



# U.S. Senate Committee on Commerce, Science, and Transportation

**Senator John D. (Jay) Rockefeller IV, Chairman**

***For Immediate Release***

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## **The Surface Transportation Board Reauthorization Act of 2009**

The Surface Transportation Board (STB) Reauthorization Act of 2009 would comprehensively update and improve the economic oversight of the railroad industry and address longstanding competitive imbalances for shippers by increasing rail competition, strengthening federal oversight, and improving shippers' access to regulatory relief.

### **MODERNIZING RAIL POLICY – STRENGTH THROUGH COMPETITION**

On December 16<sup>th</sup>, Senators Rockefeller (D-WV), Hutchison (R-TX), Lautenberg (D-NJ), Thune (R-SD), and Dorgan (D-ND) introduced S. 2889, the “STB Reauthorization Act of 2009” (STB Act). This bipartisan legislation is the first comprehensive reauthorization of the STB since it was established under the ICC Termination Act of 1995 and the first significant reform of rail competition policy since the Staggers Act of 1980.

The STB is tasked with economic oversight of the railroad industry and implementation of the Staggers Act, which was enacted at a time when the railroads were on the verge of bankruptcy and included many policies intended to help return them to financial health. Today, the railroad industry is drastically different. The major railroads have consolidated, returned to profitability, and regained market share from other modes. However, current economic rail oversight has not kept pace with these changes and captive shippers – those with no other transportation option – face fewer competitive choices and regulatory protections.

The bipartisan STB Reauthorization Act of 2009 is carefully crafted to address rail-shipper imbalances and strengthen the railroad industry.

### **INCREASING RAIL COMPETITION**

- **Requiring major railroads to quote “bottleneck rates.”** The STB Act will require major railroads to quote “bottleneck rates” and direct the STB to establish a new rate reasonableness process for bottleneck rates based on an efficient component pricing methodology and other factors. Some captive shippers have more than one railroad that serves them at their origin and/or destination points, but have at least one portion of a rail movement for which no alternative rail route is available. Requiring a railroad to quote a rate for this bottleneck segment will give captive shippers access to a second railroad and more competitive rates and service.
- **Setting standards for “reciprocal switching” and “terminal access” rates.** The STB Act will overturn a mid-1980s ICC decision called “Midtec Paper” that governs mandated reciprocal switching and

terminal access (where one railroad operates on the facilities of another). Since Midtec, captive shippers have been stifled from bringing cases to resolve reciprocal switching and terminal access concerns because they are required to prove that a railroad is engaged in anti-competitive conduct. The STB Act will combine the requirements for mandated reciprocal switching (in the Act referred to as “terminal switching”) with those for quoting bottleneck rates. It also will clarify when the Board should require terminal access and establish the appropriate pricing mechanism based on the principles of bottleneck rates.

- **Allowing parties to challenge existing and future “paper barriers.”** The STB Act will heighten standards for the review of paper barriers and authorize the Board to address any that are found unlawful. A paper barrier is a contractual agreement entered into between two railroads, usually when a Class I railroad either sells or leases long term some of its track to other railroads (typically a short-line or regional railroad). Such agreements can impede competition by placing prohibitive penalties on the short-line or regional railroad if it interchanges traffic with another railroad.
- **Increasing STB scrutiny of future railroad mergers for competitive, service, and environmental effects.** The STB Act will require mergers and acquisitions between Class I and Class II rail carriers to receive the same level of scrutiny that transactions between Class I carriers currently receive. Because there are now only seven Class I railroads (BNSF, Canadian National, Canadian Pacific, CSX, Kansas City Southern, Norfolk Southern, and Union Pacific), their transactions with Class II short-line and regional carriers need additional scrutiny. The STB Act will authorize a higher level of review of these transactions and take into account potential effects on public health, safety, environment, and intercity and passenger rail.

#### **STRENGTHENING STB AUTHORITY TO OVERSEE THE RAILROAD INDUSTRY**

- **Updating the Rail Transportation Policy.** The STB Act will update the federal “rail transportation policy” (RTP) – unchanged since 1980, when the railroads were on the verge of bankruptcy – to reflect the current state of the industry. The new policy will recognize the need to protect shippers in the absence of effective competition and prohibit predatory pricing and practices, amongst other elements.
- **Giving the Board independent investigative authority.** Today, the STB may only initiate an investigation upon formal complaint. The STB Act will allow the STB to investigate rail practices on its own initiative, rather than only in reaction to a formal complaint. The STB Act will make the STB a fully independent agency, removing it from the jurisdiction of the Department of Transportation (DOT) and dedicating resources that previously went to the DOT back to the STB.
- **Directing the STB Office of Public Assistance, Governmental Affairs, and Compliance to assist shippers with complaints regarding railroad service and rates.** The STB Act will authorize the STB Office of Public Assistance, Governmental Affairs, and Compliance to mediate rail disputes, monitor rail carrier operations, ensure legal compliance, and facilitate communication among stakeholders.

- **Creating a Rail Customer Advocate and STB Ombudsman to help rail customers resolve rail service and rate issues.** The STB Act will create a new position at the Board, a Rail Customer Advocate, to serve as a resource for shippers, investigate shipper complaints, participate in Board proceedings, and review rail cost and efficiency data. The STB will also be permitted to deploy agency staff as ombudsmen to represent the Board in regional or local matters.
- **Expanding the size of the Board.** The STB Act will increase the membership of the Board from 3 to 5 members to help ensure a broader representation of interests and expertise in Board decision-making.

#### **GIVING SHIPPERS REAL AND BETTER ACCESS TO THE STB**

- **Allowing certain complaints to be resolved through binding arbitration.** The STB Act will allow the Board to direct a rail rate, practice, or common carrier service dispute valued at up to \$250,000 per year for up to two years to be decided by an arbitrator. The STB's existing arbitration process – which has never been used – will be improved and made more accessible by allowing a shipper to apply to the Board to initiate binding arbitration. Such binding arbitration will be subject to widely-accepted U.S. arbitration practices and will take into account differential pricing and a railroad's ability to earn adequate revenues.
- **Opening the STB's simplified rate case process to more shippers and larger cases.** The STB Act will expand access to expedited review for complaints regarding the reasonableness of rates charged by a railroad with market dominance. Under the new structure, rate complaints valued at up to \$1.5 million can be contested under the "three-benchmark test" (now reserved for disputes of \$1 million or less) and rate complaints valued at up to \$10 million can be contested under the simplified "stand-alone cost" test (now reserved for disputes of \$5 million or less). The Board will be authorized to adjust figures as needed. Overall, this improvement will increase to 82 percent the amount of regulated traffic that is eligible for expedited relief, making it cheaper, easier, and faster for shippers to contest rail rates.
- **Making clear that service must be reasonable.** The STB Act will send a clear message that railroads must provide not only a reasonable *rate* but also reasonable *service* by requiring railroads to provide shippers with a range of service expectations for every common carrier rate.
- **Requiring the STB to review current class exemptions for unregulated railroad traffic.** The STB Act will help improve access to the Board for shippers currently shut out altogether by requiring it to re-examine all existing class exemptions. There are currently a number of active exemptions that need to be reviewed in light of changes in the way commodities are shipped to determine if they are still appropriate. The bill will also improve the standards for granting and revoking exemptions.
- **Setting lower fees for filing complaints at the STB.** To resolve concerns about the high-cost of filing cases at the STB, the STB Act will limit the filing fees of all complaints to the same level as filing before a federal District Court, which is \$350.