

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 1395*

Short Title: Charlotte Rail Liability Limitation. (Local)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

June 13, 2002

A BILL TO BE ENTITLED
AN ACT TO PROVIDE LIMITATIONS ON RAIL TRANSPORTATION LIABILITY
FOR PASSENGER RAIL SERVICES IN THE CITY OF CHARLOTTE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 7, Article I of the Charter of the City of Charlotte, being S.L. 2000-26, is amended by adding a new section to read:

"§ 7.02. Limitations or rail transportation liability.

(a) As used in this section:

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

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

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

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

(3) 'Railroad' means a railroad corporation or railroad company, including a State-owned railroad company as defined in G.S. 124-11, that has

1 entered into any contracts or operating agreements of any kind with the
2 City concerning passenger rail services.

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

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

13 (c) Insurance Required. —

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

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

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

40 (e) Effect on Other Laws. — This section shall not affect the damages that may
41 be recovered under the Federal Employers' Liability Act, 45 U.S.C. § 51, et seq.,
42 (1908); or under Article 1 of Chapter 97 of the General Statutes."

43 **SECTION 2.** If any provision of this act or its application is held invalid, the
44 invalidity does not affect other provisions or applications of this act that can be given

1 effect without the invalid provisions or applications, and to this end the provisions of
2 this act are severable.

3 **SECTION 3.** This act applies only to the City of Charlotte.

4 **SECTION 4.** This act is effective when it becomes law.