

106TH CONGRESS
1ST SESSION

H. R. 3446

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

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 1999

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, to protect collective bargaining agreements, 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 1999”.

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.

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- Sec. 201. Scope of authority.
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TITLE IV—AUTHORIZATION OF APPROPRIATIONS

- Sec. 401. 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;

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

3 “(3) to maintain consistent and efficient rail
4 transportation service to shippers, including the
5 timely provision of railcars requested by shippers;
6 and

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

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

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

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

23 “(2) whether the shipper has made arrange-
24 ments for transportation for any other part of that
25 movement; or

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

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

7 (b) REVIEW OF REASONABLENESS OF RATES.—Sec-
8 tion 10701(d) of title 49, United States Code, is
9 amended—

10 (1) by redesignating paragraph (3) as para-
11 graph (4); and

12 (2) by inserting after paragraph (2) the fol-
13 lowing:

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

19 “(A) whether the rate established is for only
20 part of a movement between an origin and a destina-
21 tion;

22 “(B) whether the shipper has made arrange-
23 ments for transportation for any other part of that
24 movement; or

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

23 “(3) CANCELLATION PENALTIES.—A carrier
24 may accept car orders under paragraph (2) subject
25 to reasonable penalties for service requests that are

1 canceled by the requester. If the carrier fills such or-
2 ders more than 15 days after the reasonably speci-
3 fied loading date, the carrier may not assess a pen-
4 alty for canceled car orders.

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

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

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

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

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

1 “(ii) is served by a single rail carrier
2 at its origin;

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

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

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

1 within 15 days after the facility requests service
2 from the alternative carrier, the alternative car-
3 rier or the eligible facility may request the
4 Board to establish the compensation and the
5 Board shall establish the compensation within
6 45 days after such request is made.

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

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

16 **SEC. 104. COMPETITIVE RAIL SERVICE IN TERMINAL**
17 **AREAS.**

18 (a) TRACKAGE RIGHTS.—Section 11102(a) of title
19 49, United States Code, is amended—

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

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

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

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

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

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

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

13 **SEC. 105. SIMPLIFIED STANDARDS FOR MARKET DOMI-**
14 **NANCE.**

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

20 **SEC. 106. REVENUE ADEQUACY DETERMINATIONS.**

21 (a) **RAIL TRANSPORTATION POLICY.**—Section
22 10101(a)(3) of title 49, United States Code (as so redesign-
23 nated by section 101 of this Act), is amended by striking
24 “revenues, as determined by the Board;” and inserting
25 “revenues;”.

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

5 (c) REVENUE ADEQUACY DETERMINATIONS.—Sec-
6 tion 10704(a) of title 49, United States Code, is
7 amended—

8 (1) by striking “(a)(1)” and inserting “(a)”;
9 and

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

11 **SEC. 107. RAIL CARRIER SERVICE QUALITY PERFORMANCE**
12 **REPORTS.**

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

16 “SUBCHAPTER III—PERFORMANCE REPORTS
17 “§ 541. Rail carrier service quality performance re-
18 ports

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

24 “(1) its on-time performance;

25 “(2) its car availability deadline performance;

1 “(3) its average train speed;

2 “(4) its average terminal dwell time;

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

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

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

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

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

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

“SUBCHAPTER III—PERFORMANCE REPORTS

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

1 **TITLE II—PROTECTION OF**
2 **COLLECTIVE BARGAINING**
3 **AGREEMENTS**

4 **SEC. 201. SCOPE OF AUTHORITY.**

5 Section 11321 of title 49, United States Code, is
6 amended—

7 (1) in subsection (a), by striking “all other law”
8 and all that follows through “acquired through the
9 transaction” and inserting “State and local laws to
10 the extent they regulate combinations, mergers, and
11 acquisitions of control of rail carriers, as necessary
12 to let that rail carrier, corporation, or person carry
13 out the transaction”; and

14 (2) by adding at the end the following new sub-
15 section:

16 “(c) After a transaction approved or exempted by the
17 Board under this subchapter (or by the Interstate Com-
18 merce Commission under this subchapter or any prede-
19 cessor statute) is completed, the activities of a rail carrier
20 participating in or resulting from such transaction shall
21 be subject to State and Federal law to the same extent
22 as those of any other similarly situated rail carrier that
23 has not participated in or resulted from such a trans-
24 action. Completion of a transaction for purposes of this
25 section shall be deemed to occur 1 year after the acquiring

1 rail carrier assumes responsibility for the property trans-
2 ferred.”.

3 **SEC. 202. EMPLOYEE PROTECTION.**

4 Section 11326 of title 49, United States Code, is
5 amended by striking subsection (a) and inserting the fol-
6 lowing:

7 “(a)(1) Except as otherwise provided in this section,
8 when approval is sought for a transaction under sections
9 11324 and 11325, the Board shall require the rail carrier
10 to provide a fair arrangement at least as protective of the
11 interests of employees who are affected by the transaction
12 as the terms imposed under section 11347 of this title,
13 as in effect on the day before December 29, 1995.

14 “(2) The arrangement and the order approving a
15 transaction referred to in paragraph (1) shall be subject
16 to the following conditions:

17 “(A) The employees of the affected rail carrier
18 shall not be in a worse position related to their em-
19 ployment as a result of the transaction during the
20 6-year period beginning on the date on which the
21 employee is adversely affected by an action taken by
22 the affected rail carrier as a result of the transaction
23 (or if an employee was employed for a lesser period
24 of time by the rail carrier before the action became
25 effective, for that lesser period).

1 “(B)(i) The rail carrier and the authorized rep-
2 representatives of the rail carrier’s employees shall ne-
3 gotiate under the Railway Labor Act any arrange-
4 ment regarding the selection of forces or assignment
5 of employees caused by the Board’s order of ap-
6 proval under sections 11324 or 11325.

7 “(ii) Arbitration of the proposed arrangement
8 may only occur if both parties agree to that process.

9 “(iii) The Board shall not intervene in the ne-
10 gotiations or arbitration under this subparagraph
11 unless requested to do so by both parties involved.

12 “(iv) The Board shall not, under any cir-
13 cumstances, have the authority under this title to—

14 “(I) break, modify, alter, override, or abro-
15 gate, in whole or in part, any provision in any
16 collective bargaining agreement or imple-
17 menting agreement made between a rail carrier
18 and the authorized representatives of its em-
19 ployees under the Railway Labor Act; or

20 “(II) provide the authority described in
21 subclause (I) to any other person.

22 “(3) Beginning on the date of the enactment of the
23 Surface Transportation Board Reform Act of 1999, this
24 subsection shall apply to any transaction proposed by a
25 rail carrier under conditions previously imposed by the

1 former Interstate Commerce Commission or the Surface
2 Transportation Board under—

3 “(A) section 5(2)(f) of the Interstate Commerce
4 Commission Act before October 1, 1978;

5 “(B) section 11347 of this title, before Decem-
6 ber 29, 1995; or

7 “(C) this section.”.

8 **TITLE III—MISCELLANEOUS**

9 **SEC. 301. EFFECT OF MERGERS ON LOCAL COMMUNITIES**

10 **AND RAIL PASSENGER TRANSPORTATION.**

11 Section 11324 of title 49, United States Code, is
12 amended—

13 (1) in subsection (b)—

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

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

18 (C) by adding at the end the following new
19 paragraphs:

20 “(6) the safety and environmental effects of the
21 proposed transaction, including the effect on local
22 communities, and the public interest in enforcing
23 Federal, State, and local safety and environmental
24 laws; and

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

3 (2) in subsection (c), by inserting “The Board
4 shall impose conditions under this subsection to
5 mitigate the effects of the transaction on local com-
6 munities when such conditions are in the public in-
7 terest. In imposing such conditions, the Board shall
8 consider the effect of those conditions on local com-
9 munities, and shall consider the public interest in
10 the enforcement of Federal, State, and local safety
11 and environmental laws.” after “effects are allevi-
12 ated.”.

13 **SEC. 302. USE OF FACILITIES BY COMMUTER AUTHORITIES.**

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

17 **“§ 24105. Use of facilities by commuter authorities**

18 “A commuter authority may make an agreement with
19 a rail carrier or regional transportation authority to use
20 facilities of, and have services provided by, the carrier or
21 authority in the same manner and under the same condi-
22 tions as may Amtrak under section 24308. In carrying
23 out this section, the Board shall ensure that commuter
24 authorities are able to provide commuter rail passenger
25 transportation that develops the potential of modern rail

1 transportation to meet the commuter rail passenger trans-
 2 portation needs of the United States.”.

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

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

6 **SEC. 303. SIDE TRACKS.**

7 Section 10906 of title 49, United States Code, and
 8 the item relating thereto in the table of sections of chapter
 9 109 of that title, are repealed.

10 **SEC. 304. PUBLIC AVAILABILITY OF WATER CARRIER TAR-**
 11 **IFFS.**

12 Section 13702(b) of title 49, United States Code, is
 13 amended—

14 (1) by amending paragraph (1) to read as fol-
 15 lows:

16 “(1) TARIFF AVAILABILITY.—A carrier pro-
 17 viding transportation or service described in sub-
 18 section (a)(1) shall make its tariffs available elec-
 19 tronically to any person, without time, quantity, or
 20 other limitation, through appropriate access from re-
 21 mote locations, and a reasonable charge may be as-
 22 sessed for such access. No charge may be assessed
 23 a Federal agency for such access.”;

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

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

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

6 **TITLE IV—AUTHORIZATION OF**
7 **APPROPRIATIONS**

8 **SEC. 401. AUTHORIZATION OF APPROPRIATIONS.**

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

12 “(1) \$17,000,000 for fiscal year 2000;

13 “(2) \$20,000,000 for fiscal year 2001; and

14 “(3) \$25,000,000 for fiscal year 2002.”.

○