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# Highlights

Highlights of [GAO-04-240](#), a report to the Ranking Democratic Member, Committee on Transportation and Infrastructure, House of Representatives

## Why GAO Did This Study

Commuter and freight rail services have the potential to play increasingly important roles in the nation's economy and transportation system as demand for these services increases. Because the cost of building new infrastructure can be cost-prohibitive, commuter rail agencies typically seek to use existing infrastructure—which is primarily owned by private freight railroads. Consequently, commuter rail agencies must negotiate to purchase, lease, or pay to access the existing infrastructure from freight railroads. GAO was asked to examine (1) the challenges commuter rail agencies and freight railroads face when negotiating and sharing rights-of-way, (2) the actions that help facilitate mutually beneficial arrangements between commuter rail agencies and freight railroads, and (3) the role the federal government plays in negotiations between commuter rail agencies and freight railroads.

## What GAO Recommends

GAO recommends that the Department of Transportation (DOT) and STB determine whether it would be appropriate for them to provide guidance and information, such as best practices and information on the applicability of the federal liability cap, to commuter rail agencies and freight railroads. DOT and STB generally agreed with the report's findings, conclusions, and recommendation.

[www.gao.gov/cgi-bin/getrpt?GAO-04-240](http://www.gao.gov/cgi-bin/getrpt?GAO-04-240).

To view the full product, including the scope and methodology, click on the link above. For more information, contact JayEtta Z. Hecker at (202) 512-2834 or [heckerj@gao.gov](mailto:heckerj@gao.gov).

## COMMUTER RAIL

# Information and Guidance Could Help Facilitate Commuter and Freight Rail Access Negotiations

## What GAO Found

Freight railroads and commuter rail agencies face a number of challenges when negotiating agreements and sharing access to the same rights-of-way, including reaching agreement on compensation, capacity, and liability issues. For instance, in negotiating the agreements, freight railroads typically require that the commuter rail agency contractually indemnify them from any liability in the event of a commuter rail accident and procure a certain level of insurance coverage. Officials from freight railroads said they seek these provisions to protect their shareholders from the potential costs associated with commuter rail accidents. However, accepting these liability terms—notably the expense of maintaining a high level of insurance—can be problematic for the commuter rail agencies. In 1997, Congress limited the aggregate damages that may be awarded to all passengers from claims from a particular rail accident to \$200 million and permitted providers of rail transportation to enter into indemnification agreements. However, we found some confusion within the commuter and freight rail community as to whether the liability cap applied to commuter rail agencies, which could result in problems during negotiations. After reviewing the legislation, we have concluded that the liability cap applies to commuter rail operations.

Although there is no exact formula for success, officials from commuter rail agencies and freight railroads identified actions that can help facilitate mutually beneficial arrangements—understanding each other's position, identifying and using incentives to leverage cooperation, securing adequate and flexible funding, and establishing good lines of communication. Although commuter rail agencies and freight railroads agreed on actions that could help facilitate win/win arrangements, they disagreed on the appropriate role for the federal government in negotiating access or resolving disputes between commuter rail agencies and freight railroads.

The Federal Transit Administration (FTA), Federal Railroad Administration, and Surface Transportation Board (STB) have responsibility for different aspects of rail transportation. For example, FTA helps fund the planning and development of eligible commuter rail projects. However, none of the three agencies play a role in commuter rail access negotiations. Therefore, they have not provided any guidance or information to commuter rail agencies or freight railroads to facilitate and inform negotiations.



Source: Sound Transit in Seattle, Washington.

To accommodate commuter trains on certain rail lines, capacity enhancements may be required. However, physical constraints, such as the steep terrain and Puget Sound that frame portions of Burlington Northern Santa Fe Railway Company's right-of-way in the state of Washington may make it difficult to add capacity enhancements in some cases.