does not support a \$75 million cap even though it is consistent with Massachusetts law.

David Slawsky, Concord Attorney, testified the NH Supreme Court decisions have struck down caps based on equal protection, e.g., why should train passengers be treated differently from automobile passengers.

David Fink, Executive Vice President of Gilford Railroad, testified they need an insurance policy that covers any accident with no exceptions. They require that the State of New Hampshire pay. "Gilford does not want any involvement whatsoever regarding liability." He is satisfied with the Massachusetts language. Responding to Chairman Bergin's questions, Mr. Fink said New Hampshire would have responsibility for maintaining the tracks at state expense. Further, New Hampshire will pay for all insurance on their tracks whether it is freight or passenger use.

Director Jim Marshall, Department of Transportation, testified New Hampshire common law does not distinguish between the degrees of negligence and suggests omitting the phrase excepting "gross negligence."

A discussion ensued and Chairman Bergin requested Kevin Moquin, Committee Researcher, to get information on relative costs of insurance policies based on the amount of coverage. He cited two issues for the committee as the amount of the cap and the gross negligence exception.

The cap is too low as the cap for aggregate should be more than the cap for individual occurrences. The motion was made by Reps. Wood and Ford to raise the cap for aggregate to \$100 million, which passed on a vote of 3-2.

If the "gross negligence" term is used, it should be defined. Rep. Solow referred to Black's Law Dictionary and suggested define the term to omit "intentional" but to include "reckless." Chairman Bergin suggested omitting the term and letting the full committee decide whether to include it.

Rep. Solow questioned who should determine how much liability should be assumed by the operator, and suggested it should be the state solely. The committee agreed and changed the language on line 14, page 2.

Additional comments were received from Mr. Fink in that if there is any additional exposure (to liability) for Gilford, they will not do the project. Mr. Demers commented that the committee should consider omitting a cap and simply paying for insurance. Jim Monahan of Gilford Railroad asked about the fiscal note on the bill.

Attached to these minutes is the "UPDATED 09/29/99" version of the proposed draft legislation on HB 575.

The subcommittee's recommendation to the full committee is "Ought To Pass" by a vote of 4-1. The full committee is scheduled to meet on October 20, 1999.

RECOMMENDATION TO THE FULL COMMITTEE: ☐ See Below
☐ No Recommendation Yet

The subcommittee's recommendation to the full committee is "Ought To Pass" by a vote of 4-1.

RESPECTFULLY SUBMITTED,

Martha S. Solow

Rep. Martha S. Solow, Clerk
For the Subcommittee

2000 SESSION

HOUSE BILL **575 – PROPOSED DRAFT REVISION**

AN ACT limiting railroad liability for passenger and tourist rail service.

SPONSORS:

COMMITTEE:

ANALYSIS

This bill limits railroad liability for any and all claims arising out of passenger rail service, and establishes certain criteria regarding railroad liability insurance coverage.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struckthrough.~~]
regular type. Matter which is either (a) all new or (b) repealed and reenacted appears in

STATE OF NEW HAMPSHIRE

In the Year of Our Lord One Thousand Nine Hundred and Ninety-Nine

AN ACT limiting railroad liability for passenger and tourist rail service.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Liability Limitation Added. Amend RSA 377:3 to read as follows:

2 377:3 Penalty. If any railroad shall not comply with the provisions of RSA 377:1 or 377:2,
3 it shall be for each offense guilty of a felony, and shall be liable to the party injured for [his]
4 damages in an action on the case *subject to RSA 377:22*.

5 2 New Subdivision; Railroad Liability for Passenger Rail Service Limited. Amend RSA 377
6 by inserting after section 21 the following new subdivision:

7 Limitation of Liability for Passenger Rail Service

8 377:22 Passenger Rail Service; Liability Limitation.

9 I. Definitions:

10 (a) "Railroad" means any person, railroad corporation, or other legal entity in the
11 business of providing passenger rail service pursuant to an agreement with this or any other state,
12 or with any official agency or authority of this or any other state.

13 (b) "Passenger rail service" means all services or acts performed by a railroad in
14 connection with the transportation of rail passengers including, but not limited to, the operation
15 of trains, trackage and equipment, or the construction, reconstruction or maintenance of railroad
16 equipment, tracks and any appurtenant facilities, or the provision of trackage rights over lines
17 owned by any such railroad.

18 (c) "Tourist railroad" means any person, railroad, corporation or other entity engaged
19 in "tourist rail operations".

20 (d) "Tourist rail operations" means all services and activities by a tourist railroad in
21 connection with the transportation of passengers for purposes of tourism or excursions,

including, but not limited to, the operation of trains, trackage and equipment, or the use or maintenance of railroad equipment, tracks and any appurtenant facilities, including equipment, tracks, or facilities of a rail facility provider.

(e) "Rail facility provider" means any person, railroad, corporation, or other entity providing rail facilities for use by a tourist railroad for purposes of tourist rail operations.

II. Applicability:

Any operator seeking to use either state owned or privately owned rail corridors for passenger rail service shall secure and maintain a liability insurance policy covering the liability of the owner and the operator for property damage, personal injury, bodily injury, and death arising out of such passenger rail services. Such policy shall:

(a) Name the owner as named insured and the operator as an additional insured.

(b) Have policy limits of not less than \$75,000,000 per occurrence annually and \$100,000,000 in the aggregate annually.

(c) Be subject to self-insured retention as may be determined by the State of New Hampshire.

III. Owner Liability:

In no event shall the owner or the operator be liable in excess of the coverage limits of such insurance policy for any and all claims for damage, whether compensatory or punitive, for property damage, personal injury, bodily injury, or death arising out of such passenger rail service.

IV. Exemptions:

For the purpose of this legislation, tourist railroads, tourist railroad operations, and rail facility providers are exempt.

3 Effective Date. This act shall take effect 60 days after its passage.

sign + send to
subcom
members

HB 535 Subcommittee 9-29-99 10Am

Present Ford Solow Bergrin Wood Withee

Chair Bergrin received changes from orig bill

Testimony

Jim Demers now representing NH Trial Lawyers Assoc: Does not support \$75mil cap even tho it's consistent w Mass law

David Slawsky Concord atty: NH Supreme Ct decisions have struck down caps, based on equal protection; e.g. Why should train passengers be treated differently from auto passengers?

David Fink exec. VP Gileford RR: They need an insurance policy that covers any accident - no exceptions. They require that State of NH pay. "Gileford does not want any involvement whatsoever" re liability. No's satisfied with the Mass. language. Responding to Rep Bergrin's question, Fink said NH ^{will have} ~~has~~ responsibility for maintaining tracks at State expense. Further, NH will pay for all insurance on their track whether freight or passenger use.

Should we have a
minimum of \$100,000

Jim Marshall DOT: NH common law does not distinguish between degrees of negligence + suggests omitting phrase excepting "gross negligence"

Discussion

Chair Bergin requested Kevin to get info on relative costs of ins policies based on amt of coverage. He cited 2 issues for committee as ① amt of cap and ② gross negligence exception

~~Discussion~~

Cap for
① Cap is too low; aggregate shd be more than cap for individual occurrence
Motion Wood/Ford moved to raise cap for aggregate to \$100,000. Passed 3/2

② ~~Of~~ "gross negligence" term is used it shd be defined. Solow referred to Black's Law Dictionary + suggested defining the term to omit "intentional" but to include "reckless". Bergin suggested omitting the term + letting full committee decide ~~outcome~~ whether to include it.

③ Solow questioned who shd determine how much liability shd be assumed by the operator, and suggested it shd be the State solely. Committee agreed + changed ~~language~~

Language on line 14, page 2

Additional comments:

Funk: If there is any additional exposure [to liability] for Guilford, they will not do the project.

Hemmers: Cmtee shd consider putting a cap + simply paying for insurance.

Jim Morahan (?) of Guilford RR asked about fiscal note on the bill.

Recommendation to full cmtee: OTP passed four to one.

Full cmtee will meet 10/20/99.

M. Solow

2000 SESSION

Solow
Updated
9/29/99.

HOUSE BILL ~~575~~ - *PROPOSED DRAFT REVISION*

AN ACT limiting railroad liability for passenger and tourist rail service.

SPONSORS:

COMMITTEE:

ANALYSIS

This bill limits railroad liability ~~to \$75,000,000~~ for any and all claims arising out of passenger rail service, and establishes certain criteria regarding railroad liability insurance coverage.

Explanation: Matter added to current law appears in *bold italics*.
 Matter removed from current law appears [in brackets and struck through.]
 Matter which is either (a) all new or (b) repealed and reenacted appears in
regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord One Thousand Nine Hundred and Ninety-Nine

AN ACT limiting railroad liability for passenger and tourist rail service.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Liability Limitation Added. Amend RSA 377:3 to read as follows:

2 377:3 Penalty. If any railroad shall not comply with the provisions of RSA 377:1 or 377:2,
3 it shall be for each offense guilty of a felony, and shall be liable to the party injured for [his]
4 damages in an action on the case *subject to RSA 377:22*.

5 2 New Subdivision; Railroad Liability for Passenger Rail Service Limited. Amend RSA 377
6 by inserting after section 21 the following new subdivision:

7 Limitation of Liability for Passenger Rail Service

8 377:22 Passenger Rail Service; Liability Limitation.

9 I. Definitions:

10 (a) "Railroad" means any person, railroad corporation, or other legal entity in the
11 business of providing passenger rail service pursuant to an agreement with this or any other state,
12 or with any official agency or authority of this or any other state.

13 (b) "Passenger rail service" means all services or acts performed by a railroad in
14 connection with the transportation of rail passengers including, but not limited to, the operation
15 of trains, trackage and equipment, or the construction, reconstruction or maintenance of railroad
16 equipment, tracks and any appurtenant facilities, or the provision of trackage rights over lines
17 owned by any such railroad.

18 (c) "Tourist railroad" means any person, railroad, corporation or other entity engaged
19 in "tourist rail operations".

20 (d) "Tourist rail operations" means all services and activities by a tourist railroad in
21 connection with the transportation of passengers for purposes of tourism or excursions,

including, but not limited to, the operation of trains, trackage and equipment, or the use or maintenance of railroad equipment, tracks and any appurtenant facilities, including equipment, tracks, or facilities of a rail facility provider.

(e) "Rail facility provider" means any person, railroad, corporation, or other entity providing rail facilities for use by a tourist railroad for purposes of tourist rail operations.

II. Applicability:

Any operator seeking to use either state owned or privately owned rail corridors for passenger rail service shall secure and maintain a liability insurance policy covering the liability of the owner and the operator for property damage, personal injury, bodily injury, and death arising out of such passenger rail services. Such policy shall:

(a) Name the owner as named insured and the operator as an additional insured.

(b) Have policy limits of not less than \$75,000,000 per occurrence annually and ^{100,000,000} \$75,000,000 in the aggregate annually.

(c) Be subject to self-insured retention as may be determined by the parties. *State of NH*

III. Owner Liability:

~~Except in cases of gross negligence,~~ in no event shall the owner or the operator be liable in excess of the coverage limits of such insurance policy for any and all claims for damage, whether compensatory or punitive, for property damage, personal injury, bodily injury, or death arising out of such passenger rail service.

IV. Exemptions:

For the purpose of this legislation, tourist railroads, tourist railroad operations, and rail facility providers are exempt.

3 Effective Date. This act shall take effect 60 days after its passage.

**House Judiciary Committee
Interim Study Subcommittee Work Session
HB 575**

(limiting railroad liability for passenger and tourist rail service)

September 6, 2000

10:00 a.m. – LOB 208

Present: Rep. Peter F. Bergin, Chair
Rep. McKim W. Mitchell
Rep. Janet G. Wall
Rep. Martha S. Solow

Others Present: Kit Morgan, Department of Transportation
Roger Hawk, Nashua Community Development
Andrew Singelakis, Nashua Regional Planning Commission
Stephen Pesci, Strafford Regional Planning Commission
Jim Demers, N.H. Trial Lawyers Association
Mary Nelson, Mayor's Office, City of Nashua
Jim Monahan, representing Guilford Transportation

Introduction and Background:

The original bill limited liability in passenger and tourism rail (e.g., cog railroad) at \$5M and \$75M per occurrence and \$75M aggregate. Testimony result: eliminate tourist railroad liability. Original vote: *Re-refer* (1999 session); then *Refer to Committee for Interim Study* (2000 session). MBTA would run service to Nashua; has \$75M per occurrence and \$75M aggregate; runs train in Rhode Island (which has cap).

Current Committee:

- Evidence needed to show that \$74M cap will be enough.
Medical malpractice cap stuck down by Connecticut.
- Role of State of New Hampshire.
State to buy rail and do improvements.
Guilford's responsibility for maintenance questioned. History of accidents explored.

Testimony:

Kit Morgan, Department of Transportation: Commuter rail extension project will evaluate state and railroad liability needs and effect of cap. Information available for next session. Regional efforts to restore passenger rail – regional approach to insurance liability. Desire for uniform cap (\$75M) in region. Question adequacy of \$75M: Annual claims have been below that historically.

Questions:	Maintenance	Federally mandated.
	Inspections	Federally mandated.
	Enforcement	By Federal Railroad Administration

Question: Who does inspection – MBTEA or joint?

Answer: Operator and owner would do inspections. Owner is responsible ultimately. Connecticut railroad line is situation we don't want to repeat.

Jim Demers, N.H. Trial Lawyers: 1) federal cap = \$200M; 2) trial lawyers do not support cap; 3) New Hampshire does not permit punitive damage.

Need to know cost for unlimited liability or \$200M cap. There has not been a catastrophic accident (in which case \$75M would be too low). Threat of liability encourages companies to maintain lines and equipment.

Question: Massachusetts has passed \$75M cap (and Rhode Island?).

Answer: Amtrak insisted on \$200M cap. [Find out when Massachusetts passed this.] Federal cap does not prevent states from enacting a lower (than \$200M) cap.

Committee needs to compare premium cost and self-insurance for \$2.2M.

Andrew Singelakis, Nashua Regional Planning Commission: Limiting liability will cost less than no cap.

Mr. Morgan: Guilford insists state will assume all liability for passenger service. Rail line is essential, "our one and only chance" to provide this service.

Rep. Bergin: What is timetable?

Mr. Morgan: Depends on when federal funding comes in. Best guess is construction begins in 2002 and service in 2003.

Rep. Bergin: What if liability cap legislation fails?

Mr. Morgan: State could operate on its own purchase of liability insurance.

Jim Monahan, representing Guilford Transportation (regarding Mr. Morgan's answer): Guilford would have to be satisfied.

Jim Pesci, Strafford Regional Planning Commission: Bill would apply to other rail lines also. This is a state issue.

Mr. Morgan: (Agreed.)

Rep. Mitchell: Need to coordinate with committees doing other rail studies.

Maintenance of track – role of owner.

Constitutionality of cap.

Amount of cap and cost of insurance.

Mr. Singelakis: Not having cap would make cost of services prohibitive.

Mr. Demers: Parties involved can agree on what they think is adequate.

Full committee report due November 1. List of additional information resources distributed. The work session adjourned at 10:55 a.m.

[The next meeting is scheduled for September 20, 2000, at 10:00 a.m. in LOB 302].

Respectfully submitted,

Representative Martha Solow, Recorder

FILE COPY

9/4/00 - Peter - Here's info. That was faxed to me - Steve Pesci is excellent + will

Steve Pesci

Subject: Rail Liability Bill Contact Suggestions for Janet Wall

bring in appropriate people - If you need to call him, he's at (603) 742-2523

Here are suggested invitees:

Nancy Girard
Conservation Law Foundation (CLF)
27 North Main Street
Concord NH 03301-4930
tel 225-3060 fax 225-3059

- working on EPA funded New England regional rail study which is looking at infrastructure and service coordination issues and challenges. It is critical that the liability issue be looked at from a standpoint of consistancy between the states. They are also lawyers - so I think she is a critical person to invite to the hearings.

Wayne Davis, Executive Director
Trainriders Northeast
Box 4869, Downtown Station
Portland Maine 04112-4869
tel 207-879-7245 fax

- New England Rail Advocacy grop with many members in NH who are aware of the technicalities of this issue. Wayne is a good point of contact to identify a key player and they have a lawyer or two on their Board of Directors. They represent more than just Maine and the Boston-Portland project

Jonathan Carter, Chair
Northern New England Passenger Rail Authority (NNEPRA)
PO Box 398
Wells Maine 04090
tel 207-646-5113 fax 207-646-2935

- Authority set up in Maine to manage Boston-Portland Amtrak project. They wish to include NH and MA communities as voting members but states have not pursued this. In any case, they will be handling the Boston-Portland service
+++++

Both Nashua and Rockingham regions are likely to get MBTA service or similar in the future. Both Andrew and Cliff have been involved in the issue and I have already forwarded them the meeting dates, etc and asked them to forward me more contracts on this issue:

Andrew Singelakis, Executive Director
Nashua RPC
115 Main Street, PO Box 847
Nashua NH 03061-0847
tel 883-0366 fax 883-6572

- Andrew would be able to help with the most appropriate MBTA contact as he is working with them on the NASHua service

Cliff Sinnott, Executive Director
Rockingham Planning Commission

Exeter
tel 778-0885 fax 778-

- His office completed the Hampton Branch study in 1999 - He is also on the House Committee which is continuing to look at Newburyport-Portsmouth service restoration issues.

Conway Scenic Rail

- The committee should definitely hear from one or more of the tourist rail operators. Thi

+++++

from:

Stephen T Pesci

Assistant Director/MPO Coordinator

Strafford Regional Planning Commission - Seacoast MPO

259 County Farm Road, Unit 1

Dover New Hampshire 03820-6019

Tel (603) 742-2523

Fax (603) 742-7986

e-mail stp@strafford.org

+++++

Disclaimer

e-mail is an informal communications tool used by staff and the general public to ask general information questions or expedite the completion of tasks in the approved SRPC and MPO work programs. It is intended for staff communications between the sender(s) and recipient(s) only and is not intended for reproduction or redistribution for other purposes without the consent of both parties.

All formal communications from Strafford Regional Planning Commission, including work commitments, contracts, formal responses to inquiries, etc are done on SRPC stationary via US postal mail.

• Steve Pesci

From: CMorgan@dot.state.nh.us
Sent: Thursday, August 31, 2000 2:40 PM
To: stp@strafford.org
Subject: addresses

Anna Barry is Director of Railroad Operations, MBTA, 45 High St. 9th Floor, Boston 02110.

Russ Seybold, president of Conway Scenic RR, PO Box 1947, N. Conway 03860.

You could invite David Campbell, who is the attorney for the Northcoast, if you wanted another perspective. His address is 20 Trafalgar Sq., Nashua 03063.

There are some other railroad attorneys/experts they may wish to invite. I don't know if they would come for nothing, though. One is Dennis Coffey, formerly with B&M and now with T.K. Dyer in Lexington (1762 Mass. Ave., Lexington 02173). Another is Jim Howard, a railroad attorney in Boston, (1 Thompson Sq. Suite 201, Charlestown 02129).



Conservation Law Foundation

MEMORANDUM

To: Brian Searles, Secretary, Vermont Agency of Transportation
Robert Varney, Commissioner, New Hampshire Department of Environmental Services
Wayne Davis, President, Trainriders Northeast
Leslie Otten, American Skiing Company
Peter Gregory, Executive Director, Two Rivers - Ottauquechee Regional Commission
Peter Clavelle, Mayor, City of Burlington
Stuart Hurd, Town Manager, Town of Bennington
William Veroneau, Mayor, City of Concord, New Hampshire
Andreas Aeppli, A&L Associates
Steve Pesci, Strafford Regional Planning Commission
Cliff Sinott, Rockingham Regional Planning Commission
Brett Rekola, Louis Berger & Associates, Inc.
William Harbour, CEO, Clough, Harbour & Associates
Robert Zuelsdorf, Senior Vice President, Wilbur Smith Associates

From: Mark Sinclair & Nancy Girard, Conservation Law Foundation

Re: EPA Sustainable Development Challenge Grant/Northern New England Rail

Date: July 17, 2000

On behalf of Conservation Law Foundation (CLF), we write with good news. The Environmental Protection Agency recently announced that our proposal, *Northern New England Rail Action Project*, was selected as a project for funding under EPA's Sustainable Development Challenge Grant Program. The competition was very tough; our project was one of only 27 proposals selected nationwide.

As you recall, CLF submitted the EPA funding proposal in September, 1999, in partnership with your organizations and municipalities. The purpose of the initiative is to work jointly to develop regional cooperation to build a better rail system for northern New England. The project will entail a concerted, two-year effort to study and plan for an improved passenger and freight rail system through focus on regional cooperation, regional planning, public education, and constituency-building. Through the project, our environmental groups, state agencies, regional planning commissions, and local communities have pledged to work together to increase regional cooperation on rail, to develop a regional rail plan, and to foster public/private partnerships to advance rail projects in the region.

We enclose a preliminary workplan for the project filed with the formal EPA application. The workplan can be revised and supplemented based on your input and recommendations. The work cannot begin until early September when the grant is expected to be finalized by EPA.



Conservation Law Foundation

Environmental Protection Agency Sustainable Development Challenge Grant Program

Northern New England Rail Action Project Work Plan

I. Project Narrative

The Conservation Law Foundation (CLF) will lead a two-year effort to work for the redevelopment of a modern passenger and freight rail network in northern New England, through interstate, regional cooperation; regional planning; and constituency-building. CLF's partners in this effort include Trainriders Northeast; the Vermont Agency of Transportation (VTrans); the New Hampshire Department of Environmental Services (NHDES); the communities of Burlington and Bennington, Vermont; the City of Concord, New Hampshire; the New Hampshire Seacoast Metropolitan Planning Organization (MPO); the Vermont Two Rivers-Ottawquechee Regional Commission, and American Skiing Company (ASC).

Our groups, representing two state agencies and dozens of communities interested in better rail service, will work together to foster an expanded, modern rail system for northern New England. The primary objective is to work with the northern New England states, local communities and regional planning commissions, rail carriers, and business leaders to advance rail and rail-related projects in the region. Secondary objectives are developing a regional rail strategic assessment and implementation plan, increasing regional cooperation on rail, and fostering public-private partnerships to achieve several priority rail projects.

II. The Project's Objectives

The goal of the *Northern New England Rail Action Project* is to develop an improved and expanded regional rail network connecting the region's major cities and towns. New England needs a comprehensive, regional plan for re-establishing modern passenger and freight rail service. Our coalition will establish a regional initiative between the states, regional planning organizations, Amtrak, and key communities to promote the return of trains as a sustainable transportation option for northern New England. Specifically, we will pursue coordinated efforts between the states and other stakeholders to develop and implement a regional rail initiative. We first will prepare a strategic assessment and business plan for a modern rail system. We then will implement an action plan for its development. We also will organize and educate citizens and communities to support rail projects and an expanded regional rail network. We will work to advance specific rail projects in the region through use of public-private partnerships and innovative financing opportunities.

The project has five specific objectives:

1. Development of a regional rail strategic assessment and implementation plan, including definition of the core northern New England rail system; an assessment of the system's ridership potential, freight movements, and capital needs; and creation of a business plan that will lead to a viable regional rail system. The plan also will estimate the economic, environmental, and social benefits of the system.
2. Creation of a collaborative effort among the states, key communities, and stakeholders to build an expanded regional rail system. A regional approach is justified based on the region's common goals of fostering tourism, sustainable economic development, and compact communities.

Conservation Law Foundation

travelers and tourists, old and young. An improved rail-based transport system also will benefit people who do *not* ride trains. Many communities in northern New England are becoming increasing thoroughfares for goods and people in transit. By reducing truck and car traffic in village centers, intercity rail will reduce disruptions to the quality of life for all residents.

An improved regional rail system will provide substantial environmental benefits. It will relieve congestion on our roads and reduce travel time for users of other modes. For example, it is anticipated that many passenger air trips in New England can be diverted to rail. A large number of air trips can be shifted from Boston's Logan Airport, for example, if rail is extended to Manchester Airport and if moderate-speed rail is made available between Boston and Montreal. There also will be reduced congestion and delay on highways, especially in southern New Hampshire if commuter rail service is re-established to that area.

Diversion of travelers to rail from the auto and air modes also will create reductions in air pollution. A major component of the project involves conducting a strategic assessment, an important element of which will use calculate emissions savings based on changes in energy use with and without proposed rail service.

Other environmental benefits that will result -- and that we will assess -- because of the use of expanded rail instead of automobile and air modes are more efficient use of land; less noise pollution, less alteration to hydrological features, less visual intrusion on the landscape from road building and widening, and less disturbance to natural flora and fauna.

It is expected that the project also will contribute many economic benefits. Improved rail transportation will spur economic activity, increase employment, and commercial revitalization in existing growth centers. Upgraded and expanded rail service will generate construction and permanent jobs associated with the service.] ✓

There also will be opportunities for redevelopment around stations. Good rail service encourages businesses and developers to build near transit stations and to revitalize town centers. The public and private sectors will be able to participate in joint development projects near revitalized stations. Towns along Vermont's Amtrak routes (White River Junction and Rutland) and along the Boston-Portland corridor (Dover, Durham, Exeter) already have begun to use restoration of rail service as a springboard for revitalizing their downtowns. CLF's project partners -- Burlington, Bennington, Concord and other towns -- will use new rail service as a catalyst for refocusing development in their downtowns.

The project will improve the safety and productivity of existing freight services through track improvements, thereby keeping northern New England more competitive as a major transportation hub.

Rail also will benefit the regional tourist economy by increasing travel access and options to resort communities without the traffic congestion that can destroy the rural character that attracts tourists to the region in the first place. There will be reasonable levels of resource savings in automobile operating costs and in both airport and highway congestion relief.

V. Approach and Specific Tasks:

a. Development of a Regional Rail Plan

Conservation Law Foundation

We also will prepare a business plan for an improved rail system that will assess the market potential, delineate system operating and capital costs, outline a strategy for funding capital costs, and provide a cost-benefit analysis.

The phased implementation of the recommended rail system will be pursued at a pace and in a manner consistent with market demand, first in those corridors with the highest potential ridership and level of service, and according to state affordability. We will measure the success of the overall project based on several results and actions including:

- Endorsement of the rail plan by the states and interstate cooperation on rail;
- Advanced project planning and phased implementation of a better rail system;
- Building grassroots support for the project;
- Creation of financing/business plans for implementation of the system in phases;
- Implementation of the specific rail projects identified above;
- Increases in passenger rail ridership in region;
- Improved rail technology and rights of way, drastically reduced travel times, increased train frequency, improved station accessibility and improved train amenities;
- Rebuilding and improvement of specific miles of rail line in the region;
- Implementation of action items in state and MPO rail plans;
- Substantial increases in freight transport by rail, reduction of trucks on state roads.
- Reductions in air emissions and energy use by the northern New England transportation system.

VIII. Matching Fund Commitments.

Vermont Agency of Transportation -- \$10,000 (in-kind, staff assistance)

NH Department of Environmental Conservation -- \$5,000 (in-kind, staff assistance)

A&L Associates -- \$5,000 (in-kind consulting services)

City of Burlington -- \$5,000 (in-kind, staff assistance)

Town of Bennington -- \$5,000 (in-kind, staff assistance)

Two Rivers/Ottawaquechee Regional Commission -- \$5,000 (in-kind, staff assistance)

NH Seacoast MPO -- \$5,000 (in-kind, staff assistance)

American Skiing Company -- \$10,000 (cash contribution for rail plan development)

Sept. 6/00

P. Bergen - Present

M. Mitchell Wall

M. Solow

Railroad Liability HB 575

Ford
Walker
Wall

Intro + Background

Orig bill limited liability for ^{passenger +} tourism rail (e.g. Cog RR) at 5 mil + 75 mil per occurrence + 75 mil aggregate

Testimony result - eliminate tourist RR liability.

Orig vote: ITC, Then Int. Study

MBTA wd run service to Nahant

" has 75 mil/occur + 75 mil/agg.
must train in RI wh. has cap

Current Issue needs:

- Need evidence that 75 mil cap will cover
 - Medical malpractice cap struck down by Ct
- Role of St of NH
 - State to buy rail + do improvements
 - Griffith's hospbty for maintenance questioned
 - History of accidents explored

Testimony:

[1]

Kit Morgan Dept Transp.

Commuter rail extension project will evaluate state + RR liability needs + effect of cap. Info avail for next session
Regional efforts to restore passenger rail → regional approach to insur. liab.
Desire for uniform cap (75 mil) in region
? adequacy of 75 mil: Annual claims have been below that historically

Q's Maintenance - federally mandated inspections
enforcement - by Fed RR Admin

Q: Who does inspection MBTEA or joint?

A: Operator + owner w/d do inspections
Owner is respl. ultimately

Conn R line is situation we don't want to repeat

[2] Jim Demers NH Trial Lawyers

① Fed cap = 200 mil.

② Trial Lawyers do not support cap

③ NH does not permit punitive damage

* Need to know cost for unlimited liability or 200 m cap
There has not been a ~~catastrophic~~ catastrophic accident (in which case 75 mil w/d be too low)

Great liability encourages companies to maintain lines + equipment;

Q - Mass has passed 75 mil cap (and RI?)

A - Amtrak insisted on 200 mil cap

our 1994 — [Find out when MA passed This]
Federal cap does not prevent states from enacting a lower (than 200 mil) cap.

* Crute needs to compare premium cost and self insurance for 2.2 mi

(2) Andrew Singelakis Nashua, ^{Regul} Alan Cruse
Limiting liability will cost less than no cap

Morgan - Guilford insists state will assume all liability for passenger service

Morgan - Rail line is essential
"our only chance" to
provide this service

Bergin - What is timetable?

A ^{Morgan} Depends on when fed'l funding
comes in

Best guess constr. begins 2002
+ service in 2003

Bergin - What if liab cap legislation fails?

A (Morgan) State could operate on
its own purchase of liab ins

Jim Monahan (Rep. Guilford)

re Morgan's answer: Guilford would
have to be satisfied

Jim Pesci (Nashua) ^{Pesci} Strafford Regional
Plan's Comm

Bill would apply to other
rail lines also - This is a state issue
Morgan agrees

Mitchell - Need to coordinate with counties
doing other rail studies

* Maintenance of track - role of owner

* Constitutionality of cap

* Amt of cap + cost of insurance

Singmaster
not having cap wd make cost of services
prohibitive

Demers - Parties involved can agree
on what they think is adequate

^{Sept}
Mike's report due Nov 1

Next mtg Sep 20, 2000 10AM Rm 302

List of additional info resources distributed.

Adj 10:55

Martha Solow
Recorder

Please send resource list to mike mbrs
and those on attendance list

Thank you

RR Liability HB575

09-06-00

Attendance

KIT MORGAN - NHDOT

271-2468

Roger Hawk - NASHUA COMMUNITY DEVELOPMENT

594-3379

ANDREW SINGELAKIS - NASHUA REGIONAL

PLANNING COMMISSION

883-0366

STEPHEN PESCI

Stafford Regional

742-2523

Planning Commission

Jim Demers

N.H. Trial Lawyers Association

228-1498

Mary Nelson

Mayor's Office

594-3341

City of Nashua

City Hall

~~Nelson M. G.~~

Nelson M. G. Nashua

NH. US

**House Judiciary Committee
Interim Study Subcommittee Work Session
HB 575**

(limiting railroad liability for passenger and tourist rail service)

September 20, 2000

10:00 a.m. – LOB 303

Present: Rep. Peter F. Bergin, Chair
Rep. McKim W. Mitchell
Rep. Nancy M. Ford
Rep. Martha S. Solow

Others Present: Bob Blaisdell, N.H. Trial Lawyers Association
Jim Marshall, Department of Transportation
Kit Morgan, Department of Transportation
Jim Monahan, representing Guilford Transportation
Leslie Nixon, N.H. Trial Lawyers Association

First was a review of HB 575, updated 9/29/99.

Bob Blaisdell: Object to cap of \$75 million.

Jim Marshall: Gilford wants zero responsibility for liability; same as contract with Amtrak. MBTA insurance would cover 2.2 mile extension into New Hampshire. MBTA officials feel current cap is excessive. Cap pertains to entire system. Ridership in New Hampshire would be less by a factor of 100 or more. (Refer to information on MBTA accident record.)

Kit Morgan: Role of State of New Hampshire: Department will receive federal funds and contract with MBTA and Guilford. Inspection and maintenance: Railroads are responsible for inspection; state will also inspect. Handout: FRA rules regarding inspections.

Question: Has New Hampshire enough in budget to cover inspection and enforce?

Answer: Primary responsibility is with FRA (feds). New Hampshire has only one state inspector who does track inspection only. FRA does hazardous materials and other. FRA requires inspections every two weeks. Federal grant for preliminary phase is pending. Will take one year or more. New Hampshire has been working with congressional delegation. State will not accept relief from gross negligence of Guilford. Fault in system, mistake of auto operator have been causes of accidents in the past, not track maintenance deficiencies.

\$21 million to upgrade track and \$500,000/year from federal government. State of New Hampshire hopes federal grant will cover capital costs. Operating costs to be negotiated.

Leslie Nixon: New Hampshire does not allow punitive damages. (See N.H. Constitution.) Cap is arbitrary and violates Constitution. How would cap operate? What is link between liability cap on claims and costs of insurance. Risk management. Information requested from Attorney Nixon: Cites for prohibition against punitive damages and N.H. Constitution reference; also, cases. Only reason for cap is Guilford's desire to be fully indemnified.

Jim Monahan: Refer to page 2, Section II, Lines 7-10.

Jim Marshall: Will present information on insurance coverage and costs.

Committee Discussion

Rep. Ford: Concern regarding gross negligence being absent in the bill. It should be included.

Leslie Nixon: Insurance did cover deliberate acts that cause accidents.

Rep. Mitchell: The list of lines that HB 575 will address is not complete. Law will apply statewide.

Rep. Solow: Discussed option of state's building line and adopting full responsibility for it.

Response: Much too expensive.

Rep. Mitchell: Motion: In the interest of transporting passengers and promoting public transportation, the subcommittee reports HB 575 as recommended for future legislation. Motion adopted unanimously.

[Minutes submitted by Rep. Martha Solow.]

Bergin Chr
Mitchell, Ford, Adlow

Wall

① Review of HB 575 updated 9/29/99

Bob Blawie NH Trial Lawyers
object to cap of 75 mile

Jim Marshall DOT

a. ~~2~~ Gilford wants zero respbty for liability
same as contract w/ Amtrakb. MBTA insurance wd cover 22 mile
extension into NH

MBTA officials feel current cap is excessive.

Cap pertains to entire system ^{in NH}Ridership in NH wd be less by a
factor of 100 or more(Report to
~~MBTA~~ info on MBTA accident record)c. ~~2~~ Role of St. of NH K. MorganDept will receive federal funds +
contract w/ MBTA and GilfordInspection + maintenance: RRs
are respb for inspect; state will also
inspectHandout: FRA rules re inspectionsQ: Has NH exp in budget to
cover inspect + enforceA: Primary respbty is w/ FRA (feds)
NH has ^{only} one state inspector who
does track inspection only. FRA
does haz mats + other

FRA requires inspections ev. 2 wks.

Federal grant for prelim engr-
phase is pending. Will take 1 yr or more
NH has bn working w ^{congress} delegation

State will not accept relief from gross negligence of Guilford

Fault in system, mistake of auto operator have been causes of accidents in past, not track maintenance deficiencies.

- d. 21 mil to upgrade track + \$500,000/yr ~~to NH~~ from fed. gov.

State of NH

Hopes fed govt will cover capital costs
Operating costs to be negotiated
~~NH will~~

- e. Leslie Nixon. Trial Lawyers Assoc
NH does not allow punitive damages
See NH Const. ~~case~~
Cap is arbitrary + violates Const.
How wd cap operate

What is link between ^{liability cap on} claims + costs of ins. Risk management

Info requested fr. Atty Nixon:
cases for prohibition of pun. dam
+ NH Const. reference
Also, cases

Only reason for cap is Guilford's desire to be fully indemnified.

Jim Monahan repr. Gifford

ref to p. 2 sec II lines 7-10

Jim

VT has 2 MI self ins.
+ 900K yr

VA 2 MI self
250K for 1st 3MI

MBTA 5MI self
+ 612K

Mr. Marshall will present info on
ins coverage & costs

Committee Discussion:

Ford: concern re gross negligence being
absent in the bill. It should be included.

Atty. Nixon: Ins. did cover deliberate
acts that cause accidents

Mitchell: The list of lines that 575
will address is not complete

Law will apply statewide

Solow: Discussed option of state building
line & adopting full liability for it.

Response: much too expensive

Motion

Mitchell: ~~There~~ In interest of transporting
passengers, ~~the~~ ^{+ promoting public transportation} ~~the~~ ^{the} ~~committee~~ ^{committee} recommends
consideration of HB 575 as
proposed for future legislation

Adopted unanimously Respec. Subm.
Rep. Solow

Please send notes to Berin Mitchell Ford Solow
and Mock

Testimony

FILE COPY

THE NEW HAMPSHIRE RAILROAD REVITALIZATION ASSOCIATION

"From Heritage to Vision"

**Making a difference in New Hampshire's Economic Future
through Transportation Research and Education**

Testimony on House Bill 575, given 16 March, 1999

Mr. Chairman, Members of the House Transportation Committee:

My name is Paul W. Chapman. Born in Lebanon, NH of a goodly railroad family, I have been a resident of Derry for 29 years, and have served as President, and now a Board Member, for the New Hampshire Railroad Revitalization Association.

We appreciate this opportunity to testify in favor of House Bill 575, limiting liability for passenger and tourist rail service.

We have participated in the development and introduction of this bill because of it's importance to the revitalization of the rail component of New Hampshire's 21st Century multi-modal transportation system. Just as highways benefit from the support of multiple users - trucking companies, bus lines, private autos, and excursions - so must the State's rail infrastructure if it is to develop into an economically viable transportation mode. This bill is key to that multiple use.

The importance of this is illustrated by the fact that the Nation's operating mainline rail infrastructure has grown by 4% in the last three years, whereas New Hampshire's continues to shrink with track being lifted as we speak. The current weakened position of New Hampshire's role in New England's regional rail system is underscored by it's remaining operating mainline which is 24% of historic peak, compared to 53% for Vermont, 53% for Maine, and 65% for Massachusetts.

Passage of this bill will allow:

- Boston Commuter Rail extensions into southern New Hampshire
- Origination of overnight and week-end excursion rail by New Hampshire's Tourist Railroads from Massachusetts, southern New Hampshire, and Montreal, into Lincoln, the Lakes Region, North Conway and the Presidential Range
- The return of Ski-trains from New York, Hartford and Boston to our important Ski Resorts
- Land-cruise trains such as The American Orient Express to make ports-of-call inside our beautiful state just as the Port of Portsmouth now receives cruise ships
- Special trains to serve the New Hampshire Speedway and other tracks and attractions
- Hobo Railroad, Conway Scenic Railroad, and the Mount Washington Cog Railway to negotiate the best possible insurance rates while providing recognizably ample protection for their patrons.

P.O. Box 193, Weare, NH 03281

E-mail: nhrra@altavista.net

Home page: <http://trainweb.com/nhrra>

INTERMODAL • FREIGHT • PASSENGER • TOURIST

While New Hampshire requires greater liability protection from its tourist railroads than does Massachusetts - \$5M for New Hampshire compared to \$3M for Massachusetts - this bill will provide virtually seamless liability rules for rail carriers operating in both Massachusetts and New Hampshire.

We would like to mention concerns voiced to us by Tourist Railroad operators that the definitions for "Passenger" and "Tourist" operations should perhaps be strengthened. In response, we are suggesting the following definitions for your consideration:

Passenger rail Service defined: Rail operations where passengers are carried from point-to-point on a regularly scheduled year-round service. Average point-to-point speeds for such service normally exceeding 30 MPH, and including inter-city and commuter rail service.

Tourist Rail Service defined: Rail operations where passengers are normally carried from and return to the same location, whether or not there be over-night or weekend layovers; said service often being seasonal. Average point-to-point speeds for such service normally less than 30 MPH, and including both isolated and national system connected operations.

Thank you again, Mr. Chairman, for the opportunity to state our position. I will be happy to answer any questions the Committee may have.

§ 225-A:25. Insurance; Limitations.

I. Unless an operator of a passenger tramway is in violation of this chapter or the rules of the board, which violation is causal of the injury complained of, no action shall lie against any operator by any passenger or his representative; this prohibition shall not, however, prevent the maintenance of an action against an operator for negligent operation, construction or maintenance of the passenger tramway itself.

II. Except as limited by paragraph III, each operator of a passenger tramway shall maintain liability insurance with limits of not less than \$300,000 per accident.

III. The requirements of paragraph II shall not apply to an operator of a passenger tramway which is not open to the general public and operated without charge to users. Nonprofit ski clubs, outing clubs, or other similar organizations, which are operators of rope or wire rope tows shall also be excepted from the requirements of paragraph II if the organization's bylaws so provide, each member of the organization is provided with a copy of such bylaws, and use of the rope or wire rope tows operated by the organization is restricted to members of that organization. This paragraph shall not relieve the state or any political subdivision operating a rope or wire rope tow from the requirement of maintaining liability insurance in accordance with paragraph II.

IV. No action shall be maintained against any operator for injuries to any skier or passenger unless the same is commenced within 2 years from the time of injury provided, however, that as a condition precedent thereof the operator shall be notified by certified return receipt mail within 90 days of said injury. The venue of any action against an operator shall be in the county in which the passenger tramway base station is located and not otherwise.

History

Source. 1965, 241:2. 1973, 52:2. 1978, 13:5. 1981, 112:1. 1987, 124:6, I(b). 1988, 151:14, eff. June 20, 1988.

Amendments--1988. Paragraph I: Substituted "board" for "commissioner of safety" following "rules of the".

--1987. Paragraph I: Substituted "commissioner of safety" for "board" following "rules of the".

--1981. Added "Insurance" at the beginning of the section catchline.

Paragraph I: Deleted "thereof" following "representative" and deleted the second, third and fourth sentences.

Paragraph II: Redesignated former par. II as par. IV and added a new par. II.

Paragraph III: Added.

Paragraph IV: Redesignated former par. II as par. IV.

--1978. Amended section generally.

--1973. Paragraph IV: Inserted "wire tow" preceding "or other" in the second sentence.

Paragraph V: Inserted "wire rope tow" preceding "J-bar".

Annotations

Analysis

0.5. Construction.

1. Actions against operators - Limitations.
2. -Negligence.
3. -Notice.
4. Insurance.

0.5. Construction.

By its plain language, RSA 225-A:25, I applies only to an action brought by a passenger or an action concerning a passenger tramway. *Nutbrown v. Mount Cranmore, Inc.*, 140 N.H. 675, 671 A.2d 548 (1996).

1. Actions against operators - Limitations.

Where plaintiff sued resort for injuries he suffered while skiing, RSA 225-A:25, I, did not apply to his lawsuit because that statute applies only to an action brought by a passenger or an action concerning a passenger tramway but plaintiff, at the time of his injury, did not fall within the statutory definition of a passenger and plaintiff's action against defendant did not allege that a passenger tramway was in any way involved in causing his injuries. *Nutbrown v. Mount Cranmore, Inc.*, 140 N.H. 675, 671 A.2d 548 (1996).

Where the action was not for a breach of this chapter, the limitations upon actions brought under this chapter imposed by this section were not applicable. *Adie v. Temple Mountain Ski Area, Inc.*, 108 N.H. 480, 238 A.2d 738 (1968) (Decided under RSA 225-A:26 prior to 1978 amendment.)

2. - Negligence.

1978 amendment to this section, which provided that the operator could be liable for the negligent operation of the tramway, should not be construed retrospectively to impose liability for acts or omissions preceding its effective date, since the 1978 amendment effected a substantive change in the law. *Cowan v. Tyrolean Ski Area, Inc.*, 127 N.H. 397, 506 A.2d 690 (1985) (Decided under RSA 225-A:26 prior to 1978 amendment.)

Claim for improper or negligent operation of a ski lift, in which the cause of action accrued prior to effective date of 1978 amendment to this section, requires proof of a causal violation of this section or the rules of the tramway safety board. *Cowan v. Tyrolean Ski Area, Inc.*, 127 N.H. 397, 506 A.2d 690 (1985) (Decided under RSA 225-A:26 prior to 1978 amendment.)

When skier's action is for common law negligence for the negligent construction and maintenance of the passenger tramway itself, it is not an action for the violation of this chapter or the rules or regulations issued thereunder and standard of due care remains regardless of rules or regulations. *Ford v. Black Mountain Tramways, Inc.*, 110 N.H. 20, 259 A.2d 129 (1969) (Decided under RSA 225-A:26 prior to 1978 amendment.)

3. - Notice.

Requirement of this section that an operator be notified of a ski injury as a condition precedent to maintaining an action for such injury applies only when a violation of this chapter is alleged. *Ford v. Black Mountain Tramways, Inc.*, 110 N.H. 20, 259 A.2d 129 (1969) (Decided under RSA 225-A:26 prior to 1978 amendment.)

4. Insurance.

Passenger tramway safety board would be justified in refusing to register any uphill lift device which lacks evidence of insurance. 1 N.H.Op.A.G. 92. (Decided under RSA 225-A:26 prior to 1978 amendment.)

Library References

ALR Liability for injury or death from ski lift, ski tow, or similar device. 95 ALR3d 203.

Ski resort's liability for skier's injuries resulting from condition of ski run or slope. 55 ALR4th 632.

Cited. Doggett v. Town of N. Hampton Zoning Bd. of Adjustment, 138 N.H. 744, 645 A.2d 673 (1994).

Case

Docket No.
FD 33381 0

Title

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORP. UNDER 49 U.S.C.
24309(A)--SPRINGFIELD TERMINAL RAILWAY COMPANY, BOSTON AND MAINE CORPORATION, AND
PORTLAND TERMINAL COMPANY

Decision Summary

PURSUANT TO 49 U.S.C. 24308(A)(2) PRESCRIBES TERMS AND COMPENSATION FOR THE NRPC'S
ACCESS TO FACILITIES OF RAILROADS WITHIN THE GUILDFORD RAIL SYSTEM.

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WP Envoy (requires viewer) **WordPerfect**

Graphics/Maps/Figures:



- 28270.evy



- 28270.wpd

Full Text of Decision

This decision will be included in the bound volumes of printed reports at a later date..

28270

SERVICE DATE - MAY 29, 1998

EB

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33381

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORP.

UNDER 49 U.S.C. 24308(a)--SPRINGFIELD TERMINAL RAILWAY COMPANY, BOSTON
AND MAINE CORPORATION, AND PORTLAND TERMINAL COMPANY

Decided: May 28, 1998

The Surface Transportation Board sets the terms and compensation for the National Railroad
Passenger Corporation's operation over track owned by railroads in the Guilford Rail System.

BY THE BOARD:

Pursuant to 49 U.S.C. 24308(a)(2), we are prescribing the terms and compensation for the National
Railroad Passenger Corporation's access to facilities of railroads within the Guilford Rail System.

BACKGROUND

By application filed March 19, 1997, under 49 U.S.C. 24308(a)(2), the National Railroad Passenger Corporation (Amtrak) requests that we set the terms and compensation for its use of certain facilities owned by the Springfield Terminal Railway Company, the Portland Terminal Company, and the Boston and Maine Corporation (B&M), which are part of the Guilford Rail System and will be referred to collectively as "Guilford." Amtrak seeks authority to operate passenger rail service over Guilford lines between Plaistow, NH, and Portland, ME in order to

reintroduce passenger rail service between Boston, MA and Portland.⁽¹⁾ Amtrak will operate the Boston-to-Portland service pursuant to an agreement with the Northern New England Passenger Rail Authority (NNEPRA).⁽²⁾

As contemplated by 49 U.S.C. 24308(a)(1), Amtrak and Guilford have reached agreement on certain issues regarding Amtrak's use of Guilford facilities. Consequently, in this decision, we discuss only those significant terms and conditions in the Amtrak proposal on which the parties disagree.⁽³⁾

Amtrak has submitted proposed terms and conditions for access to Guilford facilities and Guilford has submitted reply evidence. Each party has also submitted both opening and reply briefs, and NNEPRA has filed a brief as well. In addition, Guilford submitted two supplemental verified statements, which we accepted into the record in a decision served September 12, 1997. Amtrak has filed two reply statements, which we also accept into the record.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 24308(a)(2)(B), Guilford is entitled to be compensated for the incremental costs that it will incur as a result of Amtrak's operations. The parties have raised numerous disputes as to what should be considered as incremental costs and how they should be measured. The disputes center around: (1) liability costs; (2) maintenance-of-way expenses; (3) capital expenditures; (4) incentives for on-time performance; (5) administrative costs; and (6) future incremental costs. In addition, Guilford questions our authority to impose certain conditions needed to permit the commencement of passenger service on the Plaistow-Portland line. Each of these issues is discussed below.

I. Liability Costs

A. Liability for Damages

Amtrak has agreed to assume full responsibility for the following types of damages: (a) injuries or death to Amtrak employees or damage to their property; (b) injuries or death to Amtrak passengers and so called 'meeters and greeters' of such passengers, as well as damage to these persons' property; (c) damage to Amtrak locomotives, passenger cars, or other Amtrak property or equipment; and (d) injuries or death to any person or damage to property (other than Guilford property and property of its employees) proximately caused as a result of collision of a vehicle or a person with an Amtrak train at a grade crossing.⁽⁴⁾

Amtrak proposes a different arrangement for other types of damages that could occur because of Amtrak's presence on Guilford's track, including: (a) injury to trespassers and licensees; (b) general indirect damages, such as environmental damage to houses near the tracks; and (c) injuries or death to Guilford employees or damage to their property or to the property of Guilford. For these "residual damages," Amtrak proposes what it claims is its standard arrangement throughout the national railroad system with host carriers, under which the host carrier (in this case, Guilford) assumes liability for those damages in return for a set payment by Amtrak. Specifically, Amtrak proposes to pay Guilford \$0.0734 per passenger train-mile to assume liability for these residual damages, an amount which would result in a total compensation of about \$17,000 per year.

The \$0.0734 per train-mile figure is a privately negotiated figure that has apparently been used for decades. While we do not question its use in other contexts, neither the Board nor its predecessor, the Interstate Commerce Commission (ICC), has adopted any privately negotiated compensation agreement as a standard to apply broadly to all railroads.⁽⁵⁾ Rather, compensation

issues have been addressed on a case-by-case basis. On the record before us here, there is no evidence to support the adequacy of the \$0.0734 per passenger train-mile figure.⁽⁶⁾

Guilford maintains that Amtrak's proposed level of compensation would be woefully inadequate. Guilford obtained a quotation of \$514,800 per year from a group of insurers headed by the Lexington Insurance Company--based on a \$500,000 deductible and a liability limit of \$100 million--for insurance against the residual damages that it might be required to absorb under Amtrak's proposal.⁽⁷⁾ Amtrak argues that the Lexington quotation-- which would translate to about \$2.20 per train-mile, or 10 times more than the \$0.216 per train-mile that Amtrak pays to insure its operations nationwide--is too high. Moreover, Amtrak points out that the amount that Guilford currently pays for liability insurance for its entire system is only \$637,500.⁽⁸⁾

None of the insurance coverages cited by the parties establishes what Amtrak should pay to cover residual damages liability here. Guilford's own insurance only covers claims from \$5 million to \$50 million, and the fact that Guilford chooses to self-insure a portion of its own operations does not mean that it should assume the same liability for Amtrak's operations.⁽⁹⁾ Amtrak's existing insurance policy is also limited in coverage--it applies only to claims between \$10 million and \$200 million. Even the Lexington quotation would not cover the first \$500,000 of every claim.

We conclude that the liability for residual damages arising out of Amtrak operations is an incremental cost for which Guilford is entitled to compensation.⁽¹⁰⁾ However, we do not believe that either side has provided a method by which we could reasonably calculate a precise dollar amount of compensation. Furthermore, we do not believe that it is necessary for us to attempt to

prescribe the specific level of compensation necessary to cover the risk of residual damages here. Instead, we direct Amtrak to either:

- (1) fully indemnify B&M for the residual damage categories, as it has agreed to do for other damage categories;
- (2) purchase appropriate insurance or other surety to cover Guilford's assumption of liability for all such losses (i.e., without deductibles or low caps⁽¹¹⁾), even if that requires the purchase of more than one policy; or
- (3) a combination of the first two methods (for example, by purchasing insurance with a deductible or low cap, but agreeing to indemnify Guilford for damages that are subject to the deductible or cap).

Amtrak must select its approach no later than 6 months before service is scheduled to begin and communicate the details to Guilford. If Guilford can show that the approach selected by Amtrak does not, in fact, provide full indemnification or insurance, it may petition the Board for relief, and the Board will take appropriate actions including, if necessary, an interim order mandating full indemnification for any losses that may occur while Guilford's petition is being heard.

B. Damages for Gross Negligence or Misconduct

Guilford also seeks to be compensated for any punitive damages that may be linked to Amtrak's presence on the line, but are based on Guilford's own gross negligence, recklessness or wanton or willful misconduct. Guilford cites Amtrak's successful avoidance of indemnification for punitive damages in National R.R. Passenger Corp. v. Consolidated Rail Corp., 689 F. Supp. 951, 971-972 (D.D.C. 1988), vacated on other grounds, 892 F.2d 1066 (D.C. Cir. 1990) ("Conrail"),⁽¹²⁾ and asks us to declare that any state laws that may bar such total indemnification are preempted.

Amtrak argues that: (1) under agency precedent, Amtrak is not required to do more than insure against its own negligence; (2) indemnification of another party's gross negligence or willful and wanton misconduct would contravene public policy, citing the Conrail case; (3) sound policy requires that Guilford have an incentive to avoid conduct that leads to punitive

damages; and (4) trackage rights agreements (including those to which Guilford is a party) generally do not require the tenant carrier to provide full indemnity for such damages.

With respect to public policy, Guilford argues that: (1) Amtrak has been the beneficiary of liability and punitive damage limits in Massachusetts, the District of Columbia (imposed by Congress), and New Hampshire, and (2) the willful or reckless conduct of railroad employees should not be imputed automatically to their employers because the continuous supervision of operating employees is not possible in the railroad industry.

We will not require Amtrak to reimburse Guilford for damages due to Guilford's gross negligence or willful and wanton misconduct. The statute requires that compensation levels

reflect safety considerations,⁽¹³⁾ and thus Guilford should be encouraged to conduct its operations safely. Moreover, public policy generally disfavors requiring one party to be responsible for another's gross negligence or willful and wanton misconduct. Guilford argues that this policy should not apply where, as here, the uninsurable risk is not voluntarily assumed. However, because this policy is well grounded in our statutory framework and general insurance law precedent, we are not free to depart from it.

C. Security For Amtrak's Indemnity Obligations

Guilford is not satisfied with an unsecured indemnification arrangement for liability. Guilford voices concern that, in view of Amtrak's precarious financial condition, Amtrak would

not be able to satisfy its indemnity obligations. Accordingly, Guilford asks that we (1) require Amtrak to purchase appropriate insurance or other security and (2) condition access upon

Massachusetts, New Hampshire, and Maine enacting limits on liability in excess of insurance coverage.

Taking these suggestions in reverse order, we find that making Amtrak's operations dependent upon future state limitations on liability is wholly inappropriate. Under the statute, Amtrak has a right to operate over the lines of other carriers, so long as it does so under reasonable terms, including compensation for the incremental costs incurred by the host carrier. We may not deny Amtrak that right by holding Amtrak hostage to legislative initiatives.

Turning to Guilford's first suggestion (requiring that Amtrak secure its indemnity obligations), we find that the request is unsupported. Guilford has not demonstrated a strong likelihood of Amtrak going out of business. It has shown nothing more than that Amtrak's operations remain dependent in large measure on the Congressional appropriations process--a process that Amtrak has endured from the date it first commenced operations in 1970.

As noted above, Amtrak has existing, nationwide insurance that presumably will cover

its operations over this line. Its amount of insurance coverage, incorporating sizable deductibles and caps, is fairly conventional for the railroad industry and has been acceptable for every other railroad with which Amtrak has line usage agreements. We find that requiring Amtrak to absorb the costs of additional insurance or security for Guilford is unnecessary. Guilford has shown no reason why it should be given more preferential treatment than all other carriers hosting Amtrak operations.

II. Maintenance-of-Way Expense

The parties agree that Amtrak must compensate Guilford for the incremental maintenance-of-way (MOW) costs of running passenger trains over the Plaistow-Portland line. Further, the parties agree that the MOW expenditures must be sufficient to maintain the track at Federal Railroad Administration (FRA) class 3 level, to allow passenger trains to achieve speeds of 60 miles per hour (mph) and provide a comfortable ride for passengers. However, the parties disagree on the method for determining incremental MOW costs.

Based on the ICC's determination in the Amtrak/Conrail proceeding,⁽¹⁴⁾ Amtrak proposes to pay Guilford an incremental MOW cost of \$0.117 per locomotive- and car-mile (approximately \$2,050 per track-mile in 1996 dollars).⁽¹⁵⁾ While acknowledging that this level of compensation is unrelated to the operation of passenger trains over Guilford's track, Amtrak states that the proposed payment will be more than necessary because, following the \$39.6 million rehabilitation of the Plaistow-Portland line with funds to be supplied by the State of Maine, there will be little need for track maintenance for the first 6 to 8 years. Furthermore, Amtrak argues that, because of the limited amount of freight traffic that traverses the Plaistow-

Portland line (less than 10 million gross tons or MGT), most maintenance costs will be weather-related and not related to Amtrak's use of the line. According to Amtrak, only track inspection costs will be higher due to its use of the line and Amtrak will pay these costs directly.

Guilford does not dispute that MOW costs will be significantly reduced in the first few years following rehabilitation; nor does it calculate a specific incremental MOW expense figure. Rather, Guilford proposes that Amtrak pay the difference between Guilford's average MOW cost for the Plaistow-Portland line in the period 1989-1991, and any additional maintenance costs incurred after institution of Amtrak service.

Neither party has presented evidence that allows us to accurately estimate the incremental MOW for Amtrak's operations over Guilford's tracks. Amtrak's adoption of incremental MOW cost from the Amtrak/Conrail proceeding is unrelated to the incremental costs that Amtrak's service will impose on Guilford. There are substantial differences between the Conrail facilities over which Amtrak operates and Guilford's facilities. The majority of Conrail's track is maintained for freight operations at a level

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 575

BILL TITLE: limiting railroad liability for passenger and tourist rail service.

DATE: 3/31/99

LOB ROOM: 208

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Re-Refer Interim Study (Please circle one.)

Moved by Rep. *Bratt*

Seconded by Rep. *Ruoni*

Vote: (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 19-0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Loren J. Jean, Clerk

Bill #

575

Public Hearings

Executive Session

✓

COMMITTEE REPORT:

	YEAS	NAYS
Mock, Henry P, Chairman	✓	
Peterson, Andrew R, V Chairman	✓	
Jacobson, Alf E	✓	
Keans, Sandra B	✓	
Bergin, Peter F		
Dokmo, Cynthia J		
Jean, Loren J, Clerk	✓	
Rowe, Robert H	✓	
Ford, Nancy M	✓	
Withee, Dennis J	✓	
Dudley, Terri C	✓	
Picconi, Al J	✓	
Soltani, Tony F	✓	
Woods, Phyllis L	✓	
Wall, Janet G	✓	
DePecol, Benjamin J		✓
Pratt, John M	✓	
Craig, James W	✓	
Lasky, Bette R	✓	
Mitchell, McKim W	✓	
Solow, Martha S	✓	
Wood, Jane		
TOTAL VOTE	18	1
Appeared in Favor		Appeared in Opposition

Committee Report

COMMITTEE REPORT

COMMITTEE: **Judiciary**

BILL NUMBER: **HB 575**

TITLE: **limiting railroad liability for passenger and tourist rail service.**

DATE: **March 31, 1999**

CONSENT CALENDAR YES ☒ NO ☐

- ☐ OUGHT TO PASS
- ☐ OUGHT TO PASS WITH AMENDMENT
- ☐ INEXPEDIENT TO LEGISLATE
- ☒ RE-REFER
- ☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT (Include Committee Vote)

While totally sympathetic with the desire of the bill's supporters to further the cause of railroad revitalization in New Hampshire, the committee concluded that the costs to the state were not clear and the financial limits of a railroad's liability which the bill would establish were insufficient. Given the importance of the issue the committee voted overwhelmingly to re-refer the bill.

Vote 18-1.

Rep. John M. Pratt
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

Judiciary

HB 575, limiting railroad liability for passenger and tourist rail service. RE-REFER

Rep. John M. Pratt for **Judiciary**: While totally sympathetic with the desire of the bill's supporters to further the cause of railroad revitalization in New Hampshire, the committee concluded that the costs to the state were not clear and the financial limits of a railroad's liability which the bill would establish were insufficient. Given the importance of the issue the committee voted overwhelmingly to re-refer the bill. Vote 18-1.

COMMITTEE REPORT

COMMITTEE: **Judiciary**

BILL NUMBER: **HB 575**

TITLE: **limiting railroad liability for passenger and tourist rail service.**

DATE: **3/31/99**

CONSENT CALENDAR YES ☒ NO ☐

- ☐ OUGHT TO PASS
- ☐ OUGHT TO PASS WITH AMENDMENT
- ☐ INEXPEDIENT TO LEGISLATE
- ☒ RE-REFER
- ☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

**STATEMENT OF INTENT
(Include Committee Vote)**

Vote **18-1**

Rep. *Pratt*
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

COMMITTEE REPORT

COMMITTEE: **Judiciary**

BILL NUMBER: **HB 575**

TITLE: **limiting railroad liability for passenger and tourist rail service.**

DATE: **October 20, 1999**

CONSENT CALENDAR YES ☒ NO ☐

- ☐ OUGHT TO PASS
- ☐ OUGHT TO PASS WITH AMENDMENT
- ☐ INEXPEDIENT TO LEGISLATE
- ☐ RE-REFER
- ☒ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT (Include Committee Vote)

The committee was concerned with setting a precedent of a liability cap of \$75,000,000 per occurrence annually and \$100,000,000 in the aggregate annually on "passenger rail service." It was also a concern that the rail owner would be fully exempt from total liability on the tracks that the commuter rail would operate on. As a result of these concerns, the committee voted somewhat reluctantly to send this bill to interim study even though most committee members have a genuine interest in perpetuating passenger rail service in the state where appropriate.

Vote 18-0.

Rep. Peter F. Bergin
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

HB 575

The Committee was concerned with setting a precedent of ~~setting~~ a liability cap of 75,000,000 per occurrence ~~and~~ annually and \$100,000,000 in the aggregate annually on "passenger rail service". It was also ~~a~~ concerned that the ~~ex~~ rail owner would be fully ~~even~~ exempt from total liability on the tracks which the Committee rail would operate on. As a result of these ~~other~~ concerns the Committee voted to send this bill ~~at~~ ^{interim study} Vote 14-0

St. H. J.
somewhat reluctantly,

even though most committee members have a genuine interest in perpetuating passenger rail service in the state where appropriate

*ok
HJH*

This bill would limit

While totally sympathetic with the desire of the bill's supporters to further the cause of railroad revitalization in New Hampshire, the committee concluded that the costs to the state were not clear ~~and~~ ^{and} the financial limits of a railroad's liability which the bill would establish were insufficient. ~~Accordingly~~ ^{Given the importance of} the issue the committee voted overwhelmingly to refer the bill.

ok
~~done~~

COMMITTEE REPORT

COMMITTEE:

Indiviany

BILL NUMBER:

H B - 575

TITLE:

DATE:

10/20/99

CONSENT CALENDAR:

YES



NO



OUGHT TO PASS



OUGHT TO PASS W/ AMENDMENT



INEXPEDIENT TO LEGISLATE



RE-REFER



INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

STATEMENT OF INTENT:

Bergin

Jacobson

COMMITTEE VOTE:

18 - 0

- Copy to Committee Bill File
- Use Another Report for Minority Report

RESPECTFULLY SUBMITTED,

Rep.

Bergin

For the Committee

CONSENT CALENDAR

Judiciary

HB 575, limiting railroad liability for passenger and tourist rail service. REFER TO COMMITTEE FOR INTERIM STUDY

Rep. Peter F. Bergin for **Judiciary**: The committee was concerned with setting a precedent of a liability cap of \$75,000,000 per occurrence annually and \$100,000,000 in the aggregate annually on "passenger rail service." It was also a concern that the rail owner would be fully exempt from total liability on the tracks that the commuter rail would operate on. As a result of these concerns, the committee voted somewhat reluctantly to send this bill to interim study even though most committee members have a genuine interest in perpetuating passenger rail service in the state where appropriate. Vote 18-0.

HB. 575

Bill #

Public Hearings

Executive Session

COMMITTEE REPORT:

Interim Study

	YEAS	NAYS
Mock, Henry P, Chairman	✓	
Peterson, Andrew R, V Chairman	✓	
Jacobson, Alf E	✓	
Keans, Sandra B	✓	
Bergin, Peter F	✓	
Dokmo, Cynthia J	✓	
Jean, Loren J, Clerk	✓	
Rowe, Robert H		
Ford, Nancy M		
Withee, Dennis J	✓	
Dudley, Terri C		
Picconi, Al J	✓	
Soltani, Tony F	✓	
Woods, Phyllis L	✓	
Wall, Janet G	✓	
DePecol, Benjamin J		
Pratt, John M	✓	
Craig, James W	✓	
Lasky, Bette R	✓	
Mitchell, McKim W	✓	
Solow, Martha S	✓	
Wood, Jane	✓	
TOTAL VOTE	18	0
Appeared in Favor		Appeared in Opposition

COMMITTEE REPORT

COMMITTEE:

Industry

BILL NUMBER:

H.B. 575

TITLE:

*Limiting railroad liability for passenger and
Tourist rail service*

DATE:

10/20/99

CONSENT CALENDAR:

YES ☐

NO ☐

☐

OUGHT TO PASS

☒

OUGHT TO PASS W/ AMENDMENT

☐

INEXPEDIENT TO LEGISLATE

☐

RE-REFER

☐

INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

STATEMENT OF INTENT:

COMMITTEE VOTE:

6 - 12

- Copy to Committee Bill File
- Use Another Report for Minority Report

RESPECTFULLY SUBMITTED,

Rep. _____

For the Committee

Failed

Bill #

Public Hearings

Executive Session

COMMITTEE REPORT:

OTPA

	YEAS	NAYS
Mock, Henry P, Chairman	✓	
Peterson, Andrew R, V Chairman	✓	
Jacobson, Alf E		✓
Keans, Sandra B		✓
Bergin, Peter F	✓	
Dokmo, Cynthia J		✓
Jean, Loren J, Clerk		✓
Rowe, Robert H		
Ford, Nancy M		
Withee, Dennis J	✓	
Dudley, Terri C		
Picconi, Al J		✓
Soltani, Tony F	✓	
Woods, Phyllis L		✓
Wall, Janet G		✓
DePecol, Benjamin J		
Pratt, John M		✓
Craig, James W		✓
Lasky, Bette R		✓
Mitchell, McKim W		✓
Solow, Martha S		✓
Wood, Jane	✓	
TOTAL VOTE	6	12
Appeared in Favor		Appeared in Opposition

Failed

**INTERIM STUDY
COMMITTEE REPORT**

COMMITTEE:

JUDICIARY

BILL NUMBER:

HB 575

TITLE:

Limiting RR liability for pass. Freight
rail service

DATE:

10/31/00



RECOMMENDED FOR FUTURE LEGISLATION

LSR No. _____

(If legislation is already
filed, please list LSR no.)



NOT RECOMMENDED FOR FUTURE LEGISLATION

STATEMENT OF INTENT:

(May be handwritten)

The committee voted to recommend that the concept
of limiting railroad liability for passenger rail service
should be filed for future legislation. However, several
concerns still have to be researched. They are the
responsibilities of the state of New Hampshire, the
federal government, Guilford Transportation (owner
of the trains) and the MBTA (operators of the train).
Also, the concerns of the NH Travel lawyers of putting on
a liability cap. All of these will be addressed when
this bill is filed in the 2001-02 Session.

COMMITTEE VOTE:

14 - 3

(Attach Committee Voting Sheet)

PLEASE NOTE:

- Reports are due **November 1, 2000**, at the House Clerk's Office with the committee voting sheet attached.
- Place a copy of the committee report and all subcommittee work documents in bill file.

Rep. Peter F. Bergin
For the Committee

Rev. 6/5/00

JUDICIARY

Bill #: HBS75 Title: Limiting R.R. liability for Pass. & Tourist rail service

PH Date: 1 / 1 / 1

Exec Session Date: 10 / 18 / 100

Motion: Res. for future leg.

Amendment #:

MEMBER	YEAS	NAYS
Mock, Henry P, Chairman	✓	
Peterson, Andrew R, V Chairman	✓	
Jacobson, Alf E	✓	
Keans, Sandra B		✓
Bergin, Peter F	✓	
Dokmo, Cynthia J		✓
Jean, Loren J, Clerk	✓	
Rowe, Robert H		✓
Ford, Nancy M		
Withee, Dennis J	✓	
Dudley, Terri C	✓	
Picconi, Al J	✓	
Soltani, Tony F	✓	
Woods, Phyllis L	✓	
Wall, Janet G	✓	
DePecol, Benjamin J		
Pratt, John M	✓	
Craig, James W		
Lasky, Bette R	✓	
Mitchell, McKim W	✓	
Solow, Martha S		
Wood, Jane	✓	
TOTAL VOTE:	14	3