

# Passenger Rail Liability and Insurance Costs Manchester-Lowell Passenger Rail Service

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## Summary

New Hampshire (or the proposed NH Rail Transit Authority) will be asked to indemnify Massachusetts Bay Transportation Authority (MBTA), Massachusetts Bay Commuter Rail (MBCR), and Pan Am Railway against any claims resulting from the operation of the proposed commuter rail service extension. This indemnification will protect these entities from liability for damage claims from employees, passengers, and others suffering loss due to operation of the NH service. This requirement is standard among most entities involved in public transportation services throughout the United States. The project presents some complexity due to the multiple ownership of the railroad corridor and facilities and the need for overlapping coverage. There are several layers of parties of interest to the project and all will need to be protected from damages.

## MBTA Model

NH may consider the MBTA model, which provides a combination of self-insured retention and commercial insurance. Massachusetts General Laws limits the MBTA's exposure for its commuter rail operations to \$75 million. Maine and Vermont have also adopted this liability limitation for passenger rail services. MBTA self-insures for the first \$7.5 million (and shares that exposure on a 50/50 basis with its contract operator, MBCR for the first \$5 million), then purchases a combination of layers of insurance to the \$75 million level. This coverage includes employee claims, passenger claims, third party claims, trespasser claims, and vehicular collisions at grade crossings. In short, the insurance covers anything that may happen due to the operation of the rail service.

## Example of Coverage Cost for Proposed Lowell-Manchester Rail Service

We are not aware of how the market would evaluate (and underwrite) the proposed service, and therefore our cost estimates are based on industry averages. Preliminary (and non-binding) cost estimates for budgetary planning purposes have been provided by the broker that places MBTA's commercial insurance for its railroad operations.

## Premiums With a \$75 million Liability Cap

**\$75 Million in Coverage:** cost of \$75 million based on multiple layers of coverage by different insurers and assuming a statutory limit on liability of \$75 million

Self-insured retention of \$2 million	
\$3 million in coverage	premium = \$100,000
\$20 million additional	premium = \$100,000
\$50 million additional	premium = \$175,000
<b>\$75 million coverage</b>	<b>premium = \$375,000 plus \$2 million self-insurance</b>

## Premiums Without a Liability Cap

**\$500 Million in Coverage:** Class I Railroads typically require \$500 million in coverage for commuter rail operations that use privately held right-of-way. In the event that there is no liability cap the following additional premiums would likely apply in addition to the \$375,000 required for the first \$75 million in coverage:

\$125 million above first \$75 million	premium = \$350,000
\$300 million above first \$200 million	premium = \$700,000
<b>\$500 million coverage</b>	<b>premium = \$1,425,000 plus \$2 million self-insurance</b>

There is an annual difference in insurance cost of \$1,075,000 between \$75 million coverage and \$500 million coverage. Given this large cost increase, it is imperative that New Hampshire identify an approach to limit potential liability claims and annual insurance costs. House Bill 311 will establish the study committee to answer this critical question.