

November 19, 1999

H.R. 3446, SURFACE TRANSPORTATION BOARD REFORM ACT OF 1999

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 18, 1999

Mr. OBERSTAR. Mr. Speaker, I am introducing today H.R. 3446, the Surface Transportation Board Reform Act of 1999.

The Surface Transportation Board has been a troubled agency since its creation at the end of 1995.

First, the Board approved a huge merger between the Union Pacific and Southern Pacific railroads. Shippers were promised dramatically improved service. Instead, a year later, they got the biggest rail service meltdown in history. Two years later, the service crisis is over, but there are precious few signs that shippers are getting better service. Clearly, however, they are getting fewer choices and less competition.

Last year, the Board approved another huge restructuring of the industry when it allowed Conrail to be divided between Norfolk Southern and CSX. After spending a year planning the transaction so as to minimize adverse consequences, the transaction became effective on June 1st, and service almost instantly collapsed. While service in some areas has recovered, many shippers still cannot move their goods and are losing business to their competitors because they had the bad luck to be served by Norfolk Southern and CSX.

Clearly, the Board has failed to analyze rail transactions adequately to avoid these service disasters. Because of the reduced competition that has resulted from these mergers, the Board needs to provide more aggressive support to shippers who come to the Board for relief from high rates and poor service. This bill directs the Board to move in that direction. Shippers also need more competitive options without having to go to the Board. The bill's provisions on bottlenecks, terminal access, and reciprocal switching would allow shippers to avoid the adverse effects of mergers by getting more competitive service without seeking rate relief from the Board.

Second, the Board has continued the established policy of its predecessor in allowing railroads to abrogate their collective bargaining agreements as a "reward" for undergoing a merger. For 63 years, from 1920 to 1983, the Interstate Commerce Commission held to the sensible view that the rather vague language in its statute did not entitle railroads to walk away from their signed contracts. In 1983, the Reagan-era ICC voted to ignore its precedents and adopt a new interpretation that was totally at variance with Congressional intent and sound policy. The Board appointed by the current Administration, rather than return to the sensible precedents of the past, has followed the misguided policy adopted by its immediate predecessors. Instead of using the discretion that the statute gives them, the Board has written to the Congress and invited us to change the statute to save us from themselves, and prevent them from continuing to pursue this regressive policy.

This bill is a first step in that direction.

EXTENSIONS OF REMARKS

Title I of this bill proposes a series of measures to enhance rail competition. It clarifies the Rail Transportation Policy to make clear that competition is the "primary objective" to be pursued by the Board. It corrects the Board's "bottleneck" decision, which says that, even if a railroad monopolizes only part of the route along which a shipper wishes to transport a shipment, it can effectively monopolize the whole route, because the railroad can refuse to offer to ship along only part of the route.

The bill also makes it easier to secure competing rail service in terminal areas, and by reciprocal switching.

It codifies the one recent decision by the Board that has benefited shippers, namely the December 1998 decision on "product" and "geographic" competition.

It ends the ludicrous annual charade in which the Board examines the books of railroads that are raising billions of dollars in the capital markets and concludes that they are earning inadequate revenues.

It provides relief for small captive grain shippers by reducing the fees they must pay to protest rate and simplifying the process of determining a rate to be unreasonable. It also provides them with some assurance that they will be able to get enough cars to move out their grain each year.

The bill also requires submission of monthly service quality performance reports by the railroads, so the Board can do a better job of monitoring the industry's performance.

The bill's labor provisions in Title II end any authority of the Board to abrogate collective bargaining agreements, or to authorize a railroad or anyone else to do so. The bill strictly limits the preemption of other laws that is allowed in connection with railroads mergers, restricting this preemption to State and local laws that regulate mergers, and restricting this preemption in time to one year after the railroad takes possession of the acquired property.

The bill also clarifies the status of labor protection for railroad employers. The current statute confusingly defines labor protection in terms of the labor protection once received by Amtrak employees, whose statutory labor protection was taken away by the 1997 Amtrak reauthorization bill. Today's bill makes clear that railroad employees receive six years of labor protection if they are laid off as the result of a merger. While employees in other industries are not given labor protection like this, employees in other industries are entitled to strike if they cannot reach agreement with their employer on a contract. Since World War II, railroad employees have been denied the right to strike by repeated congressional interventions every time a strike is threatened. It is only fair, if employees are not entitled to strike, that they at least be compensated if they lose their jobs as the result of a merger.

Title III of the bill has several other significant provisions. The bill corrects an historical oversight by giving commuter railroads the same access to freight railroad rights-of-way that Amtrak has. When Amtrak was created in 1971, the Nation's private railroads were relieved of their common carrier obligation to provide passenger service—both intercity and commuter service. In return for being relieved of this common carrier obligation, the railroads

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were required to provide Amtrak with guaranteed access to their rights-of-way, but, in an oversight, the Nation's commuter railroads—which provide equally essential passenger service—were not given the same guaranteed access. This bill corrects that oversight by giving commuter railroads the same guaranteed access that Amtrak has.

The bill also gives special consideration to local communities and to passenger railroads in the Board's merger decisions. The Board has often given short shrift to the legitimate concerns of these parties in approving mergers, and has not imposed conditions that are necessary to protect their legitimate interests.

The bill also corrects an anomaly that was inserted in the statute by the 1995 ICC Termination Act. That bill preempted the authority of states to regulate the construction or abandonment of "spur, industrial, team, switching, or side tracks," but it did not give corresponding authority to the Surface Transportation Board. The result was a regulatory black hole, where such facilities could be built or abandoned without regulation either by local zoning regulations or by Federal environmental regulations. If these facilities were only minor railroad spurs, this would perhaps be acceptable, but the term "switching tracks" has been interpreted by the Board to include railroad yards occupying hundreds of acres. Not only can the railroads built these yards without any regulatory interference, they can also use their eminent domain authority to force landowners to sell them the land. This provision should never have been in the statute, and this bill repeals it, giving regulatory jurisdiction to the STB.

The bill also eliminates tariff filing for water carriers in the domestic offshore trades serving Alaska, Hawaii, Puerto Rico, and Guam. These carriers are directed to make their tariffs available electronically, just as water carriers in the U.S. foreign trades were in the Ocean Shipping Reform Act.

Finally, the bill reauthorizes the STB for three years, from fiscal year 2000 to fiscal year 2002, with authorized appropriations rising from \$17 million in FY 2000 to \$25 million in FY 2002. In view of its inability to respond promptly to shipper rate protests (documented in a GAO report earlier this year) and its inability to oversee the results of its merger decisions, the Board clearly needs additional resources. We can only hope that this bill will be enacted and that the Board will use these resources effectively.

COMMEMORATING THE WORK OF
GENERATION EARTH

HON. LUCILLE ROYBAL-ALLARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 18, 1999

Ms. ROYBAL-ALLARD. Mr. Speaker, it gives me great pleasure to come to the floor of the House to recognize the Los Angeles County Department of Public Works for its Generation Earth Program.

Generation Earth is an environmental program of the Los Angeles County Department of Public Works and presented by TreePeople.