



**June 25, 2010**

## **Legislation**

**Oberstar Seeks Even Playing Field in Rail Bill.** Congressman James Oberstar (D-MN), chairman of the House Transportation and Infrastructure Committee, said a pending rail regulatory overhaul should ensure the procedures for shippers challenging rail rates are more accessible and balanced.

Speaking recently at the National Industrial Transportation League policy forum in Arlington, Virginia, Oberstar said any legislation reauthorizing the Surface Transportation Board (STB) should no longer obligate rail customers “to create a virtual railroad” in a major rate challenge, when alleging that railroads are charging excessive rates.

“It is absolutely irrational for the Surface Transportation Board to require a petitioner on a rate issue to create a virtual railroad,” Oberstar said. “If you as a grain shipper, coal shipper, coal consumer are so damn good at running a railroad, you’d run it yourself instead of creating it on paper or in a computer. That’s one of many anomalies here that we need to eliminate. We’re working on doing that. I’m very optimistic about getting this done before the end of this session.”

Elimination of that so-called standalone railroad calculation model is not in Surface Transportation Board Reauthorization Act (S.2889) – a bill passed in December 2009 by the Senate Commerce, Science and Transportation Committee. Rather, it would simply direct the STB to study these procedures, which can be costly and time-consuming to shippers.

Senator Jay Rockefeller (D-W.Va.), chairman of the Senate Commerce Committee and leading proponent of S.2889, told rail customers in April he remains committed to passing the bill in 2010, and that he and Oberstar were developing a strategy to accomplish it.

According to Oberstar, the plan is for the Senate to move initially on the legislation. Shortly thereafter, the House will introduce an identical bill. Oberstar says, “They (Senate) move it; we’ll introduce ours, and won’t need a (House-Senate) conference” to iron out any difference because they would be have the same language. Instead, Oberstar continued, “we’ll send it right to the White House, where it will be signed” into law by President Obama.

Railroads are sharply opposed to S.2889. Industry executives fear that yet-to-be added language could strip them of a limited immunity they now enjoy from some antitrust regulation. They are also concerned rules allowing shippers greater access to a competing railroad will impact their profitability.

Rail officials have been holding closed talks with Commerce Committee staff to alter some provisions. It remains unclear when the bill will be considered by the full Senate.

## **Department of Transportation (DOT)**

**USDOT, HUD launch effort to promote 'sustainable communities'**. On June 22, U.S. Transportation Secretary Ray LaHood and U.S. Housing and Urban Development Secretary Shaun Donovan announced a collaborative effort designed to help foster planning for more livable, sustainable communities – places where transportation, housing and commercial development investments are coordinated to better serve the people living in those communities.

USDOT and HUD will jointly award up to \$75 million in funding — \$35 million in Transportation Investment Generating Economic Recovery II (TIGER II) planning grants and \$40 million in Sustainable Community Challenge Grants — for localized planning activities.

The TIGER II grants could be used to plan, prepare or design eligible surface transportation projects, such as transit, railway, highway, bridge, port or bicycle and pedestrian facilities.

HUD's sustainable community grants will help fund urban and community planning projects aimed at fostering reform and "reducing barriers to achieving affordable, economically vital and sustainable communities," HUD officials said in a prepared statement.

Grant applications are due Aug. 23.

## **Gulf Oil Spill**

**National Incident Command: Jones Act no obstacle to Gulf cleanup.** The U.S. government's National Incident Command (NIC) in charge of the oil cleanup effort in the Gulf of Mexico has circulated a fact sheet stating that U.S.-flag vessel rules for operating in coastal waters have not prevented it from accepting assistance and equipment from other countries.

"Currently 15 foreign-flagged vessels are involved in the largest response to an oil spill in U.S. history," NIC said. "No Jones Act waivers have been granted because none of the vessels have required such a waiver to conduct their operations as part of the response in the Gulf of Mexico."

While the agency claims to see no need to waive the Jones Act, the NIC is making preparations "to process necessary waivers as quickly as possible to allow vital spill response activities being undertaken by foreign-flagged vessels to continue without delay should that be necessary."

The Merchant Marine Act of 1920 (“the Jones Act”) is a statute sponsored by U.S. Senator Wesley Jones (WA) that restricts the carriage of goods or passengers between U.S. ports to U.S. built and flagged ships. In addition, at least 75 percent of crewmembers must be U.S. citizens.

The Jones Act only applies within three miles of shore. As a result, foreign oil skimmers along with American skimmers, are already at work beyond three miles. The *Deepwater Horizon* spill is occurring 50 miles from shore, and the vast majority of oil is beyond three miles.

“In no case has the Federal On Scene Coordinator (FOSC) or Unified Area Command (UAC) declined to request assistance or accept offers of assistance of foreign vessels that meet an operational need because the Jones Act was implicated,” NIC said.

The NIC fact sheet can be accessed at:

[http://www.deepwaterhorizonresponse.com/posted/2931/MARAD\\_revised\\_Jones\\_Act\\_Fact\\_Sheet.670991.pdf](http://www.deepwaterhorizonresponse.com/posted/2931/MARAD_revised_Jones_Act_Fact_Sheet.670991.pdf)