

**AGENDA ITEM 8-A**  
**ACTION ITEM**

**TO: CHAIRMAN KAUFFMAN AND THE VRE OPERATIONS BOARD**

**FROM: DALE ZEHNER**

**DATE: MAY 18, 2007**

**SUBJECT: AUTHORIZATION TO EXTEND AMENDED OPERATING/ACCESS AGREEMENT WITH CSXT**

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**RECOMMENDATION:**

The VRE Operations Board is being asked to recommend that the Commissions authorize the Chief Executive Officer to execute an extension of the existing Amended Operating/Access Agreement with CSXT to January 31, 2008.

**BACKGROUND:**

The VRE has an Operating/Access Agreement with CSXT related to VRE operations in the Fredericksburg to Washington corridor. That agreement, entered into in 1994, has been amended and extended several times, most recently this past January 2007, with an agreed upon extension to July 31, 2007. A further extension is being requested at this time to provide sufficient time to complete negotiation of a new agreement.

Since December 2005, numerous negotiation sessions have been held with CSXT representatives on the terms of a new, long-term agreement. Preliminary agreement was achieved in a number of areas to include:

- Term of the agreement
- Change in method of calculating the annual escalation
- Incentive agreement for improved on time performance
- Additional CSXT supervision in the VRE operating territory
- Approval of infrastructure improvements at VRE facilities

Progress has slowed, however, due to a failure to reach an agreement on the level of liability coverage. CSXT continues to insist on including a higher level of liability and terrorism coverage in the new agreement. Although we were able to cap commuter rail liability at the state level, the legislation does not provide protection from gross negligence claims or claims of third parties, i.e. nonpassengers. Therefore, CSXT and Norfolk Southern continue to press for higher liability insurance coverage. Currently, VRE has \$250 million in coverage. An extension of the current agreement is needed while this issue is resolved.

In the meantime, VRE has asked APTA for assistance in resolving the increasing demands of host freight railroads on commuter agencies for higher levels of liability coverage. APTA has initiated discussions with key House and Senate members requesting that the federal government assume a larger role. Topics being considered are modification of the current \$200 million federal cap to include coverage for third parties, establishing an insurance pool among commuter agencies to gain purchasing economies and to reduce premium payments, and requesting the federal government to cover liability exposure above a specific threshold similar to liability coverage in the nuclear power industry. A series of meetings are planned over the next three months to discuss the above issues with House and Senate staff, commuter agencies, risk managers, and legal experts.

**FISCAL IMPACT:**

Funding for the CSX track access fees have been included in the FY 2007/FY2008 budgets, including an escalation of 4% annually.

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**FROM: DALE ZEHNER**  
**DATE: MAY 18, 2007**  
**RE: AUTHORIZATION TO EXTEND AMENDED OPERATING/ACCESS AGREEMENT WITH CSXT**

**RESOLUTION**  
**8A-05-2007**  
**OF THE**  
**VIRGINIA RAILWAY EXPRESS**  
**OPERATIONS BOARD**

**WHEREAS**, the Commissions currently have an amended Operating/Access Agreement with CSXT relating to VRE operations in the Fredericksburg to Washington corridor, with said agreement extension ending on July 31, 2007; and,

**WHEREAS**, staff is currently engaged in ongoing discussions with CSXT concerning a new agreement and does not anticipate conclusion of these discussions prior to the expiration of the Amended Operating/Access Agreement; and,

**WHEREAS**, a proposal to extend the existing agreement to January 31, 2008, without any changes to the current agreement is expected from CSXT; and,

**WHEREAS**, the purpose of this extension is to allow time to negotiate and resolve the outstanding liability issues relating to a new agreement; and,

**WHEREAS**, necessary funding has been incorporated into the FY 2007/FY 2008 budgets to allow VRE to continue its operations over CSXT tracks via this contract extension.

**NOW, THEREFORE, BE IT RESOLVED THAT**, the VRE Operations Board recommends that the Commissions authorize the Chief Executive Officer to execute an extension of the existing Amended Operating/Access Agreement with CSXT to January 31, 2008.