

- SUBJECT:** Capping the liability for passenger services on certain freight tracks
- COMMITTEE:** Transportation — committee substitute recommended
- VOTE:** 9 ayes — Pickett, Martinez, Burkett, Fletcher, McClendon, Murr, Paddie, Phillips, Simmons
- 2 nays — Y. Davis, Israel
- 1 absent — Harless
- WITNESSES:** For — Charles Emery, Denton County Transportation Authority; (*Registered, but did not testify:* Byron Campbell, Drew Campbell, Brandi Bird, and Jim Cline, Denton County Transportation Authority; Vic Suhm, Tarrant Regional Transportation Coalition)
- Against — Steve Bresnen, Texas Trial Lawyers Association
- On — (*Registered, but did not testify:* Eric Gleason, Texas Department of Transportation)
- BACKGROUND:** Transportation Code, sec. 460.110 gives coordinated county transportation authorities the ability to purchase insurance to cover the liability of the authority's operations and of its contractors.
- DIGEST:** CSHB 1944 would limit the aggregate liability of the Denton County Transportation Authority and the rail owners from which it rents tracks to \$125 million for all damage claims arising from a single incident involving the provision of passenger rail services under an agreement between the authority and the railroad.
- The bill would not affect certain limits and liability for damages under other law, including the federal Employer's Liability Act. The transportation authority would be required to obtain insurance coverage for the liability with the railroad named as an insured party.

With respect to the use of eminent domain by an authority, the bill would require that any relocation assistance be provided as required under the Relocation Assistance Program specified in Property Code, sec. 21.046. The bill also would amend the Transportation Code to comply with the limits on no-bid contracts specified in Local Government Code, sec. 252.021(a).

The bill would take effect September 1, 2015, and would apply only to a condemnation hearing in which the petition was filed on or after that date.

**SUPPORTERS
SAY:**

CSHB 1944 would help the Denton County Transportation Authority (DCTA) expand its services to better serve North Texas. The Dallas-Fort Worth region continues to grow, and DCTA needs to grow along with it. To expand its rail services, DCTA needs to use right-of-way and tracks owned by BNSF Railway. Before BNSF will enter into an agreement with DCTA, it needs a limitation on its liability.

The \$125 million cap is reasonable, given the scale of the potential operation. The Trinity Rail Express, also in the Dallas-Fort Worth area, has had its liability capped at a similar amount for many years, which has proved to be adequate for metropolitan commuter rail.

The cost of insuring operations up to \$200 million in damages is far too high and would make operations unaffordable.

**OPPONENTS
SAY:**

CSHB 1944's \$125 million cap on liability is too low to protect DCTA passengers, the surrounding property owners, and the public from potential damages that could result from the railroad's operations. Railroad disasters are expensive, and it is difficult to anticipate how much damage a crash may cause. The liability cap should be raised to around \$200 million, which would better reflect the potential for damages.

The bill should not allow damages to DCTA to be covered under the liability cap. Legislation that limits liability needs to ensure that insurance covers passengers and other third parties.