

106TH CONGRESS  
1ST SESSION

# S. 747

To amend title 49, United States Code, to promote rail competition, and  
for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 25, 1999

Mrs. HUTCHISON introduced the following bill; which was read twice and  
referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To amend title 49, United States Code, to promote rail  
competition, 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 and Improvement Act of  
6       1999”.

7       **SEC. 2. PROMOTION OF COMPETITION WITHIN THE RAIL**  
8               **INDUSTRY.**

9       Section 10101 of title 49, United States Code, is  
10      amended by—

1 (1) redesignating paragraphs (1) through (7) as  
 2 paragraphs (2) through (8);

3 (2) inserting before paragraph (2), as redesign-  
 4 nated, the following:

5 “(1) to encourage and promote effective com-  
 6 petition within the rail industry;”;

7 (3) striking “revenues,” in paragraph (4), as  
 8 redesignated, and inserting “revenues to ensure ap-  
 9 propriate rail infrastructure;”;

10 (4) redesignating paragraphs (8) through (15)  
 11 as paragraphs (10) through (17); and

12 (5) inserting before paragraph (10), as redesign-  
 13 nated, the following:

14 “(9) to discourage artificial barriers to inter-  
 15 change and car supply which can impede competition  
 16 between shortline, regional, and Class I carriers and  
 17 block effective rail service to shippers;”.

18 **SEC. 3. EXTENSION OF TIME LIMIT ON EMERGENCY SERV-**

19 **ICE ORDERS.**

20 Section 11123 of title 49, United States Code, is  
 21 amended by—

22 (1) striking “30” in subsection (a) and insert-  
 23 ing “60”;

24 (2) striking “30” in subsection (c)(1) and in-  
 25 serting “60”; and

1           (3) adding at the end of subsection (c) the fol-  
 2       lowing:

3           “(4) The Board may provide up to 2 exten-  
 4       sions, totalling not more than 180 days, of the 240-  
 5       day period under paragraph (1).”

6 **SEC. 4. PROCEDURAL RELIEF FOR SMALL RATE CASES.**

7       (a) DISCOVERY LIMITED.—Section 10701(d) of title  
 8       49, United States Code, is amended by—

9           (1) inserting “(A)” in paragraph (3) before  
 10       “The Board”; and

11          (2) adding at the end thereof the following:

12               “(B) Unless the Board finds that there is  
 13       a compelling need to permit discovery in a par-  
 14       ticular proceeding, discovery shall not be per-  
 15       mitted in a proceeding handled under the guide-  
 16       lines established under subparagraph (A).”.

17       (b) ADMINISTRATIVE RELIEF.—Not later than 180  
 18       days after the date of enactment of this Act, the Surface  
 19       Transportation Board shall—

20           (1) review the rules and procedures applicable  
 21       to rate complaints and other complaints filed with  
 22       the Board by small shippers;

23           (2) identify any such rules or procedures that  
 24       are unduly burdensome to small shippers; and

1           (3) take such action, including rulemaking, as  
2           is appropriate to reduce or eliminate the aspects of  
3           the rules and procedures that the Board determines  
4           under paragraph (2) to be unduly burdensome to  
5           small shippers.

6           (c) **LEGISLATIVE RELIEF.**—The Board shall notify  
7           the Committee on Commerce, Science, and Transportation  
8           of the Senate and the Committee on Transportation and  
9           Infrastructure of the House of Representatives if the  
10          Board determines that additional changes in the rules and  
11          procedures described in subsection (b) are appropriate and  
12          require commensurate changes in statutory law. In mak-  
13          ing that notification, the Board shall make recommenda-  
14          tions concerning those changes.

15   **SEC. 5. CODIFICATION OF MARKET DOMINANCE RELIEF.**

16          Section 10707(d)(1)(A) of title 49, United States  
17          Code, is amended by adding at the end thereof the fol-  
18          lowing: “In making a determination under this section, the  
19          Board may not consider evidence of product or geographic  
20          competition.”.

21   **SEC. 6. RAIL REVENUE ADEQUACY DETERMINATIONS.**

22          (a) Section 10101(3) of title 49, United States Code,  
23          is amended by striking “revenues, as determined by the  
24          Board;” and inserting “revenues;”.

1 (b) Section 10701(d)(2) of title 49, United States  
 2 Code, is amended by striking “revenues, as established by  
 3 the Board under section 10704(a)(2) of this title.” and  
 4 inserting “revenues.”.

5 (c) Section 10701(d) of title 49, United States Code,  
 6 is amended by adding at the end thereof the following:

7 “(4) To facilitate the process by which the  
 8 Board gives due consideration to the policy that rail  
 9 carriers shall earn adequate revenues, the Board  
 10 shall convene a 3-member panel of outside experts to  
 11 make recommendations as to an appropriate meth-  
 12 odology by which the adequacy of a carrier’s reve-  
 13 nues should be considered. The panel shall issue a  
 14 report containing its recommendations within 270  
 15 days after the date of enactment of the Surface  
 16 Transportation Board Amendments of 1999.”.

17 **SEC. 7. BOTTLENECK RATES.**

18 (a) THROUGH ROUTES.—Section 10703 of title 49,  
 19 United States Code, is amended—

20 (1) inserting “(a) IN GENERAL.—” before  
 21 “Rail carriers”; and

22 (2) adding at the end thereof the following:

23 “(b) CONNECTING CARRIERS.—When a shipper and  
 24 rail carrier enter into a contract under section 10709 for  
 25 transportation that would require a through route with a

1 connecting carrier and there is no reasonable alternative  
 2 route that could be constructed without participation of  
 3 that connecting carrier, the connecting carrier shall, upon  
 4 request, establish a through route and a rate that can be  
 5 used in conjunction with transportation provided pursuant  
 6 to the contract, unless the connecting carrier shows that—

7           “(1) the interchange requested is not operation-  
 8 ally feasible; or

9           “(2) the through route would significantly im-  
 10 pair the connecting carrier’s ability to serve its other  
 11 traffic. The connecting carrier shall establish a rate  
 12 and through route within 21 days unless the Board  
 13 has made a determination that the connecting car-  
 14 rier is likely to prevail in its claim under paragraph  
 15 (1) or (2).”.

16       (b) BOARD’S AUTHORITY TO PRESCRIBE DIVISION  
 17 OF JOINT RATES.—Section 10705(b) of title 49, United  
 18 States Code, is amended by striking “The Board shall”  
 19 and inserting “Except as provided in section 10703(b), the  
 20 Board shall”.

21       (c) COMPLAINTS.—Section 11701 of title 49, United  
 22 States Code, is amended—

23           (1) by redesignating subsection (c) as sub-  
 24 section (d); and

1           (2) by inserting after subsection (b) the fol-  
 2       lowing:

3       “(c) Where transportation over a portion of a through  
 4       route is governed by a contract under section 10709, a  
 5       rate complaint must be limited to the rates that apply to  
 6       the portion of the through route not governed by such a  
 7       contract.”.

8       **SEC. 8. SIMPLIFIED DISPUTE RESOLUTION.**

9       Within 180 days after the date of enactment of this  
 10      Act, the Surface Transportation Board shall promulgate  
 11      regulations adopting a simplified dispute resolution mech-  
 12      anism with the following features:

13           (1) IN GENERAL.—The simplified dispute reso-  
 14      lution mechanism will utilize expedited arbitration  
 15      with a minimum of discovery and may be used to de-  
 16      cide disputes between parties involving any matter  
 17      subject to the jurisdiction of the Board, other than  
 18      rate reasonableness cases that would be decided  
 19      under constrained market pricing principles.

20           (2) APPLICABLE STANDARDS.—Arbitrators will  
 21      apply existing legal standards.

22           (3) MANDATORY IF REQUESTED.—Use of the  
 23      simplified dispute resolution mechanism is required  
 24      whenever at least one party to the dispute requests.

1           (4) 90-DAY TURNAROUND.—Arbitrators will  
2           issue their decisions within 90 days after being ap-  
3           pointed.

4           (5) PAYMENT OF COSTS.—Each party will pay  
5           its own costs, and the costs of the arbitration and  
6           other administrative costs of arbitration will be  
7           shared equally between and among the parties.

8           (6) DECISIONS PRIVATE; NOT PRECEDEN-  
9           TIAL.—Except as otherwise provided by the Board,  
10          decisions will remain private and will not constitute  
11          binding precedent.

12          (7) DECISIONS BINDING AND ENFORCEABLE.—  
13          Except as otherwise provided in paragraph (8), deci-  
14          sions will be binding and enforceable by the Board.

15          (8) RIGHT TO APPEAL.—Any party will have an  
16          unqualified right to appeal any decision to the  
17          Board, in which case the Board will decide the mat-  
18          ter de novo. In making its decision, the Board may  
19          consider the decision of the arbitrator and any evi-  
20          dence and other material developed during the arbi-  
21          tration.

22          (9) MUTUAL MODIFICATION.—Any procedure or  
23          regulation adopted by the Board with respect to the  
24          simplified dispute resolution may be modified or



1       eliminated by mutual agreement of all parties to the  
2       dispute.

3       **SEC. 9. PROMOTION OF COMPETITIVE RAIL SERVICE OP-**  
4                                   **TIONS.**

5       Section 11324 of title 49, United States Code, is  
6       amended—

7               (1) by striking “and” in paragraph (4) of sub-  
8       section (b);

9               (2) by striking “system.” in paragraph (5) of  
10       subsection (b) and inserting “system; and”;

11              (3) by adding at the end of subsection (b) the  
12       following:

13              “(6) means and methods to encourage and ex-  
14       pand competition between and among rail carriers in  
15       the affected region or the national rail system.”; and

16              (4) by inserting after the second sentence in  
17       subsection (c) the following: “The Board may im-  
18       pose conditions to encourage and expand competition  
19       between and among rail carriers in the affected re-  
20       gion or the national rail system, if such conditions  
21       do not cause substantial harm to the benefits of the  
22       transaction to the affected carriers or the public.”.

1 **SEC. 10. CLARIFICATION OF STB AUTHORITY TO GRANT**  
2 **TEMPORARY ACCESS RELIEF.**

3 (a) Section 10705 of title 49, United States Code,  
4 is amended by adding at the end thereof the following:

5 “(d) The Board may grant temporary relief under  
6 this section when the Board finds it necessary and appro-  
7 priate to do so to remedy inadequate service. The author-  
8 ity provided in this section is in addition to the authority  
9 of the Board to provide temporary relief under sections  
10 11102 and 11123 of this title.”.

11 (b) Section 11102 of title 49, United States Code,  
12 is amended by adding at the end thereof the following:

13 “(e) The Board may grant temporary relief under  
14 subsections (a) and (c) when the Board finds it necessary  
15 and appropriate to do so to remedy inadequate service.  
16 The authority provided in this section is in addition to  
17 the authority of the Board to provide temporary relief  
18 under sections 10705 and 11123 of this title.”.

19 (c) Section 11123 of title 49, United States Code,  
20 is amended by adding at the end thereof the following:

21 “(e) The authority provided in this section is in addi-  
22 tion to the authority of the Board to provide temporary  
23 relief under sections 10705 and 11102 of this title.”.

24 **SEC. 11. HOUSEHOLD GOODS COLLECTIVE ACTIVITIES.**

25 Section 13703(d) of title 49, United States Code,  
26 is amended by inserting “(other than an agreement affect-

1 ing only the transportation of household goods, as defined  
2 on December 31, 1995)” after “agreement” in the first  
3 sentence.

4 **SEC. 12. AUTHORIZATION LEVELS.**

5 There are authorized to be appropriated to the Sur-  
6 face Transportation Board \$16,000,000 for fiscal year  
7 1999, \$17,000,000 for fiscal year 2000, \$17,555,000 for  
8 fiscal year 2001, and \$18,129,000 for fiscal year 2002.

9 **SEC. 13. CHAIRMAN DESIGNATED WITH SENATE CONFIRMA-**  
10 **TION.**

11 Section 701(c)(1) of title 49, United States Code, is  
12 amended by striking “President” and inserting “Presi-  
13 dent, by and with the advice and consent of the Senate,”.

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