

§ 160A-326. Limitations on rail transportation liability.

- (a) As used in this section:
- (1) "Claim" means a claim, action, suit, or request for damages, whether compensatory, punitive, or otherwise, made by any person or entity against:
 - a. The 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. 105-130.2, or agent of: the City, a railroad, or an operating rights railroad.
 - (2) "Operating rights railroad" means a railroad corporation or railroad company that, prior to January 1, 2001, was granted operating rights by a State-Owned Railroad Company or operated over the property of a State-Owned Railroad Company under a claim of right over or adjacent to facilities used by or on behalf of the City.
 - (3) "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 right-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 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.
 - (4) "Railroad" means a railroad corporation or railroad company, including a State-Owned Railroad Company as defined in G.S. 124-11, that has entered into any contracts or operating agreements of any kind with the City concerning passenger rail services.
- (b) Contracts Allocating Financial Responsibility Authorized. – The City may contract with any railroad to allocate financial responsibility for passenger rail services claims, including, but not limited to, the execution of 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) Insurance Required. –
- (1) If the City enters into any contract authorized by subsection (b) of this section, the contract shall require the City to secure and maintain, upon and after the commencement of the operation of trains by or on behalf of the City, a liability insurance policy covering the liability of the parties to the contract, a State-Owned Railroad Company as defined in G.S. 124-11 that owns or claims an interest in any real property subject to the contract, and any operating rights railroad for all claims for property damage, personal injury, bodily injury, and death arising out of or related to passenger rail services. The policy shall name the parties to the contract, a State-Owned Railroad Company as defined in G.S. 124-11 that owns or claims an interest in any real property subject to the contract, and any operating rights railroad as named insureds and shall have policy limits of not less than two hundred million dollars (\$200,000,000) per single accident or incident, and may include a self-insured retention in an amount of not more than five million dollars (\$5,000,000).

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

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

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

(f) **Applicability.** – This section shall apply only to municipalities with a population of more than 500,000 persons, according to the latest decennial census, or to municipalities that have entered into a transit governance interlocal agreement with, among other local governments, a city with a population of more than 500,000 persons. (2002-78, s. 3; 2012-79, s. 1.14(f).)