

Wisconsin Railroad Committee

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How the Provision on Joint and Several Liability in the Budget Bill Affects both Freight and Passenger Rail

Current law requires that a civil court action must find a party at least 51% negligent to be found responsible for damages. The Budget Bill (AB-75) removes this protection. That means that a party to an action could be found as little as 1% negligent, but be held responsible for 100% of a court judgment.

Railroad companies and operators are often seen as having the most available assets to settle such judgments, the so-called “deep pockets”. In fact, just such civil court results have occurred in actions against railroads.

Both passenger and freight railroads have excellent safety records. However, their location alone means that they are often drawn into civil actions. Accidents often occur at locations where roadways and railways intersect. Even in instances when the railroad is not a factor or is only a minor factor, the railroad becomes a party to legal action. Railroads are drawn in to these actions by virtue of ‘being there’ and having more assets than the main parties to the action.

This change in Wisconsin law will significantly increase the exposure of Wisconsin’s railroads to costly legal actions. Ultimately, this will raise the cost to shippers and Wisconsin’s business and industry that rely on rail service. Up to catastrophic levels, railroads are largely self-insured. There is a self-insured retention (SIR) on any rail liability insurance policy, usually ranging from \$25-50 million. Railroads cannot purchase first dollar coverage. The SIR is similar to a deductible in that the insurer does not pay until you exceed the retention amount. Accidents below the threshold would be paid by the railroad out of its operating budget, which leaves fewer funds for railroad infrastructure and other improvements in WI.

This change in the joint and several liability statutes will make it more difficult or more costly for Wisconsin to expand inter-city and commuter passenger rail as also proposed in the budget bill. Generally, passenger access to freight rail lines requires indemnification of the freight rail host by the passenger operator (RTA or Amtrak). This means that new passenger service will need to be prepared with reserves or other means to handle the possibility of multi-million dollar judgments.

The inclusion of the change to joint and several liability in this budget should be reconsidered in light of the potential cost to the railroad industry, its shipper customers, as well as the possibility of impeding efforts to increase passenger and commuter rail service.

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