

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO:** Honorable City Council

**FROM:** Hugh R. Riley, Assistant City Manager 

**DATE:** November 22, 2010 (CC Meeting of 12/1/10)

**SUBJECT:** Consider Request from Richard Myles Regarding Support for House of Representatives Bill 6150 Amending Limitations on Liability for Certain Rail Accidents

**BACKGROUND**

The City recently received a letter from Mr. Richard Myles representing a group named Justice and Railroad Safety (JARS) requesting City Council support of HR 6150 sponsored by Congressman Elton Gallegly. A copy of Mr. Myles' letter is attached. HR 6150 as currently proposed would increase the liability limit for a rail accident or incident occurring on or after September 12, 2008, from \$200,000,000.00 to \$500,000,000.00. A copy of the bill is attached

As the Council is aware, Metrolink Train No. 111 on the Ventura County line crashed in Chatsworth on September 12, 2008, with the loss of 24 passengers' lives and injuries of various severities to over 100 people.

**DISCUSSION**

In addition to the aforementioned letter, Mr. Myles and two other speakers addressed the City Council at its November 3, 2010, meeting. The specific request is for the City Council to pass a Resolution in support of HR 6150. The subject matter of HR 6150 is not included in the City Council's adopted Legislative Program. The Legislative Program is intended to allow the City to address matters that affect the City as an organization for such things as funding, operations, and providing services to the community.

As a member of the Ventura County Transportation Commission (VCTC), which in turn is part of the Southern California Regional Rail Authority (SCRRA), the City would generally defer to them on matters potentially affecting the funding and operations of their organizations.

Honorable City Council  
December 1, 2010  
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The extent of liability for the September 12, 2008 accident has not been determined. The potential fiscal impact to SCRRA as a result of the passage of HR 6150 is also unknown at this time

Due to the uncertainties of HR 6150 and the fact that it could be amended in the future, staff does not recommend City Council support. An alternative action to consider is to send a letter to Congressman Gallegly supporting an increase in the current liability cap contained in Title 49 United States Code Section 28103 so long as SCRRA's potential liability does not exceed the current limits for accidents occurring prior to a change in the current law.

**STAFF RECOMMENDATION:**

Authorize Mayor to send letter to Congressman Gallegly supporting a change to the liability limits contained in Title 49 United States Code Section 28103 so long as they apply to SCRRA only after enactment of such change.

**ATTACHMENTS:**

1. Letter from Richard Myles
2. H.R. 6150 As Introduced with Section 28103 of Title 49, U.S. Code

RECEIVED

OCT 26 2010

CITY CLERK'S DIVISION  
CITY OF MOORPARK

**JUSTICE AND RAILROAD SAFETY  
4383 Clearwood Road  
Moorpark, CA 93021**

**From JARS Committee (Justice and Railroad Safety):**

**We are the survivors of Metrolink #111 that crashed in Chatsworth on September 12, 2008. Until it cost me my job, I was a long time Los Angeles employee / supervisor of between 300 and 700 truck drivers.**

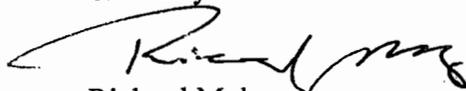
**On that day 24 passengers were killed and over 150 were injured, many of whom were seriously injured, requiring medical attention well into the future.**

**We have since learned that if nothing is done, we will be victimized again by a Federal Law (49 United States Code Section 28103) which limits the possible damages that can be recovered by all victims of a single rail crash to 200 million dollars, this, even though we now know that the train's engineer was grossly negligent when he was texting for months while driving the train and that Connex/Veolia Management knew, but ignored and failed to enforce written safety practices that would have prevented the Chatsworth crash. Instead, they spent their time pushing the same crew to falsify records so they would get bigger bonuses and their company (Veolia) more profits.**

**Please see attached detail sheet and short DVD for more explanation.**

**If French conglomerate Veolia Transportation and its subsidiaries are not required to pay for all the harm they caused, this City and taxpayers in general will likely have to pick up the shortfall. We are therefore asking that the Moorpark City Council pass a resolution asking Congress to support Congressman Elton Gallegly's Bill HR 6150 which will amend the current law to allow the damage limit to be raised to 500 million dollars in cases of gross negligence. Veolia Transportation, and not Metrolink, was more than grossly negligent in causing this tragedy. Veolia has deposited \$ 200 Million in a federal court case, so Congress must act before that lawsuit becomes final.**

Sincerely



Richard Myles

**ATTACHMENT I**

+CC(W/OVD); CM; DAS; ACM; SMA (JB); FI (W/OVD) (REC'D I EA)

.....  
(Original Signature of Member)

111TH CONGRESS  
2D SESSION

# H. R. \_\_\_\_\_

To amend the limitation on liability for certain passenger rail accidents or incidents under section 28103 of title 49, United States Code, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

Mr. GALLEGLY introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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# A BILL

To amend the limitation on liability for certain passenger rail accidents or incidents under section 28103 of title 49, United States Code, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. ACCIDENT LIABILITY.**

4 (a) AMENDMENT.—Section 28103 of title 49, United  
5 States Code, is amended—

6 (1) in subsection (a)(2), by striking “The ag-  
7 gregate” and inserting “Except as provided in para-  
8 graph (3), the aggregate”;

1           (2) by adding at the end of subsection (a) the  
2 following new paragraph:

3           “(3) The liability cap under paragraph (2) shall be  
4 \$500,000,000 if the accident or incident was proximately  
5 caused by gross negligence or willful misconduct of the  
6 defendant. Such amount shall be adjusted annually by the  
7 Secretary to reflect changes in the Consumer Price Index-  
8 All Urban Consumers.”; and

9           (3) in subsection (c), by striking  
10 “\$200,000,000” and inserting “\$500,000,000”.

11           (b) EFFECTIVE DATE.—The amendments made by  
12 subsection (a) shall be effective for any passenger rail acci-  
13 dent or incident occurring on or after September 12, 2008.

**Title 49 United States Code**

**§ 28103. Limitations on rail passenger transportation liability**

**(a) Limitations.—**

(1) Notwithstanding any other statutory or common law or public policy, or the nature of the conduct giving rise to damages or liability, in a claim for personal injury to a passenger, death of a passenger, or damage to property of a passenger arising from or in connection with the provision of rail passenger transportation, or from or in connection with any rail passenger transportation operations over or rail passenger transportation use of right-of-way or facilities owned, leased, or maintained by any high-speed railroad authority or operator, any commuter authority or operator, any rail carrier, or any State, punitive damages, to the extent permitted by applicable State law, may be awarded in connection with any such claim only if the plaintiff establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct carried out by the defendant with a conscious, flagrant indifference to the rights or safety of others. If, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, this paragraph shall not apply.

(2) The aggregate allowable awards to all rail passengers, against all defendants, for all claims, including claims for punitive damages, arising from a single accident or incident, shall not exceed \$200,000,000.

**(b) Contractual Obligations.—** A provider of rail passenger transportation may enter into contracts that allocate financial responsibility for claims.

**(c) Mandatory Coverage.—** Amtrak shall maintain a total minimum liability coverage for claims through insurance and self-insurance of at least \$200,000,000 per accident or incident.

**(d) Effect on Other Laws.—** This section shall not affect the damages that may be recovered under the Act of April 27, 1908 (45 U.S.C. 51 et seq.; popularly known as the “Federal Employers’ Liability Act”) or under any workers compensation Act.

**(e) Definition.—** For purposes of this section—

(1) the term “claim” means a claim made—

(A) against Amtrak, any high-speed railroad authority or operator, any commuter authority or operator, any rail carrier, or any State; or

(B) against an officer, employee, affiliate engaged in railroad operations, or agent, of Amtrak, any high-speed railroad authority or operator, any commuter authority or operator, any rail carrier, or any State;

(2) the term “punitive damages” means damages awarded against any person or entity to punish or deter such person or entity, or others, from engaging in similar behavior in the future; and

(3) the term “rail carrier” includes a person providing excursion, scenic, or museum train service, and an owner or operator of a privately owned rail passenger car.