

108TH CONGRESS
1ST SESSION

H. R. 2192

To authorize appropriations for the Surface Transportation Board, to enhance railroad competition, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 2003

Mr. OBERSTAR introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To authorize appropriations for the Surface Transportation Board, to enhance railroad 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 Reform Act of 2003”.

6 **SEC. 2. TABLE OF CONTENTS.**

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—RAILROAD COMPETITION

Sec. 101. Clarification of rail transportation policy.

Sec. 102. Fostering rail to rail competition.

Sec. 103. Simplified relief process for small captive grain shippers.

- Sec. 104. Competitive rail service in terminal areas.
 Sec. 105. Simplified standards for market dominance.
 Sec. 106. Revenue adequacy determinations.
 Sec. 107. Rail carrier service quality performance reports.

TITLE II—MISCELLANEOUS

- Sec. 201. Effect of mergers on local communities and rail passenger transportation.
 Sec. 202. Use of facilities by commuter authorities.
 Sec. 203. Side tracks.
 Sec. 204. Public availability of water carrier tariffs.

TITLE III—AUTHORIZATION OF APPROPRIATIONS

- Sec. 301. Authorization of appropriations.

1 **TITLE I—RAILROAD**
 2 **COMPETITION**
 3 **SEC. 101. CLARIFICATION OF RAIL TRANSPORTATION POL-**
 4 **ICY.**

5 Section 10101 of title 49, United States Code, is
 6 amended—

7 (1) by inserting “(a) IN GENERAL.—” before
 8 “in regulating”; and

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

10 “(b) PRIMARY OBJECTIVES.—The primary objectives
 11 of the rail transportation policy of the United States shall
 12 be—

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

15 “(2) to maintain reasonable rates in the ab-
 16 sence of effective competition;

17 “(3) to maintain consistent and efficient rail
 18 transportation service to shippers, including the

1 timely provision of railcars requested by shippers;
2 and

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

6 **SEC. 102. FOSTERING RAIL TO RAIL COMPETITION.**

7 (a) ESTABLISHMENT OF RATE.—Section 11101(a) of
8 title 49, United States Code, is amended by inserting after
9 the first sentence the following: “Upon the request of a
10 shipper, a rail carrier shall establish a rate for transpor-
11 tation and provide service requested by the shipper be-
12 tween any two points on the system of that carrier where
13 traffic originates, terminates, or may reasonably be inter-
14 changed. A carrier shall establish a rate and provide serv-
15 ice upon such request without regard to—

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

19 “(2) whether the shipper has made arrange-
20 ments for transportation for any other part of that
21 movement; or

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

1 If such a contract exists, the rate established by the car-
2 rier shall not apply to transportation covered by the con-
3 tract.”.

4 (b) REVIEW OF REASONABLENESS OF RATES.—Sec-
5 tion 10701(d) of title 49, United States Code, is
6 amended—

7 (1) by redesignating paragraph (3) as para-
8 graph (4); and

9 (2) by inserting after paragraph (2) the fol-
10 lowing:

11 “(3) A shipper may challenge the reasonableness of
12 any rate established by a rail carrier in accordance with
13 section 11101(a) or with subsection (c) of this section.
14 The Board shall determine the reasonableness of the rate
15 so challenged without regard to—

16 “(A) whether the rate established is for only
17 part of a movement between an origin and a destina-
18 tion;

19 “(B) whether the shipper has made arrange-
20 ments for transportation for any other part of that
21 movement; or

22 “(C) whether the shipper currently has a con-
23 tract with a rail carrier for any part of the rail traf-
24 fic at issue, provided that the rate prescribed by the

1 Board shall not apply to transportation covered by
2 such a contract.”.

3 **SEC. 103. SIMPLIFIED RELIEF PROCESS FOR SMALL CAP-**
4 **TIVE GRAIN SHIPPERS.**

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

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

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

15 “(1) **IN GENERAL.**—Notwithstanding any other
16 provision of law, a rail carrier may not charge a rate
17 for shipments from or to an eligible facility which re-
18 sults in a revenue-to-variable cost percentage, using
19 system average costs, for the transportation service
20 to which the rate applies that is greater than 180
21 percent.

22 “(2) **ACCEPTANCE OF REQUESTS.**—Notwith-
23 standing any other provision of law, a rail carrier
24 shall accept all requests for grain service from an el-
25 ible facility up to a maximum of 110 percent of

1 the grain carloads shipped from or to the facility in
2 the immediately preceding calendar year. If, in a
3 majority of instances, a rail carrier does not in any
4 45-day period, supply the number of grain cars so
5 ordered by an eligible facility or does not initiate
6 service within 30 days of the reasonably specified
7 loading date, the eligible facility may request that an
8 alternative rail carrier provide the service using the
9 tracks of the original carrier. If the alternative rail
10 carrier agrees to provide such service, and such serv-
11 ice can be provided without substantially impairing
12 the ability of the carrier whose tracks reach the fa-
13 cility to use such tracks to handle its own business,
14 the Board shall order the alternative carrier to com-
15 mence service and to compensate the other carrier
16 for the use of its tracks. The alternative carrier shall
17 provide reasonable compensation to the original car-
18 rier for the use of the original carrier's tracks.

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

1 “(4) DAMAGES.—A rail carrier that fails to
2 provide service under the requirements of paragraph
3 (2) is liable for damages to an eligible facility that
4 does not have access to an alternative carrier, in-
5 cluding lost profits, attorney’s fees, and any other
6 consequences attributable to the carrier’s failure to
7 provide the ordered service. A claim for such damage
8 may be brought in an appropriate United States
9 District Court or before the Board.

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

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

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

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

22 “(ii) is served by a single rail carrier
23 at its origin;

24 “(iii) has more than 60 percent of the
25 facility’s inbound or outbound grain and

1 grain product shipments (excluding the de-
2 livery of grain to the facility by producers),
3 measured by weight or bushels moved via
4 a rail carrier in the immediately preceding
5 calendar year; and

6 “(iv) the rate charged by the rail car-
7 rier for the majority of shipments of grain
8 and grain products from or to the facility,
9 excluding premium for special service pro-
10 grams, results in a revenue-to-variable cost
11 percentage, using system average costs, for
12 the transportation to which the rate ap-
13 plies that is equal to or greater than 180
14 percent.

15 “(B) REASONABLE COMPENSATION.—The
16 term ‘reasonable compensation’ shall mean an
17 amount no greater than the total shared costs
18 of the original carrier and the alternative car-
19 rier incurred, on a usage basis, for the provision
20 of service to an eligible facility. If the carriers
21 are unable to agree on compensation terms
22 within 15 days after the facility requests service
23 from the alternative carrier, the alternative car-
24 rier or the eligible facility may request the
25 Board to establish the compensation and the

1 Board shall establish the compensation within
2 45 days after such request is made.

3 “(C) ORIGINAL CARRIER.—The term
4 ‘original carrier’ means a rail carrier which pro-
5 vides the only rail service to an eligible facility
6 using its own tracks or provides such service
7 over an exclusive lease of the tracks serving the
8 eligible facility.

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

12 **SEC. 104. COMPETITIVE RAIL SERVICE IN TERMINAL**
13 **AREAS.**

14 (a) TRACKAGE RIGHTS.—Section 11102(a) of title
15 49, United States Code, is amended—

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

18 (2) by inserting after “business.” the following:
19 “In making this determination, the Board shall not
20 require evidence of anticompetitive conduct by the
21 rail carrier from which access is sought.”; and

22 (3) by striking “may” in the next-to-last sen-
23 tence and inserting “shall”.

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

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

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

7 (3) by striking “may” in the last sentence and
8 inserting “shall”.

9 **SEC. 105. SIMPLIFIED STANDARDS FOR MARKET DOMI-**
10 **NANCE.**

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

16 **SEC. 106. REVENUE ADEQUACY DETERMINATIONS.**

17 (a) RAIL TRANSPORTATION POLICY.—Section
18 10101(a)(3) of title 49, United States Code (as so redesign-
19 nated by section 101 of this Act), is amended by striking
20 “revenues, as determined by the Board;” and inserting
21 “revenues;”.

22 (b) STANDARDS FOR RATES.—Section 10701(d)(2)
23 of title 49, United States Code, is amended by striking
24 “revenues, as established by the Board under section
25 10704(a)(2) of this title” and inserting “revenues”.

1 (c) REVENUE ADEQUACY DETERMINATIONS.—Sec-
2 tion 10704(a) of title 49, United States Code, is
3 amended—

4 (1) by striking “(a)(1)” and inserting “(a)”;
5 and

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

7 **SEC. 107. RAIL CARRIER SERVICE QUALITY PERFORMANCE**
8 **REPORTS.**

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

12 “SUBCHAPTER III—PERFORMANCE REPORTS
13 “§ 541. Rail carrier service quality performance re-
14 ports

15 “(a) IN GENERAL.—The Secretary of Transportation
16 shall require, by regulation, each rail carrier to submit a
17 monthly report to the Secretary, in such uniform format
18 as the Secretary may by regulation prescribe, containing
19 information about—

20 “(1) its on-time performance;

21 “(2) its car availability deadline performance;

22 “(3) its average train speed;

23 “(4) its average terminal dwell time;

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

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

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

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

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

15 (b) CONFORMING AMENDMENT.—The chapter anal-
16 ysis for chapter 5 of subtitle I of title 49, United States
17 Code, is amended by adding at the end thereof the fol-
18 lowing:

“SUBCHAPTER III—PERFORMANCE REPORTS

“541. Rail carrier service quality performance reports.”.

19 **TITLE II—MISCELLANEOUS**

20 **SEC. 201. EFFECT OF MERGERS ON LOCAL COMMUNITIES**
21 **AND RAIL PASSENGER TRANSPORTATION.**

22 Section 11324 of title 49, United States Code, is
23 amended—

24 (1) in subsection (b)—

1 (A) by striking “and” at the end of para-
2 graph (4);

3 (B) by striking the period at the end of
4 paragraph (5) and inserting a semicolon; and

5 (C) by adding at the end the following new
6 paragraphs:

7 “(6) the safety and environmental effects of the
8 proposed transaction, including the effect on local
9 communities, and the public interest in enforcing
10 Federal, State, and local safety and environmental
11 laws; and

12 “(7) the effect of the proposed transaction on
13 rail passenger transportation.”; and

14 (2) in subsection (c), by inserting “The Board
15 shall impose conditions under this subsection to
16 mitigate the effects of the transaction on local com-
17 munities when such conditions are in the public in-
18 terest. In imposing such conditions, the Board shall
19 consider the effect of those conditions on local com-
20 munities, and shall consider the public interest in
21 the enforcement of Federal, State, and local safety
22 and environmental laws.” after “effects are allevi-
23 ated.”.

1 **SEC. 202. USE OF FACILITIES BY COMMUTER AUTHORITIES.**

2 (a) AMENDMENT.—Chapter 241 of title 49, United
3 States Code, is amended by adding at the end the fol-
4 lowing new section:

5 **“§ 24105. Use of facilities by commuter authorities**

6 “A commuter authority may make an agreement with
7 a rail carrier or regional transportation authority to use
8 facilities of, and have services provided by, the carrier or
9 authority in the same manner and under the same condi-
10 tions as may Amtrak under section 24308. In carrying
11 out this section, the Board shall ensure that commuter
12 authorities are able to provide commuter rail passenger
13 transportation that develops the potential of modern rail
14 transportation to meet the commuter rail passenger trans-
15 portation needs of the United States.”.

16 (b) TABLE OF SECTIONS.—The table of sections for
17 such chapter 241 is amended by adding at the end the
18 following new item:

“24105. Use of facilities by commuter authorities.”.

19 **SEC. 203. SIDE TRACKS.**

20 Section 10906 of title 49, United States Code, and
21 the item relating thereto in the table of sections of chapter
22 109 of that title, are repealed.

1 **SEC. 204. PUBLIC AVAILABILITY OF WATER CARRIER TAR-**
2 **IFFS.**

3 Section 13702(b) of title 49, United States Code, is
4 amended—

5 (1) by amending paragraph (1) to read as fol-
6 lows:

7 “(1) **TARIFF AVAILABILITY.**—A carrier pro-
8 viding transportation or service described in sub-
9 section (a)(1) shall make its tariffs available elec-
10 tronically to any person, without time, quantity, or
11 other limitation, through appropriate access from re-
12 mote locations, and a reasonable charge may be as-
13 sessed for such access. No charge may be assessed
14 a Federal agency for such access.”;

15 (2) in paragraph (3), by striking “tariff filings”
16 and inserting “tariffs”;

17 (3) in paragraph (4), by striking “filed under
18 this subsection”; and

19 (4) in paragraph (5), by striking “filing com-
20 plete tariffs under this subsection” and inserting
21 “changing their complete electronic tariffs”.

1 **TITLE III—AUTHORIZATION OF**
2 **APPROPRIATIONS**

3 **SEC. 301. AUTHORIZATION OF APPROPRIATIONS.**

4 Section 705 of title 49, United States Code, is
5 amended by striking paragraphs (1) through (3) and in-
6 serting the following:

7 “(1) \$20,000,000 for fiscal year 2004;

8 “(2) \$25,000,000 for fiscal year 2005; and

9 “(3) \$27,000,000 for fiscal year 2006.”.

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