Soy Transportation Coalition
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Legislation

House subcommittee holds hearing on surface transportation reauthorization. On March 29-30, the House Transportation and Infrastructure subcommittee on Highways and Transit conducted a two-day hearing on a pending surface transportation reauthorization, and solicited suggestions from the transportation community on how to streamline and consolidate programs, cut red tape to speed up the infrastructure project approval process, and create jobs through wise investment of limited resources.

During the course of the two-day hearing, the subcommittee heard from approximately 40 witnesses.

Over the past month, the committee has conducted a series of 16 field hearings and listening sessions around the country to gather similar input from states and local communities.

In opening the hearing, Highways and Transit Subcommittee Chairman John Duncan (R-TN) made the following statement:

"One of the key initiatives that the Subcommittee will focus on is streamlining the project delivery process. Time delays and inefficiencies in project delivery not only postpone needed improvements in our Nation's transportation infrastructure but also result in increases in the cost of projects.

"The subcommittee will also be looking at innovative financing. Bonding, loan programs and public private partnerships are just some of the innovative financing techniques that the subcommittee can utilize to leverage the nation's limited Highway Trust Fund dollars.

"Additionally, the subcommittee must take a hard look at the number of federal surface transportation programs. Today, there are more than 100 highway, transit and highway safety programs. We should consolidate duplicative federal programs to eliminate waste and eliminate programs that do not serve a national need."

Senate Committee approves STB nominee. On March 17, the Senate Commerce, Science, and Transportation Committee voted to approve Ann Begeman to join the Surface Transportation Board (STB). If approved by the full Senate, Begeman would replace Charles Nottingham, who stepped down on March 18.

The STB is the the regulatory agency created by the United States Congress to resolve railroad rate and service disputes and approve proposed railroad mergers. The two other members of the STB are Daniel Elliott (Chairman) and Francis Mulvey. For the previous two years, Begeman has been the Republican staff director for the Senate Commerce Committee.

DeMint introduces bill to reform Army Corps of Engineers. On March 14, Senator Jim DeMint (R-SC) introduced the Army Corps of Engineers Reform Act of 2011 to reform the way water resources projects are funded by eliminating the need for wasteful earmarks, focusing on national priorities, and giving states flexibility to meet critical needs. Senator Lindsey Graham (R-SC) is lead cosponsor of the bill.

The plan includes three major reforms: 1.) Eliminate the Corps' more than 10-year backlog of over 1,000 earmarks by increasing transparency and establishing a Water Resources Commission to better prioritize water resource projects performed by the Corps in the United States, 2.) Empower the Corps to undertake studies and construction projects based on national priority instead of politically-directed earmarks, 3.) Reform the administration of the Harbor Maintenance Trust Fund (HMTF) to allow states to choose, within the proper parameters, where to use the Harbor Maintenance taxes collected at their own ports.

"The era of earmarks is over and Congress must pass urgently needed reforms to ensure taxpayer dollars are spent on national priorities or not spent at all," said Senator DeMint. "For too long, Congress has relied on a corrupting system that funded projects based on politics instead of merit. Politicians have tried to justify their existence with politically-driven handouts to low-priority projects in their states, but the time of using taxpayer-dollars as a favor factory must end. This bill answers the call of the American people who have demanded that we change the way Washington works. We can fund water resource projects of national priority, stop wasteful earmarks and give states the flexibility they need to address critical needs at our country's busiest ports."

"I appreciate Jim introducing this legislation and look forward to working with him to reform our current port funding system," said Senator Graham. "This legislation will bring about reform that will allow decisions to be made locally and fees collected will be used for the most local benefit. Senator DeMint and I will push this legislation in the Senate in an expeditious manner."

Senators urge STB to examine rail acquisition premiums. In a recent letter to Surface Transportation Board (STB) Chairman Daniel Elliott, 10 U.S. Senators expressed concern about how the STB takes into account railroad acquisition premiums when determining a rail company's asset base. The letter specifically referenced Berkshire Hathaway's acquisition of BNSF Railway, which included a purchase price of $7.3 billion higher than the rail company's book value. The Senators contend these acquisition premiums could simply be passed onto rail customers.

The letter was signed by Sens. Al Franken (D-MN), Michael Enzi (R-WY), Tom Harkin (D-IA), Tim Johnson (D-SD), Mary Landrieu (D-LA), Amy Klobuchar (D-MN), Herb Kohl (D-WI), Mark Pryor (D-AR), Jon Tester (D-MT), and David Vitter (R-LA).

"Uncompetitive rail rates pose huge costs for Minnesota's grain elevators, and those costs get passed down directly to the farmers, whether they grow corn, soybeans, or wheat," said Senator Franken. "The independent Surface Transportation Board exists to protect businesses from exactly this type of anticompetitive practice and I don't think it's been doing its job."

Under current federal regulations, financial company Berkshire Hathaway, Inc. which acquired BNSF Railway in 2010 for an estimated $7 billion more than book value, may be able to pass along that "acquisition premium" cost to its customers. In their letter the senators expressed concern that these "captive customers" face a monopoly and need the federal board to protect them from these unfair fees.

By statute, in order for a shipper initiate a rate dispute, at least a 180 percent ratio of a railroad company's rates must by charged to its variable cost. Acquisition premiums increase a company's variable cost, meaning that higher rates are needed in order to meet the 180 percent minimum that allows a case to be considered by the STB.

House hearing examines regulatory overreach of railroads. During a March 17 hearing, House Railroads, Pipelines and Hazardous Materials Subcommittee Chairman Bill Shuster (R-PA) highlighted the need to rein in out-of-control federal regulations, citing Federal Railroad Administration's (FRA) implementation of rail safety provisions that exceeded the agency's congressional mandate.

A hearing of the subcommittee focused on the implementation of the Rail Safety Improvement Act of 2008 (RSIA). In accordance with that law, the Federal Railroad Administration (FRA) published a final rule in January to implement requirements for freight and passenger railroads to install positive train control (PTC) systems by December 31, 2015. However, there are concerns that FRA's rule exceeded the scope of its mandate.

RSIA moved forward in part due to a tragic train accident in Chatsworth, California on September 12, 2008 that resulted in 25 fatalities and 135 additional injuries. Ms. Mackenzie Souser from Camarillo, California, whose father was killed in the tragedy, testified before the subcommittee.

“My thoughts and prayers are with the victims of this accident, in particular Mackenzie, who is the daughter of Doyle Souser, who was killed in the crash,” said Shuster during his opening statement.

Shuster stressed the need to continue to ensure the safety of the nation's railways, as set forth in RSIA, but noted that regulatory overreach could threaten the industry and the economy for very little safety benefit.

The following continues Shuster's opening statement from the hearing:

“Throughout our government, I am deeply concerned with the regulatory overreach that cripples our economy, stifles job creation, and ties our nation up in red tape. I applaud President Obama for his recent comments on reducing the regulatory burden and for calling for a government wide review of burdensome regulations. However, it seems like every time I turn around, another agency is moving forward with new cumbersome and expensive rulemakings. There is a significant disconnect between the President's words and the action's of the Administration's agencies.

“Positive Train Control is an example of regulatory overreach… PTC describes technologies designed to automatically stop or slow a train before certain accidents caused by human error.

“FRA’s PTC rule has raised great concern and strong objections, specifically because the FRA regulation appears to have gone beyond the scope of the Rail Safety Improvement Act PTC mandate.

“FRA’s own cost-benefit analysis of its final rule implementing PTC states: ‘an immediate regulatory mandate for PTC could not be justified based upon normal cost-benefit principles relying on direct safety benefits.… The safety benefits of PTC systems were relatively small in comparison to the large capital and maintenance costs.’

“The FRA estimated a cost-benefit ratio of 15:1 for required installation of PTC systems when it issued its Notice of Proposed Rulemaking, and an even higher cost-benefit ration of 22:1 in its final rule. The 20-year costs are estimated to be $13.21 billion.

“Notably, the PTC rule has been targeted by the Obama Administration’s Regulatory Review task force.

“Another important issue is the base year used for PTC route determination. In its final rule, the FRA orders railroads to install PTC on rail lines that carried toxic-by-inhalation (TIH) materials in 2008. Yet nothing in the Rail Safety Improvements Act calls for using 2008 as the base year – only the 2015 implementation date is mentioned in the statute.

“Using 2008 as the base year makes little sense because TIH traffic patterns in 2015 will be vastly different than they were in 2008. If left unchanged, the 2008 baseline year will mean railroads may have to spend hundreds of millions of dollars to deploy PTC on thousands of miles of rail lines on which neither passengers nor TIH materials will be moving in 2015.

“Commuter railroads also have serious concerns regarding the PTC mandate, particularly given the dire financial straits that many of these public agencies face during our current economic recession. The additional $2 billion price tag for implementation of PTC on commuter rail systems is out of reach for almost all commuter rail agencies. Commuter rails argue that the PTC mandate could have the unintended consequence of degrading safety by requiring the deferral of needed state of good repair projects in order to fund initial phases of PTC.

“Finally, although short line and regional railroads are not explicitly required to install PTC equipment on their lines under the Rail Safety Improvement Act, the PTC mandate affects them in the case of interchanges of freight between short lines and Class 1’s that take places on Class 1 track. In many cases such interchanges will occur on sections of track that are PTC equipped. There has not been a cost analysis of the impact of PTC requirements on short line and regional railroads, but industry representatives estimate that as many as 140 smaller railroads will be required to upgrade their equipment to be PTC compatible.

“We simply must get out-of-control government regulations under control and today’s hearing is one step in that direction.”

Senators propose infrastructure bank. On March 15, Senators John Kerry (D-MA), Kay Bailey Hutchison (R-TX), and Mark R. Warner (D-VA), announced legislation to create an infrastructure bank that would help close America’s widening infrastructure funding gap.

The Building and Upgrading Infrastructure for Long-Term Development (BUILD) Act would establish an American Infrastructure Financing Authority (AIFA) – a kind of infrastructure bank – to complement our existing infrastructure funding.

KEY PROVISIONS OF THE BUILD ACT

Organization and Governance:

- While AIFA would be a government-owned entity, it would not be controlled by any federal agency and instead would operate independently. It would be led by a Board of Directors with seven voting members and a chief executive officer.
- No more than four voting members of the board could be from the same political party.
- Board members would have to be U.S. citizens with significant expertise either in the management of a relevant financial institution or in the financing, development, or operation of infrastructure projects.
- The Board and CEO would be appointed by the President, with one board member designated as chairperson. All candidates would have to be confirmed with the advice and consent of the Senate.
- The Majority Leader of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives would each recommend candidates.
- An Inspector General would oversee AIFA's operations, an independent auditor would review AIFA's books, and AIFA would submit an assessment of the risks of its portfolio, prepared by an independent source.
- The General Accounting Office would also conduct an evaluation of AIFA and submit a report to Congress no later than five years after the date of enactment.

Project Eligibility:

- Eligible projects would include transportation infrastructure; water infrastructure; and energy infrastructure.
- In general, projects would have to be at least $100 million in size and be of national or regional significance.
- Projects would have a clear public benefit, meet rigorous economic, technical and environmental standards, and be backed by a dedicated revenue stream.
- Geographic, sector, and size considerations would also be weighed.

Project Selection:

- The CEO would be responsible, in consultation with professional staff, for reviewing and preparing the eligible project applications.
- The Board would be responsible for the ultimate approval or disapproval of the eligible projects that are submitted to the Board by the Chief Executive Officer and staff.

Rural Protections:

- Rural projects would only need to be $25 million in size.
- Five percent of the initial funding of AIFA would be dedicated to helping rural projects.
- AIFA would include an Office of Rural Assistance to provide technical assistance regarding the developing and financing of rural projects.

- Projects would still have to have a clear public benefit, meet rigorous economic, technical and environmental standards, and be backed by a dedicated revenue stream.

Financing:

- AIFA would issue loan and loan guarantees to eligible projects.
- Loans issued by AIFA would use approximately the same interest rate as similar-length United States Treasury securities and would have a maturity of no longer than 35 years.
- Loans and loan guarantees could be subject to additional fees or interest rate premiums based largely on the costs of the loan to the Federal government, as determined by AIFA in consultation with the Office of Management and Budget.
- AIFA would finance no more than 50 percent of the total costs of the project, in order to avoid crowding out private capital.

Self-sufficiency of AIFA:

- AIFA is set up to be self-sufficient after the first few years.
- To achieve self-sufficiency, the CEO of AIFA would establish fees for loans and loan guarantees. These fees could be in the form of application fees or transaction fees, and could include an interest rate premium associated with the loan or loan guarantee.
- However, AIFA would receive an initial funding of $10 billion, which would earn interest. This initial funding would be used both to offset the cost of the loans to the Federal government and to cover administrative costs.
- Funding under the Act would be subject to the Federal Credit Reform Act, except that it would be exempted from the requirement that appropriations are needed for subsequent loans and loan guarantees.

U.S. Chamber of Commerce President and CEO Thomas J. Donohue and AFL-CIO President Richard Trumka both endorsed the proposal.

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