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LEGISLATIVE ACTION

Senate	.	House
Comm: FC	.	
04/15/2009	.	
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The Committee on Transportation and Economic Development Appropriations (Dockery) recommended the following:

1           **Senate Amendment to Amendment (356220) (with title**  
2 **amendment)**

3  
4           Delete lines 246 - 360  
5 and insert:

6  
7           (17) (a) In conjunction with the acquisition, ownership,  
8 construction, operation, maintenance, and management of a rail  
9 corridor, have the authority to:

10           1. Assume the obligation by contract to forever protect,  
11 defend, indemnify, and hold harmless the freight rail operator,



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12 or its successors, from whom the department has acquired a real  
13 property interest in the rail corridor, and that freight rail  
14 operator's officers, agents, and employees, from and against any  
15 liability, cost, and expense, including, but not limited to,  
16 commuter rail passengers, rail corridor invitees, and  
17 trespassers in the rail corridor, regardless of whether the  
18 loss, damage, destruction, injury, or death giving rise to any  
19 such liability, cost, or expense is caused in whole or in part,  
20 and to whatever nature or degree, by the fault, failure,  
21 negligence, misconduct, nonfeasance, or misfeasance of such  
22 freight rail operator, its successors, or its officers, agents,  
23 and employees, or any other person or persons whomsoever,  
24 provided that such assumption of liability of the department by  
25 contract shall not in any instance exceed the following  
26 parameters of allocation of risk:

27 a. The department may be solely responsible for any loss,  
28 injury, or damage to commuter rail passengers, rail corridor  
29 invitees, or trespassers, regardless of circumstances or cause,  
30 subject to subparagraphs 2., 3., and 4.

31 b. When only one train is involved in an incident, the  
32 department may be solely responsible for any loss, injury, or  
33 damage if the train is a department train or other train  
34 pursuant to subparagraph 3., but in an instance when only a  
35 freight rail operator train is involved, the freight rail  
36 operator is solely responsible for any loss, injury, or damage,  
37 except for commuter rail passengers, rail corridor invitees, and  
38 trespassers, and the freight rail operator is solely responsible  
39 for its property and all of its people in any instance when its  
40 train is involved in an incident.



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41 c. For the purposes of this subsection, any train involved  
42 in an incident that is neither the department's train nor the  
43 freight rail operator's train, hereinafter referred to in this  
44 subsection as an "other train," may be treated as a department  
45 train, solely for purposes of any allocation of liability  
46 between the department and the freight rail operator only, but  
47 only if the department and the freight rail operator share  
48 responsibility equally as to third parties outside the rail  
49 corridor who incur loss, injury, or damage as a result of any  
50 incident involving both a department train and a freight rail  
51 operator train, and the allocation as between the department and  
52 the freight rail operator, regardless of whether the other train  
53 is treated as a department train, shall remain one-half each as  
54 to third parties outside the rail corridor who incur loss,  
55 injury, or damage as a result of the incident. The involvement  
56 of any other train shall not alter the sharing of equal  
57 responsibility as to third parties outside the rail corridor who  
58 incur loss, injury, or damage as a result of the incident.

59 d. When more than one train is involved in an incident:  
60 (I) If only a department train and freight rail operator's  
61 train, or only another train as described in subparagraph 3. and  
62 a freight rail operator's train, are involved in an incident,  
63 the department may be responsible for its property and all of  
64 its people, all commuter rail passengers, rail corridor  
65 invitees, and trespassers, but only if the freight rail operator  
66 is responsible for its property and all of its people, and the  
67 department and the freight rail operator each share one-half  
68 responsibility as to third parties outside the rail corridor who  
69 incur loss, injury, or damage as a result of the incident.



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70       (II) If a department train, a freight rail operator train,  
71 and any other train are involved in an incident, the allocation  
72 of liability between the department and the freight rail  
73 operator, regardless of whether the other train is treated as a  
74 department train, shall remain one-half each as to third parties  
75 outside the rail corridor who incur loss, injury, or damage as a  
76 result of the incident. The involvement of any other train shall  
77 not alter the sharing of equal responsibility as to third  
78 parties outside the rail corridor who incur loss, injury, or  
79 damage as a result of the incident, and, if the owner, operator,  
80 or insurer of the other train makes any payment to injured third  
81 parties outside the rail corridor who incur loss, injury, or  
82 damage as a result of the incident, the allocation of credit  
83 between the department and the freight rail operator as to such  
84 payment shall not in any case reduce the freight rail operator's  
85 third-party-sharing allocation of one-half under this paragraph  
86 to less than one-third of the total third-party liability.

87       e. Any such contractual duty to protect, defend, indemnify,  
88 and hold harmless such a freight rail operator shall expressly  
89 include a specific cap on the amount of the contractual duty,  
90 which amount shall not exceed \$200 million without prior  
91 legislative approval, and the department shall purchase  
92 liability insurance and establish a self-insurance retention  
93 fund in the amount of the specific cap established under this  
94 subparagraph, provided that:

95       (I) No such contractual duty shall in any case be effective  
96 or otherwise extend the department's liability in scope and  
97 effect beyond the contractual liability insurance and self-  
98 insurance retention fund required pursuant to this paragraph;



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99 and

100 (II) The freight rail operator's compensation to the  
101 department for future use of the department's rail corridor  
102 shall include a monetary contribution to the cost of such  
103 liability coverage for the sole benefit of the freight rail  
104 operator.

105 2. Purchase liability insurance, which amount shall not  
106 exceed \$200 million, and establish a self-insurance retention  
107 fund for the purpose of paying the deductible limit established  
108 in the insurance policies it may obtain, including coverage for  
109 the department, any freight rail operator as described in  
110 paragraph (a), commuter rail service providers, governmental  
111 entities, or ancillary development. The insureds shall pay a  
112 reasonable monetary contribution to the cost of such liability  
113 coverage for the sole benefit of the insured. Such insurance and  
114 self-insurance retention fund may provide coverage for all  
115 damages, including, but not limited to, compensatory, special,  
116 and exemplary, and be maintained to provide an adequate fund to  
117 cover claims and liabilities for loss, injury, or damage arising  
118 out of or connected with the ownership, operation, maintenance,  
119 and management of a rail corridor.

120 3. Incur expenses for the purchase of advertisements,  
121 marketing, and promotional items.

122 (b) Notwithstanding any other provision of this section,  
123 the department may not have an obligation to indemnify a freight  
124 rail operator or third party until the commuter rail is  
125 operating in the rail corridor.

126  
127 ===== T I T L E A M E N D M E N T =====



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128 And the title is amended as follows:  
129       Delete line 464  
130 and insert:  
131 expenses; providing that an obligation to indemnify a freight  
132 rail operator or third party may not exist until the commuter  
133 rail is operating in the rail corridor; extending provisions to  
134 other governmental