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H.364

Introduced by Representatives Fagan of Rutland City, Cupoli of Rutland City,
Howard of Rutland City, Notte of Rutland City, Page of
Newport City, Sullivan of Dorset, and Terenzini of Rutland
Town

Referred to Committee on

Date:

Subject: Surface transportation; railroads

Statement of purpose of bill as introduced: This bill proposes to prohibit the
State and railroads operating over State-owned railroad property from
requiring that any other party entering into a license, lease, agreement, right-
of-way, or easement with respect to the property agree to (1) waive the right to
challenge a denial of such license, lease, agreement, right-of-way, or easement;
(2) indemnify the State and railroad irrespective of any negligence on the part
of the State or railroad; (3) pay the attorney's fees of the State or of the railroad
in any suit or other action brought by or against the holder with respect to the
license, lease, agreement, right-of-way, or easement irrespective of who
substantially prevails; or (4) waive the right to bring suit or action related to
the lease, agreement, right-of-way, or easement.

1 An act relating to agreements between the State, railroads operating over
2 State-owned railroad property, and third-parties

3 It is hereby enacted by the General Assembly of the State of Vermont:

4 Sec. 1. 5 V.S.A. § 3406 is amended to read:

5 § 3406. SALE OR LEASE OF STATE-OWNED RAILROAD PROPERTY
6 FOR OTHER PURPOSES

7 (a) In connection with State-owned railroad property, the Secretary shall
8 have authority to enter into licenses, leases, easements, and sales of personal
9 property, including tracks, structures, and buildings which are to be removed
10 by the purchaser.

11 * * *

12 (c) In entering into or renewing any license, lease, agreement, right-of-way,
13 or easement with respect to State-owned railroad property, neither the
14 Secretary nor any railroad operating over State-owned railroad property shall
15 impose any condition or requirement that the current or prospective holder of
16 the license, lease, agreement, right-of-way, or easement:

17 (1) waive all claims related to the State's or railroad's alleged
18 negligence or refusal to approve an additional or expanded license, lease,
19 agreement, right-of-way, or easement;

20 (2) defend, indemnify, or hold harmless the State or the railroad against
21 all actions, damages, or losses resulting from the holder's authorized use of

1 any State-owned railroad property irrespective of any negligence on the part of
2 the State or railroad;

3 (3) pay the attorney's fees of the State or of the railroad in any suit or
4 other action brought by or against the holder with respect to the license, lease,
5 agreement, right-of-way, or easement if the holder substantially prevails in the
6 suit or action; or

7 (4) waive the right to bring suit or action related to the holder's license,
8 lease, agreement, right-of-way, or easement.

9 (d) Notwithstanding subdivision (c)(2) of this section, the Secretary or
10 railroad operating over State-owned railroad property may require, to the
11 extent permitted by law, that the current or prospective holder of the license,
12 lease, agreement, right-of-way, or easement defend, indemnify, or hold
13 harmless the State or railroad from and against any actions, damages, or losses
14 proximately caused by the holder's negligence.

15 Sec. 2. ENFORCEABILITY

16 Any language in an existing license, lease, agreement, right-of-way, or
17 easement with respect to State-owned railroad property that would be
18 prohibited pursuant to 5 V.S.A. § 3406 shall be unenforceable upon renewal or
19 hold over on or after the effective date of this section.

20 Sec. 3. EFFECTIVE DATE

21 This act shall take effect on passage.