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## California crash ties up RTD rail plans

Railroads want legal protection on FasTracks lines

By Kevin Flynn, Rocky Mountain News  
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The desperate and tragic act of one despondent person in Southern California changed the course of the metro area's planned rapid transit system.

In November 2004, when voters approved FasTracks, railroads serving the Denver area were generally open to talks about letting the Regional Transportation District use their tracks for commuter lines.

That changed less than three months later, when a commuter train smashed into an SUV parked on railroad tracks in Glendale, Calif.

What happened there caused railroads nationwide to ban light-rail trains from routes used by heavy freights.

In Colorado, one railroad also is demanding that it be shielded from lawsuits arising from accidents involving RTD trains using its tracks.

On Wednesday, the state House Judiciary Committee will consider a bill that would do just that. The legislature got involved because state law currently doesn't allow RTD to pay damages on behalf of railroads.

Several lawmakers already have made it clear they don't like the idea. But they also acknowledge that unless they go along, FasTracks would be stalled in the four corridors where RTD wants to use freight tracks.

### Transit tragedy

Nearly an hour before sunrise on Jan. 26, 2005, Juan Manuel Alvarez drove his Jeep Cherokee to the Chevy Chase Drive crossing of the Metrolink line in Glendale. A speeding commuter train soon would be coming inbound to downtown Los Angeles.

According to witnesses, the SUV driver entered the crossing, then but turned down the track bed itself, going a short distance in the rock ballast.

Investigators said Alvarez got out and doused the vehicle with gasoline. But instead of staying in the SUV as the train neared, Alvarez allegedly got out and left it on the track.

Metrolink conductor Thomas Ormiston saw the Jeep and hit the emergency brake. Witnesses said he then jumped from the control panel and darted toward the rear of the car, yelling at passengers to "Hang on."

Metrolink train No. 100 slammed into the Jeep, careening forward, shoving the Jeep aside and plowing toward a siding where a Union Pacific freight train was parked.

No. 100's cab slammed into the Union Pacific locomotive. Its rear swung out and dipped a passing commuter train bound for Burbank.

Eleven people, including Ormiston, were killed. One hundred eighty people were injured and damages totaled millions of dollars. More than 100 crash-related lawsuits were filed against Metrolink and the Los Angeles Metropolitan Transportation Authority.

Union Pacific initially was named as a co-defendant in one of the suits, but was later dropped from the case. Because Metrolink had purchased the Glendale tracks outright years before, it was determined there was no basis to sue the railroad.

Alvarez was arrested and is facing a death penalty trial on a charge of first-degree murder. A member of Alvarez's family told news agencies after the crash that Alvarez was troubled over a separation from his wife and had been suicidal.



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Investigators examine the wreckage of a commuter train crash on Jan. 26, 2005, in Glendale, Calif. An SUV parked on the tracks caused the crash, which killed 11 people.

## Railroads balk

RTD had long planned to use four existing railroad corridors for its FasTracks program, and the railroad owners had been cooperative about discussing an arrangement. Burlington Northern-Santa Fe controls the Gold Line and Northwest rail corridors. Union Pacific owns the East and North Metro corridors.

But fallout from the Glendale tragedy made railroads jittery.

The first ripple hit Denver in fall 2005. Union Pacific told RTD it would not permit light rail to operate along its Smith Road tracks, which RTD wanted for the train to Denver International Airport. RTD would have to use heavier commuter-rail cars, which would hold up better in a collision.

Then late last year, BNSF said no transit lines - light rail or commuter rail - could operate on its tracks unless RTD got the legislature to grant the railroad immunity from transit-related lawsuits.

Union Pacific has not taken a position, but it doesn't need to. It has a me-too agreement with RTD that says whatever the agency gives BNSF applies to Union Pacific, too.

The railroad argues that it would have zero exposure to such lawsuits if it simply doesn't allow transit in the first place.

The demand didn't sit well with Senate President Joan Fitz-Gerald, D-Coal Creek Canyon. She opposes granting the immunity and instead is sponsoring a bill that would limit railroads' liability in future accidents involving RTD operations.

"I literally had to gag to do it, but there were so few options on the table. RTD has to move along on some of these corridors, and this issue of immunity was not explored prior to that Glendale accident," she said.

Fitz-Gerald's bill shields railroads from liability for punitive, exemplary and outrageous-conduct damages in accidents that result from RTD operations.

The shield wouldn't apply to the operation and maintenance of the railroad's own equipment, said the bill's co-sponsor, Rep. Claire Levy, D-Boulder.

"It does not apply to Burlington Northern-Santa Fe's switcher throwing the wrong switch, or their engineer running down passengers with a freight train," Levy said. "It is completely reasonable to interpret that language to limit damages only when the railroad gets pulled into an action that involves the transit service."

The railroads are reluctant to comment on Senate Bill 219, which passed the Senate unanimously, with one absence.

BNSF spokesman Steven Forsberg said it's up to the legislature how best to address the issue.

For RTD, the most apparent added cost is an estimated \$2 million more per year to buy additional insurance coverage to handle the railroads' risks.

[flynnk@RockyMountainNews.com](mailto:flynnk@RockyMountainNews.com) or 303-954-5247

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