

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

S

2

SENATE BILL 1395  
Judiciary I Committee Substitute Adopted 7/18/02

Short Title: Charlotte Rail Liability Limitation.

(Local)

Sponsors:

Referred to:

June 13, 2002

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE LIMITATIONS ON RAIL TRANSPORTATION LIABILITY  
3 FOR PASSENGER RAIL SERVICES IN MECKLENBURG COUNTY AND  
4 MUNICIPALITIES IN MECKLENBURG COUNTY.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 153A of the General Statutes is amended by adding a  
7 new section to read:

8 "**§ 153A-279. Limitations on rail transportation liability.**

9 (a) As used in this section:

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

13 a. The County, a railroad, or an operating rights railroad; or

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

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

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

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

10       (b) Contracts Allocating Financial Responsibility Authorized. – The County may  
11 contract with any railroad to allocate financial responsibility for passenger rail services  
12 claims, including, but not limited to, the execution of indemnity agreements,  
13 notwithstanding any other statutory, common law, public policy, or other prohibition  
14 against same, and regardless of the nature of the claim or the conduct giving rise to such  
15 claim.

16       (c) Insurance Required. –

17           (1) If the County enters into any contract authorized by subsection (b) of  
18 this section, the contract shall require the County to secure and  
19 maintain, upon and after the commencement of the operation of trains  
20 by or on behalf of the county, a liability insurance policy covering the  
21 liability of the parties to the contract, a State-Owned Railroad  
22 Company as defined in G.S. 124-11 that owns or claims an interest in  
23 any real property subject to the contract, and any operating rights  
24 railroad for all claims for property damage, personal injury, bodily  
25 injury, and death arising out of or related to passenger rail services.  
26 The policy shall name the parties to the contract, a State-Owned  
27 Railroad Company as defined in G.S. 124-11 that owns or claims an  
28 interest in any real property subject to the contract, and any operating  
29 rights railroad as named insureds and shall have policy limits of not  
30 less than two hundred million dollars (\$200,000,000) per single  
31 accident or incident, and may include a self-insured retention in an  
32 amount of not more than five million dollars (\$5,000,000).

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

40       (d) Liability Limit. – The aggregate liability of the County, the parties to the  
41 contract or contracts authorized by subsection (b) of this section, a State-Owned  
42 Railroad Company as defined in G.S. 124-11, and any operating rights railroad for all  
43 claims arising from a single accident or incident related to passenger rail services for  
44 property damage, personal injury, bodily injury, and death is limited to two hundred

1 million dollars (\$200,000,000) per single accident or incident or to any proceeds  
2 available under any insurance policy secured pursuant to subsection (c) of this section,  
3 whichever is greater.

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

7 (f) Applicability. – This section shall apply only to counties that have entered  
8 into a transit governance interlocal agreement with, among other local governments, a  
9 city with a population of more than 500,000 persons."

10 **SECTION 2.** Chapter 160A of the General Statutes is amended by adding a  
11 new section to read:

12 **"§ 160A-326. Limitations on rail transportation liability.**

13 (a) As used in this section:

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

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

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

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

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

37 (4) 'Operating rights railroad' means a railroad corporation or railroad  
38 company that, prior to January 1, 2001, was granted operating rights  
39 by a State-Owned Railroad Company or operated over the property of  
40 a State-Owned Railroad Company under a claim of right over or  
41 adjacent to facilities used by or on behalf of the City.

42 (b) Contracts Allocating Financial Responsibility Authorized. – The City may  
43 contract with any railroad to allocate financial responsibility for passenger rail services  
44 claims, including, but not limited to, the execution of indemnity agreements,

1 notwithstanding any other statutory, common law, public policy, or other prohibition  
2 against same, and regardless of the nature of the claim or the conduct giving rise to such  
3 claim.

4 (c) Insurance Required. –

5 (1) If the City enters into any contract authorized by subsection (b) of this  
6 section, the contract shall require the City to secure and maintain, upon  
7 and after the commencement of the operation of trains by or on behalf  
8 of the City, a liability insurance policy covering the liability of the  
9 parties to the contract, a State-Owned Railroad Company as defined in  
10 G.S. 124-11 that owns or claims an interest in any real property subject  
11 to the contract, and any operating rights railroad for all claims for  
12 property damage, personal injury, bodily injury, and death arising out  
13 of or related to passenger rail services. The policy shall name the  
14 parties to the contract, a State-Owned Railroad Company as defined in  
15 G.S. 124-11 that owns or claims an interest in any real property subject  
16 to the contract, and any operating rights railroad as named insureds  
17 and shall have policy limits of not less than two hundred million  
18 dollars (\$200,000,000) per single accident or incident, and may  
19 include a self-insured retention in an amount of not more than five  
20 million dollars (\$5,000,000).

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

28 (d) Liability Limit. – The aggregate liability of the City, the parties to the  
29 contract or contracts authorized by subsection (b) of this section, a State-Owned  
30 Railroad Company as defined in G.S. 124-11, and any operating rights railroad for all  
31 claims arising from a single accident or incident related to passenger rail services for  
32 property damage, personal injury, bodily injury, and death is limited to two hundred  
33 million dollars (\$200,000,000) per single accident or incident or to any proceeds  
34 available under any insurance policy secured pursuant to subsection (c) of this section,  
35 whichever is greater.

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

39 (f) Applicability. – This section shall apply only to municipalities with a  
40 population of more than 500,000 persons, according to the latest decennial census, or to  
41 municipalities that have entered into a transit governance interlocal agreement with,  
42 among other local governments, a city with a population of more than 500,000 persons."

43 **SECTION 3.** 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 4.** This act applies only to Mecklenburg County and  
4 municipalities in Mecklenburg County.

5           **SECTION 5.** This act is effective when it becomes law.