



## Summary

# Surface Transportation Board Reauthorization Act of 2009 (S.2889)

On Thursday, December 17, the Senate Commerce, Science, and Transportation Committee held an executive session and favorably reported out S.2889, “The Surface Transportation Board (STB) Reauthorization Act of 2009.” The bill, introduced by Committee Chairman Jay Rockefeller (D-WV) and co-sponsored by Ranking Member Kay Bailey Hutchison (R-TX), Senator Frank Lautenberg (D-NJ), Senator John Thune (R-SD), and Senator Byron Dorgan (D-ND), seeks to increase rail industry competition, improve federal oversight, and enhance rail customer access to regulatory relief.

The full text of S.2889 can be accessed at <http://commerce.senate.gov>.

### **What is the Surface Transportation Board and what are its current responsibilities?**

The Surface Transportation Board is the regulatory agency created in 1995 by the United States Congress to resolve railroad rate and service disputes and review proposed railroad mergers. The STB is administratively affiliated with the U.S. Department of Transportation and is comprised of three commissioners – each nominated by the president and confirmed by the Senate for a five year term of office. The STB is the successor agency to the Interstate Commerce Commission (ICC).

### **Will S.2889 be beneficial to the transportation of soybeans and other agricultural products?**

S.2889 should be viewed by agricultural shippers as a step in the right direction. Chairman Rockefeller, Ranking Member Hutchison, and their colleagues should be commended for their bipartisan efforts to create legislation that provides greater balance between the interests of railroads and rail customers. If the bill was too aggressive in imposing new regulations on the rail industry, broad Senate support would not be possible. On the other hand, a bill absent significant reform measures would not have been acceptable to the broader shipping community.

Overall, S.2889 provides for a more proactive, effective Surface Transportation Board, a more accessible process for resolving rail rate and service disputes, and greater transparency within the rail industry.

Since our nation's transportation challenges are more the result of a lack of investment, rather than a lack of regulation, Chairman Rockefeller and his colleagues were prudent to ensure the current environment remains conducive to continued investment by the rail industry.

## **What are the key provisions of the legislation?**

### Restructuring the Surface Transportation Board

- The STB will increase from three to five commissioners. Two members must possess private sector “professional or business experience (including agriculture or other rail customers).”
- S.2889 directs the STB to be a proactive agency, rather than a reactive or adjudicatory organization. This would permit the board to initiate investigations into rail practices and procedures rather than having to wait for a formal complaint from a shipper.
- Fees for filing a complaint with the STB would be limited to \$350 – the same filing fee in U.S. District Courts.
- The STB would be removed from under the jurisdiction of the U.S. Department of Transportation and would become an independent federal agency – similar to the structure that exists for the Commodity Futures Trading Commission.
- The STB would be directed to create a new position – rail customer advocate – charged with investigating and assisting with rail rate and service disputes.

### Redefining National Rail Transportation Policy

- Promoting competition within the rail industry would be included among the Surface Transportation Board's overall goals. In the absence of competition, the STB is directed to ensure rail rates are reasonable. This is balanced by another STB goal to “ensure that rail carriers can earn adequate revenues to provide and sustain consistent, efficient, and reliable transportation services and to maintain and expand rail infrastructure, equipment, and technology.”

### Rail Rate Disputes

- Medium-sized rate cases – under the STB's “Simplified Stand Alone Cost” procedure – must be completed within 1 ½ years vs. the current 3 years. The maximum eligible reward for such rate disputes would be increased from \$5 million to \$10 million.
- The maximum eligible reward for small rate cases – under the STB's “Three-Benchmark” procedure – would be increased from \$1 million to \$1.5 million.

- Within one year of enactment, the bill would direct the STB to establish a binding arbitration process to resolve disputes over rates, common-carrier obligations, and service concerns. The maximum eligible reward under the arbitration system would be \$250,000 per year for a maximum of 2 years.

#### Paper Barriers

- Shippers would have greater access to challenging interchange commitments (“paper barriers”) unless such commitments are “reasonable and in the public interest.” Paper barriers restrict the ability of a purchasing or leasing railroad to interchange traffic with a railroad other than the selling or landlord railroad.

#### Bottleneck Rates

- On many occasions, only one railroad (the “bottleneck carrier”) serves either an origin or a destination of a potential movement (the “bottleneck segment”). However, another railroad may serve a portion of that movement between origin and destination. Currently, shippers are not permitted to request a separate rate for the bottleneck segment. S.2889 would require railroads to quote so called “bottleneck rates” provided that it does not produce any economic hardship to the railroad.

#### Reciprocal Switching and Terminal Access

- The STB would be authorized to require railroads to provide access to its terminals to a competing railroad provided that: 1.) it would not significantly adversely affect the operations of the terminal, 2.) it would not negatively affect the railroad’s network efficiency, 3.) it would not negatively impact service to other rail customers, and 4.) it is in the public interest.

#### Surface Transportation Board Studies

- The STB will be directed to perform studies of the following issues: Uniform Rail Costing System, replacement cost accounting for railroads, performance metrics, and rail car interchanges.

### **What are the next steps in the legislative process for S.2889?**

The bill will likely be modified as it is considered by the full Senate in 2010. It is possible language could be inserted that would amend the rail industry’s limited antitrust exemptions. It is expected that the House Transportation and Infrastructure committee, chaired by Congressman James Oberstar (D-MN), will produce a version of rail reform legislation in 2010. S.2889, if passed by the full Senate in 2010, would ultimately need to be reconciled with any version considered and passed by the House of Representatives.

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