

106TH CONGRESS
1ST SESSION

S. 621

To enhance competition among and between rail carriers in order to ensure efficient rail service and reasonable rail rates in any case in which there is an absence of effective competition.

IN THE SENATE OF THE UNITED STATES

MARCH 15, 1999

Mr. ROCKEFELLER (for himself, Mr. DORGAN, Mr. BURNS, and Mr. ROBERTS and Mr. CONRAD) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To enhance competition among and between rail carriers in order to ensure efficient rail service and reasonable rail rates in any case in which there is an absence of effective competition.

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 “Railroad Competition
5 and Service Improvement Act of 1999”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

1 (1) to clarify the rail transportation policy of
2 the United States by requiring the Surface Trans-
3 portation Board to accord greater weight to the need
4 for increased competition between and among rail
5 carriers and consistent and efficient rail service in
6 its decision making;

7 (2) to eliminate unreasonable barriers to com-
8 petition among rail carriers serving the same geo-
9 graphic areas and ensure that smaller carload or
10 intermodal shippers are not precluded from access-
11 ing rail systems due to volume requirements;

12 (3) to ensure reasonable rail rates for captive
13 rail shippers;

14 (4) to provide relief for certain agricultural fa-
15 cilities lacking effective competitive alternatives; and

16 (5) to remove unnecessary regulatory burdens
17 from the rate reasonableness procedures of the Sur-
18 face Transportation Board.

19 **SEC. 3. FINDINGS.**

20 The Congress finds that:

21 (1) Prior to 1976, the Interstate Commerce
22 Commission regulated most of the rates that rail-
23 roads charged shippers. The Railroad Revitalization
24 and Regulatory Act (1976) and the Staggers Rail
25 Act (1980) limited the regulation of the rail industry

1 by allowing the Interstate Commerce Commission to
2 regulate rates only where railroads have no effective
3 competition and established the Interstate Com-
4 merce Commission's process for resolving rate dis-
5 putes.

6 (2) In 1976, when the Congress began the proc-
7 ess of railroad deregulation, there were 63 class I
8 railroads in the United States. By 1997, through
9 mergers and other factors, the number of class I
10 railroads shrunk to nine.

11 (3) The nine class I carriers accounted for more
12 than 90 percent of the industry's freight revenue
13 and 71 percent of the industry's mileage operated in
14 1997.

15 (4) Rail industry consolidation has diminished
16 competition, creating an even greater dependence
17 upon a rate relief process through a regulatory body
18 such as the Surface Transportation Board.

19 (5) Agricultural, chemical, and utility industries
20 in particular rely heavily upon rail transportation,
21 and unreasonable rail rates and inadequate service
22 have a dramatic impact on these important indus-
23 tries.

24 (6) According to a report issued by the General
25 Accounting Office, “. . . [t]he Surface Transpor-

1 tation Board’s standard procedures for obtaining
2 rate relief are highly complex and time-consuming”
3 and the General Accounting Office estimates that
4 over “70 percent [of shippers] believe that the time,
5 complexity, and costs of filing complaints are bar-
6 riers that often preclude them from seeking relief.”

7 (7) The General Accounting Office analyzed all
8 41 rate complaints filed with the Interstate Com-
9 merce Commission and its successor, the Surface
10 Transportation Board, since 1990 and found that
11 each complaint cost shippers between \$500,000 to
12 \$3 million apiece and took between a few months
13 and 16 years to resolve.

14 (8) The General Accounting Office surveyed
15 over 700 shippers and found that—

16 (A) 75 percent of the shippers believed
17 that they are overcharged with unreasonable
18 rates and

19 (B) over 70 percent of the shippers be-
20 lieved that the time, complexity, and costs of fil-
21 ing complaints create unsurmountable barriers
22 and therefore preclude them from pursuing the
23 rate relief they are entitled to under the law.

1 (9) The General Accounting Office survey of
2 shippers identified the following barriers to obtain-
3 ing rate relief under the current process:

4 (A) The costs associated with filing com-
5 plaints outweighs the benefits of winning relief.

6 (B) The rate complaint process is too com-
7 plex and too lengthy.

8 (C) Developing the stand-alone revenue-to-
9 variable cost model is too costly.

10 (D) Most shippers believe that the STB is
11 most likely to decide in favor of the railroad.

12 (E) The discovery process is too difficult
13 because the shipper is dependent upon the rail-
14 road for all the necessary data.

15 (F) Responding to the railroads requests
16 for discovery is too difficult and time con-
17 suming.

18 (G) Shippers fear reprisal from the rail-
19 roads.

20 (H) The Surface Transportation Board fil-
21 ing fee is too high.

22 (10) According to the General Accounting Of-
23 fice report, the vast majority of shippers believe that
24 the following changes in the rate relief process are

1 necessary to provide them with the ability to seek
2 the rate relief:

3 (A) The Surface Transportation Board's
4 time limit for deciding a rate relief case should
5 be shortened.

6 (B) The complaint fee required upon filing
7 should be eliminated or reduced.

8 (C) The market dominance requirement
9 should be simplified.

10 (D) Mandatory binding arbitration should
11 be used to resolve rate disputes.

12 (E) The Surface Transportation Board's
13 jurisdictional threshold of 180% revenue-to-
14 variable cost should be lowered.

15 (11) According to the General Accounting Of-
16 fice report, shippers believe that increasing competi-
17 tion in the railroad industry would lower rates and
18 diminish the need for a rate complaint process. Pro-
19 posals to increase railroad competition identified in
20 the report include the following:

21 (A) Require the STB to grant trackage
22 rights; require reciprocal switching at the near-
23 est junction or interchange upon request of a
24 shipper or competing railroad; and increase rail
25 access for shortline and regional railroads.

1 (B) Overturn the STB’s “bottle neck” de-
 2 cision by requiring railroads to quote a rate for
 3 all route segments.

4 (12) Consolidation in the railroad industry has
 5 diminished competition, thwarting the intended ob-
 6 jectives of deregulation to allow competition to lower
 7 rates and improve service.

8 (13) The rate protection intended for shippers
 9 without effective competition has been de-railed by a
 10 complex, costly, and time-consuming maze of dis-
 11 covery, findings, and appeals that take years and
 12 cost millions of dollars.

13 (14) Because of diminished rail competition, a
 14 rate relief process plagued with unsurmountable bar-
 15 riers and blanket antitrust immunity unique to the
 16 railroad industry, captive shippers have no effective
 17 recourse under the current system.

18 **SEC. 4. CLARIFICATION OF RAIL TRANSPORTATION POL-**
 19 **ICY.**

20 Section 10101 of title 49, United States Code, is
 21 amended—

22 (1) by inserting “(a) IN GENERAL.—” before
 23 “In regulating”; and

24 (2) by adding at the end the following:

1 “(b) PRIMARY OBJECTIVES.—The primary objectives
2 of the rail transportation policy of the United States shall
3 be—

4 “(1) to ensure effective competition among rail
5 carriers at origin and destination;

6 “(2) to maintain reasonable rates in the ab-
7 sence of effective competition; and

8 “(3) to maintain consistent and efficient rail
9 transportation service to shippers, including the
10 timely provision of railcars requested by shippers;
11 and

12 “(4) to ensure that smaller carload and inter-
13 modal shippers are not precluded from accessing rail
14 systems due to volume requirements.”.

15 **SEC. 5. FOSTERING RAIL TO RAIL COMPETITION.**

16 (a) ESTABLISHMENT OF RATE.—Section 11101(a) of
17 title 49, United States Code, is amended by inserting after
18 the first sentence the following: “Upon the request of a
19 shipper, a rail carrier shall establish a rate for transpor-
20 tation and provide service requested by the shipper be-
21 tween any two points on the system of that carrier where
22 traffic originates, terminates, or may reasonably be inter-
23 changed. A carrier shall establish a rate and provide serv-
24 ice upon such request without regard to—

1 “(1) whether the rate established is for only
2 part of a movement between an origin and a destina-
3 tion;

4 “(2) whether the shipper has made arrange-
5 ments for transportation for any other part of that
6 movement; or

7 “(3) whether the shipper currently has a con-
8 tract with any rail carrier for part or all of its trans-
9 portation needs over the route of movement.

10 “If such a contract exists, the rate established by the car-
11 rier shall not apply to transportation covered by the con-
12 tract.”.

13 (b) REVIEW OF REASONABLENESS OF RATES.—Sec-
14 tion 10701(d) of title 49, United States Code, is
15 amended—

16 (1) by redesignating paragraph (3) as para-
17 graph (4); and

18 (2) by inserting after paragraph (2) the fol-
19 lowing:

20 “(3) A shipper may challenge the reasonable-
21 ness of any rate established by a rail carrier in ac-
22 cordance with sections 11101(a) and 10701(c) of
23 this title. The Board shall determine the reasonable-
24 ness of the rate so challenged without regard to—

1 “(A) whether the rate established is for
2 only part of a movement between an origin and
3 a destination;

4 “(B) whether the shipper has made ar-
5 rangements for transportation for any other
6 part of that movement; or

7 “(C) whether the shipper currently has a
8 contract with a rail carrier for any part of the
9 rail traffic at issue, provided that the rate pre-
10 scribed by the Board shall not apply to trans-
11 portation covered by such a contract.”.

12 **SEC. 6. SIMPLIFIED RELIEF PROCESS FOR CERTAIN AGRI-**
13 **CULTURAL SHIPPERS.**

14 (a) **LIMITATION ON FEES.**—Notwithstanding any
15 other provision of law, the Surface Transportation Board
16 shall not impose fees in excess of \$1,000 for services col-
17 lected from an eligible facility in connection with rail max-
18 imum rate complaints under part 1002 of title 49, Code
19 of Federal Regulations.

20 (b) **SIMPLIFIED RATE AND SERVICE RELIEF.**—Sec-
21 tion 10701 of title 49, United States Code, is amended
22 by adding at the end thereof the following:

23 “(e) **SIMPLIFIED RATES AND SERVICES.**—

24 “(1) **IN GENERAL.**—Notwithstanding any other
25 provision of law, a rail carrier may not charge a rate

1 for shipments from or to an eligible facility which re-
2 sults in a revenue-to-variable cost percentage, using
3 system average costs, for the transportation service
4 to which the rate applies that is greater than 180
5 percent.

6 “(2) ACCEPTANCE OF REQUESTS.—Notwith-
7 standing any other provision of law, a rail carrier
8 shall accept all requests, for grain service from an
9 eligible facility up to a maximum of 110 percent of
10 the grain carloads shipped from or to the facility in
11 the immediately preceding calendar year. If, in a
12 majority of instances, a rail carrier does not in any
13 45-day period, supply the number of grain cars so
14 ordered by an eligible facility or does not initiate
15 service within 30 days of the reasonably specified
16 loading date, the eligible facility may request that an
17 alternative rail carrier provide the service using the
18 tracks of the original carrier. If the alternative rail
19 carrier agrees to provide such service, and such serv-
20 ice can be provided without substantially impairing
21 the ability of the carrier whose tracks reach the fa-
22 cility to use such tracks to handle its own business,
23 the Board shall order the alternative carrier to com-
24 mence service and to compensate the other carrier
25 for the use of its tracks. The alternative carrier shall

1 provide reasonable compensation to the original car-
 2 rier for the use of the original carrier's tracks.

3 “(3) CANCELLATION PENALTIES.—A carrier
 4 may accept car orders under paragraph (2) subject
 5 to reasonable penalties for service requests that are
 6 canceled by the requester. If the carrier fills such or-
 7 ders more than 15 days after the reasonably speci-
 8 fied loading date, the carrier may not assess a pen-
 9 alty for canceled car orders.

10 “(4) DAMAGES.—A rail carrier that fails to
 11 provide service under the requirements of paragraph
 12 (2) is liable for damages to an eligible facility that
 13 does not have access to an alternative carrier, in-
 14 cluding lost profits, attorney's fees, and any other
 15 consequences attributable to the carrier's failure to
 16 provide the ordered service. A claim for such damage
 17 may be brought in an appropriate United States
 18 District Court or before the Board.

19 “(5) TIMETABLE FOR BOARD PROCEEDING.—
 20 The Board shall conclude any proceeding brought
 21 under this subsection no later than 180 days from
 22 the date a complaint is filed.

23 “(6) DEFINITIONS.—In this subsection:

24 “(A) ELIGIBLE FACILITY.—The term ‘eli-
 25 gible facility’ means a shipper facility that—

1 “(i) is the origin or destination for not
2 more than 4,000 carloads annually of
3 grain as defined in section 3(g) of the
4 United States Grain Standards Act (7
5 U.S.C. 75(g));

6 “(ii) is served by a single rail carrier
7 at its origin;

8 “(iii) has more than 60 percent of the
9 facility’s inbound or outbound grain and
10 grain product shipments (excluding the de-
11 livery of grain to the facility by producers),
12 measured by weight or bushels moved via
13 a rail carrier in the immediately preceding
14 calendar year; and

15 “(iv) the rate charged by the rail car-
16 rier for the majority of shipments of grain
17 and grain products from or to the facility,
18 excluding premium for special service pro-
19 grams, results in a revenue-to-variable cost
20 percentage, using system average costs, for
21 the transportation to which the rate ap-
22 plies that is equal to or greater than 180
23 percent.

24 “(B) REASONABLE COMPENSATION.—The
25 term ‘reasonable compensation’ shall mean an

1 amount no greater than the total shared costs
 2 of the original carrier and the alternative car-
 3 rier incurred, on a usage basis, for the provision
 4 of service to an eligible facility. If the carriers
 5 are unable to agree on compensation terms
 6 within 15 days after the facility requests service
 7 from the alternative carrier, the alternative car-
 8 rier or the eligible facility may request the
 9 Board to establish the compensation and the
 10 Board shall establish the compensation within
 11 45 days after such request is made.

12 “(C) ORIGINAL CARRIER.—The term
 13 ‘original carrier’ means a rail carrier which pro-
 14 vides the only rail service to an eligible facility
 15 using its own tracks or provides such service
 16 over an exclusive lease of the tracks serving the
 17 eligible facility.

18 “(D) ALTERNATIVE CARRIER.—The term
 19 ‘alternative carrier’ means a rail carrier that is
 20 not an original carrier to an eligible facility.”.

21 **SEC. 7. COMPETITIVE RAIL SERVICE IN TERMINAL AREAS.**

22 (a) TRACKAGE RIGHTS.—Section 11102(a) of title
 23 49, United States Code, is amended—

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

1 (2) by inserting [as a new second sentence]
 2 after “business.” the following: “In making this de-
 3 termination, the Board shall not require evidence of
 4 anticompetitive conduct by the rail carrier from
 5 which access is sought.”; and

6 (3) by striking “may establish” in the next-to-
 7 last sentence and inserting “shall.”

8 (b) RECIPROCAL SWITCHING.—Section 11102(c)(1)
 9 of title 49, United States Code, is amended—

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

12 (2) by inserting after “service.” the following:
 13 “In making this determination, the Board shall not
 14 require evidence of anticompetitive conduct by the
 15 rail carrier from which access is sought.”; and

16 (3) by striking “may establish” in the last sen-
 17 tence and inserting “shall”.

18 **SEC. 8. SIMPLIFIED STANDARDS FOR MARKET DOMINANCE.**

19 Section 10707(d)(1)(A) of title 49, United States
 20 Code, is amended by adding at the end thereof the fol-
 21 lowing: “The Board shall not consider evidence of product
 22 or geographic competition in making a market dominance
 23 determination under this section.”.

1 **SEC. 9. REVENUE ADEQUACY DETERMINATIONS.**

2 (a) RAIL TRANSPORTATION POLICY.—Section
3 10101(3) of title 49, United States Code, is amended by
4 striking “revenues, as determined by the Board;” and in-
5 serting “revenues;”.

6 (b) STANDARDS FOR RATES.—Section 10701(d)(2) is
7 amended by striking “revenues, as established by the
8 Board under section 10704(a)(2) of this title” and insert-
9 ing “revenues.”.

10 (c) REVENUE ADEQUACY DETERMINATIONS.—Sec-
11 tion 10704(a) of title 49, United States Code, is
12 amended—

13 (1) by striking “(a)(1)” and inserting “(a)”;
14 and

15 (2) by striking paragraphs (2) and (3).

16 **SEC. 10. RAIL CARRIER SERVICE QUALITY PERFORMANCE**
17 **REPORTS.**

18 (a) IN GENERAL.—Chapter 5 of subtitle I of title 49,
19 United States Code, is amended by adding at the end
20 thereof the following:

21 “SUBCHAPTER III. PERFORMANCE REPORTS

22 “§ 541. Rail carrier service quality performance re-
23 ports

24 “(a) IN GENERAL.—The Secretary of Transportation
25 shall require, by regulation, each rail carrier to submit a
26 monthly report to the Secretary, in such uniform format

1 as the Secretary may by regulation prescribe, containing
 2 information about—

3 “(1) its on-time performance;

4 “(2) its car availability deadline performance;

5 “(3) its average train speed;

6 “(4) its average terminal dwell time;

7 “(5) the number of its cars loaded (by major
 8 commodity group); and

9 “(6) such other aspects of its performance as a
 10 rail carrier as the Secretary may require.

11 “(b) INFORMATION FURNISHED TO STB; THE PUB-
 12 LIC.—The Secretary shall furnish a copy of each report
 13 required under subsection (a) to the Surface Transpor-
 14 tation Board no later than the next business day following
 15 its receipt by the Secretary, and shall make each such re-
 16 port available to the public.

17 “(c) ANNUAL REPORT TO THE CONGRESS.—The Sec-
 18 retary shall transmit to the Congress an annual report
 19 based upon information received by the Secretary under
 20 this section.

21 “(d) DEFINITIONS.—In this section, the definitions
 22 in section 10102 apply.”.

23 (b) CONFORMING AMENDMENT.—The chapter anal-
 24 ysis for chapter 5 of subtitle I of title 49, United States

- 1 Code, is amended by adding at the end thereof the fol-
- 2 lowing:

“SUBCHAPTER III. PERFORMANCE REPORTS

“541. Rail carrier service quality performance reports”.

