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HOUSE BILL NO. 2898

Offered January 21, 2005

A BILL to amend the Code of Virginia by adding a section numbered 56-446.1, relating to limitations on passenger rail transportation liability.

Patron—Janis

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 56-446.1, as follows:

§ 56-446.1. Limitations on passenger rail transportation liability.

A. As used in this section, unless the context requires otherwise:

"Authority" means an agency or political subdivision of the Commonwealth that is engaged in providing, directly or indirectly, rail transportation services to the general public.

"Claim" means a claim, action, suit, or request for damages, whether compensatory, punitive, or otherwise, made by any person against (i) an authority or a railroad, or (ii) against an officer, employee, affiliate engaged in railroad operations, or agent of an authority or a railroad.

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

"Railroad" means a railroad company or railroad corporation that has entered into any contracts or operating agreements of any kind with an authority concerning passenger rail services.

B. An authority may contract with any railroad to allocate financial responsibility for claims against the railroad or the authority in connection with any incident or accident of any kind related to passenger rail services, which may include but not be limited to executing indemnity agreements, notwithstanding any other statutory, common law, public policy, or other prohibition against same, and regardless of the nature of the claim or the conduct giving rise to such claim.

C. If an authority:

1. Enters into any contract authorized by subsection B, the contract shall require the authority to secure and maintain, upon and after the commencement of the operation of trains by or on behalf of the authority, a liability insurance policy covering the liability of the parties to the contract for all claims for property damage, personal injury, bodily injury, and death arising out of or related to passenger rail services. The policy (i) shall name the parties to the contract as named insured; (ii) shall provide full coverage, including but not limited to coverage for compensatory and punitive damages and for claims arising out of acts of both foreign and domestic terrorism; (iii) shall have policy limits of not less than \$200 million per single accident or incident; and (iv) may include a self-insured retention in an amount of not more than \$5 million; or

2. Does not enter into a contract authorized by subsection B, upon and after the commencement of the operation of trains by or on behalf of the authority, the authority shall secure and maintain a liability insurance policy, with policy limits and a self-insured retention consistent with those in an insurance policy as set forth in subdivision 1 of this subsection, for all claims for property damage, personal injury, and death arising out of or related to passenger rail services.

D. The aggregate liability of the authority and the parties to the contract or contracts authorized by subsection B for all claims arising from a single incident or accident of any kind related to passenger rail services for property damage, personal injury, bodily injury, and death shall be limited to the greater of (i) \$200 million per single incident or accident or (ii) any proceeds available under any insurance policy secured pursuant to subsection C.

E. This section shall not affect the damages that may be recovered under the Federal Employers' Liability Act of 1908 (45 U.S.C. § 51 et seq.), as amended.

INTRODUCED

HB2898