

106TH CONGRESS
1ST SESSION

H. R. 3163

To authorize appropriations for the Surface Transportation Board for fiscal years 2000 and 2001, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 28, 1999

Mr. SHUSTER (for himself, Mr. OBERSTAR, Mr. PETRI, and Mr. RAHALL) (all by request) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To authorize appropriations for the Surface Transportation Board for fiscal years 2000 and 2001, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Surface Transpor-
5 tation Board Reauthorization Act of 1999”.

6 **SEC. 2. AUTHORIZATION OF APPROPRIATIONS.**

7 The text of section 705 of title 49, United States
8 Code, is amended to read as follows:

1 “(a) AUTHORIZATIONS.—There are authorized to be
2 appropriated for the activities of the Board such sums as
3 may be necessary for fiscal year 2001.

4 “(b) USER FEES AND CHARGES.—Beginning in fiscal
5 year 2000, the Board is authorized to assess and collect
6 fees and annual charges in each fiscal year in amounts
7 equal to all of the costs incurred by the Board in that
8 fiscal year. Fees and charges assessed by the Board shall
9 be computed on the basis of methods that the Board deter-
10 mines, by rule, to be fair and equitable. Fees authorized
11 under this section shall be collected and be available for
12 obligation only to the extent and in the amount provided
13 for in advance in appropriation acts. Such fees are author-
14 ized to be appropriated to remain available until ex-
15 pended.”.

16 **SEC. 3. SMALL SHIPMENTS.**

17 Section 10701(d) of title 49, United States Code, is
18 amended by adding a new paragraph (4) at the end to
19 read as follows:

20 “(4) The simplified and expedited method for deter-
21 mining the rate reasonableness in the non-coal rate guide-
22 lines proceeding developed by the Board under paragraph
23 (3) shall be used by the Board in considering a challenged
24 rate if the shipper challenging the rate has incurred ship-
25 ping costs of not more than \$500,000 under that rate for

1 the 12-month period immediately preceding the date on
 2 which a rate challenge is filed with the Board. The Board
 3 shall also use the simplified procedure in any other rate
 4 challenge as it deems appropriate.”.

5 **SEC. 4. REVENUE ADEQUACY.**

6 (a) Section 10101(3) of title 49, United States Code,
 7 is amended by striking “, as determined by the Board”.

8 (b) Section 10701(d)(2) of title 49, United States
 9 Code, is amended by striking “recognizing the policy” and
 10 all that follows through “title.” and inserting “recognizing
 11 the policy that rail carriers shall earn adequate revenues.”.

12 (c) Section 10704(a) of title 49, United States Code,
 13 is amended by—

14 (1) striking paragraphs (2) and (3); and

15 (2) redesignating subsection (a)(1) as sub-
 16 section (a).

17 **SEC. 5. RATE AGREEMENTS.**

18 Title 49, United States Code, is amended by striking
 19 section 10706, and striking the corresponding item in the
 20 analysis of chapter 107: *Provided*, however, That agree-
 21 ments approved by the Board under section 10706 that
 22 are currently in effect shall terminate on the termination
 23 date originally established by the Board or 2 years after
 24 the date of enactment of this section, whichever occurs
 25 first.

1 **SEC. 6. RECIPROCAL SWITCHING.**

2 Section 11102(c)(1) of title 49, United States Code,
3 is amended—

4 (1) by striking “may” in the first sentence and
5 inserting “shall”;

6 (2) by inserting after the first sentence the fol-
7 lowing: “In making this determination, the Board
8 shall not require evidence of anticompetitive conduct
9 by the rail carrier from which access is sought.”;
10 and

11 (3) by striking “may establish such conditions
12 and compensation” in the last sentence and insert-
13 ing “shall, through an arbitration process, establish
14 reasonable conditions and compensation which will
15 facilitate the use of such switching agreements”.

16 **SEC. 7. SERVICE ORDERS.**

17 Section 11123(c)(1) of title 49, United States Code,
18 is amended by striking “240” and inserting “335”.

19 **SEC. 8. MERGER AUTHORITY.**

20 (a) Section 11321 is amended by—

21 (1) striking subsection (a) and inserting a new
22 subsection (a) to read as follows:

23 “(a) The authority of the Board under this sub-
24 chapter is exclusive. A rail carrier or corporation partici-
25 pating in or resulting from a transaction approved by, or
26 exempted by, the Board under this subchapter may carry

1 out the transaction, own, and operate property, and exer-
2 cise control of franchises acquired through the transaction
3 without the approval of a State authority. Except as other-
4 wise provided, a rail carrier, corporation, or person partici-
5 pating in that approved or exempted transaction is exempt
6 from all other laws as necessary to let that rail carrier,
7 corporation, or person carry out the transaction, hold,
8 maintain, and operate property, and exercise control or
9 franchises acquired through the transaction. This section
10 does not, however, exempt a transaction from Federal
11 labor, safety, health, and antitrust laws, nor from State
12 and municipal laws that are not otherwise preempted
13 under Federal law and that deal with labor, employment,
14 employee safety, or railroad safety. If an exemption from
15 any other laws is necessary it may be no broader than
16 required to enable the transaction to be effected. However,
17 if a purchase and sale, a lease, or a corporate consolidation
18 or merger is involved in the transaction, the carrier or cor-
19 poration may carry out the transaction only with the as-
20 sent of a majority, or the number required under applica-
21 ble State law, of the votes of the holders of the capital
22 stock of that corporation entitled to vote. The vote must
23 occur at a regular meeting, or special meeting called for
24 that purpose, of those stockholders and the notice of the
25 meeting must indicate its purpose.”; and

1 (2) adding a new subsection (c) to read as fol-
2 lows:

3 “(c) The Board shall not, under any circumstances,
4 have the authority under this subchapter to break, modify,
5 alter, override or abrogate, in whole or in part, any or
6 all provisions in any collective bargaining agreements or
7 implementing agreements made between the rail carrier
8 and authorized representatives of its employees under the
9 Railway Labor Act or to provide such authority to any
10 other person, carrier, or corporation.”.

11 (b) Section 11322(a) of title 49, United States Code,
12 is amended by striking “earnings—” and all that follows
13 through “competition.” and inserting “earnings will be in
14 the interest of better service to the public or of economy
15 of operation.”.

16 (c) Section 11324 of title 49, United States Code,
17 is amended—

18 (1) in subsection (b) by—

19 (A) striking “transaction;” and inserting
20 “transaction; and” in paragraph (3);

21 (B) striking “; and” in paragraph (4), and
22 inserting a period; and

23 (C) striking paragraph (5);

24 (2) in subsection (c) by striking the third sen-
25 tence;

1 (3) by striking subsection (d); and

2 (4) by redesignating subsections (e) and (f) as
3 subsections (d) and (e).

4 **SEC. 9. EMPLOYEE IMPLEMENTING AGREEMENTS IN RAIL-**
5 **ROAD CONSOLIDATIONS.**

6 Section 11326 of title 49, United States Code, is
7 amended by striking subsection (a) and inserting a new
8 subsection (a) to read as follows:

9 “(a)(1) Except as otherwise provided in this section,
10 when approval is sought for a transaction under sections
11 11324 and 11325 of this title, the Board shall require the
12 rail carrier to provide a fair arrangement at least as pro-
13 tective of the interests of employees who are affected by
14 the transaction as the terms imposed under section 11347
15 of this title as in effect before December 29, 1995. The
16 arrangement and the order approving the transaction
17 must require that—

18 “(A) the employees of the affected rail carrier
19 will not be in a worse position related to their em-
20 ployment as a result of the transaction during the
21 6 years following the date the employees are ad-
22 versely affected by an action taken by the affected
23 rail carrier as a result of the transaction (or if an
24 employee was employed for a lesser period of time

1 by the rail carrier before the action became effective,
2 for that lesser period); and

3 “(B) the rail carrier and the authorized rep-
4 resentatives of the rail carrier’s employees shall ne-
5 gotiate under the Railway Labor Act any arrange-
6 ment regarding the selection of forces or assignment
7 of employees caused by the Board’s order of ap-
8 proval under section 11324 or 11325 of this sub-
9 chapter. Arbitration of the proposed arrangement
10 may only occur if both parties agree to that process.
11 The Board shall not intervene in such negotiations
12 or arbitration unless requested to do so by both par-
13 ties. The Board shall not, under any circumstances,
14 have the authority under this subchapter to break,
15 modify, alter, override, or abrogate, in whole or in
16 part, any or all provisions in any collective bar-
17 gaining agreements or implementing agreements
18 made between the rail carrier and authorized rep-
19 resentatives of its employees under the Railway
20 Labor Act or to provide such authority to any other
21 person, carrier, or corporation.

22 “(2) The provisions of this subsection shall be appli-
23 cable, effective on the date of enactment of the Surface
24 Transportation Board Reauthorization Act of 1999, to
25 any transactions proposed by rail carriers under condi-

1 tions previously imposed by the former Interstate Com-
 2 merce Commission or the Surface Transportation Board
 3 under this section or former section 11347 of this title
 4 or 5(2)(f) of the Interstate Commerce Act.”.

5 **SEC. 10. COLLECTIVE MOTOR CARRIER ACTIVITIES.**

6 (a) Title 49, United States Code, is amended by strik-
 7 ing section 13703, and striking the corresponding item in
 8 the analysis of chapter 137.

9 (b) Section 13907 of title 49, United States Code,
 10 is amended by striking subsection (d) and redesignating
 11 subsection (e) as subsection (d).

12 (c) Title 49, United States Code, is amended by strik-
 13 ing section 14302, and striking the corresponding item in
 14 the analysis of chapter 143.

15 (d) The Federal Trade Commission Act (15 U.S.C.
 16 41 et seq.) is amended—

17 (1) in section 5(a)(2) by striking “common car-
 18 riers subject to the Acts to regulate commerce” and
 19 inserting “common carriers subject to the Commu-
 20 nications Act of 1934 (47 U.S.C. 609 et seq.) or
 21 Acts amendatory thereof or supplementary thereof”;
 22 and

23 (2) in section 6 by striking “common carriers
 24 subject to the Act to regulate commerce” each place

1 it appears and inserting “common carriers described
2 in section 5(a)(2)”.

3 **SEC. 11. MOTOR CARRIER CONSOLIDATIONS AND MERG-**
4 **ERS.**

5 (a) Section 14303(f) of title 49, United States Code,
6 is amended by striking from the second sentence “the
7 antitrust laws and from all other law, including State and
8 municipal laws,” and inserting in lieu thereof “State and
9 municipal laws, and from all other law except the antitrust
10 laws, as defined in the first section of the Clayton Act
11 (15 U.S.C. 12)”.

12 (b) The Clayton Act (15 U.S.C. 12 et seq.) is
13 amended—

14 (1) in section 7—

15 (A) in the first and second paragraphs, by
16 striking “or” immediately after “stock” and in-
17 serting a comma, and by striking “and no per-
18 son subject to the jurisdiction of the Federal
19 Trade Commission shall acquire the whole or
20 any part of the” and inserting “or”;

21 (B) by striking the fourth paragraph; and

22 (C) in the final paragraph, by striking
23 “Surface Transportation Board,”;

24 (2) in section 11(a) by—

1 (A) striking “in the Surface Transpor-
 2 tation Board where applicable to common car-
 3 riers subject to jurisdiction under subtitle IV of
 4 title 49, United States Code;” and

5 (B) striking “, Board,” in the caption; and

6 (3) in section 16 by striking “issue: *Provided*,
 7 That” and all that follows through “title 49, United
 8 States Code.” and inserting “issue.”.

9 **SEC. 12. STUDY OF RAIL INDUSTRY SINCE THE STAGGERS**
 10 **ACT.**

11 (a) STUDY.—(1) There is authorized to be appro-
 12 priated to the Secretary of Transportation such sums as
 13 may be necessary for fiscal years 2000 and 2001 to con-
 14 duct a comprehensive analysis to determine—

15 (A) the changes in the rail industry cost struc-
 16 ture and related financial condition since enactment
 17 of the Staggers Rail Act of 1980;

18 (B) the effectiveness of the regulatory structure
 19 that has governed the industry since enactment of
 20 the ICC Termination Act of 1995; and

21 (C) the potential impact on railroad rates, oper-
 22 ation, financial condition, and efficiency of service
 23 delivery under various competitive access scenarios.

24 (2) The analysis shall assess—

1 (A) the scope of the changes in the rail indus-
2 try, including the effect of mergers and development
3 of regional and short line railroads on competitive
4 access and rates;

5 (B) service to small and captive shippers;

6 (C) the financial health of the industry;

7 (D) the adequacy of capital investment;

8 (E) the location of system capacity constraints;

9 (F) the impact of other economic changes, such
10 as electric utility deregulation;

11 (G) the adequacy and appropriateness of the
12 existing regulatory structure and procedures, with
13 particular emphasis on identifying additional alter-
14 nate, less costly means to seek regulatory relief or
15 solve disputes;

16 (H) the potential impact on railroads and ship-
17 pers that may result from imposing various competi-
18 tive access proposals; and

19 (I) the Canadian experience with reciprocal
20 switching.

21 (b) CONSULTATION.—In conducting the study under
22 subsection (a), the Secretary shall consult with the Sur-
23 face Transportation Board, the Department of Agri-
24 culture, the Department of Justice, the Council of Eco-
25 nomic Advisors, and the National Economic Council.

1 (c) REPORT.—The Secretary shall complete the study
 2 required by subsection (a) and report the findings of the
 3 study to Congress within 1 year of the date of enactment
 4 of this section.

5 **SEC. 13. TITLE 49 TECHNICAL CORRECTIONS.**

6 (a) REFERENCE TO TITLE 49 U.S.C.—Except as
 7 otherwise provided, a reference in this section to an
 8 amendment to, or a repeal of, a section or other provision
 9 is deemed to be a reference to a section or other provision
 10 of title 49, United States Code.

11 (b) REPEAL OF 49 U.S.C. 307.—(1) Section 307
 12 (Safety information and intervention in Interstate Com-
 13 merce Commission proceedings), is repealed.

14 (2) Strike item 307 in the analysis of chapter 3.

15 (c) CORRECTION OF OBSOLETE REFERENCE TO
 16 ICC.—Subsections (d)(1)(C) and (e) of section 333 (Re-
 17 sponsibility for rail transportation unification and coordi-
 18 nation projects) are amended by striking “Interstate Com-
 19 merce Commission” and “Commission” each place the
 20 words appear and inserting “Surface Transportation
 21 Board” and “Board”, respectively.

22 (d) CORRECTION OF CHAPTER 53 ANALYSIS.—The
 23 analysis for chapter 53 is amended by striking items 5310
 24 and 5311 and inserting the following:

“5310. Formula grants and loans for special needs of elderly individuals and
 individuals with disabilities.

“5311. Formula grants for other than urbanized areas.”.

1 (e) CONFORMING SINGULAR AND PLURAL FORMS OF
 2 TERM.—Section 5303 (Metropolitan planning) is amended
 3 by striking “long-range plan” each place the words appear
 4 and inserting “long-range transportation plan”.

5 (f) REDESIGNATION OF DUPLICATE PROVISION.—
 6 Effective June 9, 1998, section 3009 of the Transpor-
 7 tation Equity Act for the 21st Century (112 Stat. 356)
 8 is amended as follows:

9 (1) In subsection (i), strike “adding at the end
 10 the following” and insert “redesignating subsection
 11 (o) as subsection (q) and inserting a new subsection
 12 (o) as follows”.

13 (2) In subsection (j), strike “adding at the end
 14 the following” and insert “adding after subsection
 15 (o) (as added by this section) the following”.

16 (g) REDESIGNATION OF DUPLICATE PROVISION.—
 17 (1) Effective June 9, 1998, subsection (e) of section 5337
 18 (as added by section 3028(b) of the Transportation Equity
 19 Act for the 21st Century (112 Stat. 367) is redesignated
 20 as subsection (f) of section 5337.

21 (h) PUNCTUATION CORRECTION.—Section
 22 5338(h)(5) is amended by striking “1999”, “2000”,
 23 “2001”, “2002”, and “2003”, and inserting “1999,”,
 24 “2000,”, “2001,”, “2002,”, and “2003,”, respectively.

1 (i) DELETION OF OBSOLETE REFERENCE.—Sections
 2 5313(b) and 5314(a) are each amended by striking “5315,
 3 5317, and 5322” and inserting “5315, and 5322”.

4 (j) CORRECTION OF CASE.—Section 5903(a) is
 5 amended by striking “person, To whom” and inserting
 6 “person, to whom”.

7 (k) CORRECTION OF CROSS REFERENCE.—Section
 8 10903(b)(2) is amended by striking “24706(c) of this
 9 title” and inserting “24706(c) of this title before May 31,
 10 1998”.

11 (l) CLARIFICATION OF WORDING.—Section 13541(a)
 12 is amended by striking “finds that” and all that follows,
 13 and inserting “finds that the exemption is in the public
 14 interest and that the application of that provision—

15 “(1) is not necessary to carry out the transpor-
 16 tation policy of section 13101; and

17 “(2) is not needed to protect shippers from the
 18 abuse of market power or that the transaction or
 19 service is of limited scope.”.

20 (m) CORRECTION OF PLACEMENT OF PROVISION.—

21 (1) Section 14704 (Rights and remedies of persons injured
 22 by carriers or brokers) is amended as follows:

23 (A) In subsection (a)—

24 (i) strike “IN GENERAL.—” and all that
 25 follows through “injured” and insert “EN-

1 FORCEMENT OF ORDER.—A person injured”;
2 and

3 (ii) move paragraph (2) to the end of sub-
4 section (b).

5 (B) In subsection (b), strike “LIABILITY AND
6 DAMAGES” and all that follows through “A carrier”
7 and insert “LIABILITY AND DAMAGES.—(1) A car-
8 rier”.

9 (2) Section 14705(c) is amended by striking
10 “14704(b)” and inserting “14704(b)(2)”.

11 (n) CORRECTION OF OBSOLETE REFERENCES TO
12 ICC.—(1) Subsection (b)(3) of section 24307 (Special
13 transportation) is amended by striking “Interstate Com-
14 merce Commission” and inserting “Surface Transpor-
15 tation Board”.

16 (2) Section 24308 (Use of facilities and providing
17 services to Amtrak) is amended by striking “Interstate
18 Commerce Commission” and “Commission” each place
19 the words appear and inserting “Surface Transportation
20 Board” and “Board”, respectively.

21 (3) Section 24311 (Acquiring interests in property by
22 eminent domain) is amended by striking “Interstate Com-
23 merce Commission” and “Commission” each place the
24 words appear and inserting “Surface Transportation
25 Board” and “Board”, respectively.

1 (4) Section 24902 (Goals and requirements) is
 2 amended by striking “Interstate Commerce Commission”
 3 and “Commission” each place the words appear and in-
 4 serting “Surface Transportation Board” and “Board”, re-
 5 spectively.

6 (5) Section 24904 (General authority) is amended by
 7 striking “Interstate Commerce Commission” and “Com-
 8 mission” each place the words appear and inserting “Sur-
 9 face Transportation Board” and “Board”, respectively.

10 (o) DELETION OF OBSOLETE PROVISION.—Section
 11 31112(d) is amended by striking paragraph (4).

12 (p) DELETION OF OBSOLETE REFERENCE.—Section
 13 31132(7) (definition of “State”) is amended by striking
 14 “31136 and 31140–31142” and inserting “31136, 31141,
 15 and 31142”.

16 (q) DELETION OF OBSOLETE REFERENCE.—Section
 17 31304(2) is amended by striking “(except as allowed
 18 under section 31302 of this title)”.

19 **SEC. 14. CORRECTIONS TO ICC REFERENCES IN CERTAIN**
 20 **LAWS OF THE UNITED STATES.**

21 (a) Section 316 of the Packers and Stockyards Act,
 22 1921 (7 U.S.C. 217), is amended by striking “Interstate
 23 Commerce Commission” and inserting “Surface Trans-
 24 portation Board”.

1 (b) Section 406(a) of the Packers and Stockyards
2 Act, 1921 (7 U.S.C. 226), is amended by striking “Inter-
3 state Commerce Commission” and “commission” and in-
4 serting “Surface Transportation Board” and “Board”, re-
5 spectively.

6 (c) Section 11 of the Perishable Agricultural Com-
7 modities Act, 1930 (7 U.S.C. 499k), is amended by strik-
8 ing “Interstate Commerce Commission” and inserting
9 “Surface Transportation Board”.

10 (d) Section 203(j) of the Act of August 14, 1946 (re-
11 lating to the distribution and marketing of agricultural
12 products) (60 Stat 1082, 1087) (7 U.S.C. 1622(j)), is
13 amended by striking “Interstate Commerce Commission”
14 and inserting “Surface Transportation Board”.

15 (e) Section 1110(a)(2)(B) of title 11, United States
16 Code, is amended by striking “a water carrier that holds
17 a certificate of public convenience and necessity or permit
18 issued by the Interstate Commerce Commission” and in-
19 serting “a water carrier that held, on December 31, 1995,
20 a certificate of public convenience and necessity or permit
21 issued by the Interstate Commerce Commission (or a
22 water carrier that would have been required to obtain such
23 a certificate or permit under the law in effect on that
24 date)”.

1 (f)(1) Section 1398 of title 28, United States Code,
2 is amended—

3 (A) by striking the section heading and
4 inserting—

5 **“§ 1398. Surface Transportation Board’s orders”**; and

6 (B) in subsection (b), by striking “Interstate
7 Commerce Commission” and inserting “Surface
8 Transportation Board”.

9 (2) The analysis for chapter 87 of title 28, United
10 States Code, is amended by striking item 1398 and insert-
11 ing the following:

“1398. Surface Transportation Board’s orders.”.

12 (g) Section 1108(f) of title 31, United States Code,
13 is amended by striking “Interstate Commerce Commis-
14 sion” and “Commission” and inserting “Surface Trans-
15 portation Board” and “Board”, respectively.

16 (h) Section 3(a)(2) of Public Law 91–621 (33 U.S.C.
17 857–3) is amended by striking “Interstate Commerce
18 Commission” and inserting “Surface Transportation
19 Board”.

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