



# Overview of S. 2889 STB Reauthorization Act of 2009



## Southwest Association of Rail Shippers

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# Presentation Topics

- Key provisions in S. 2889
  - ▣ STB Organization and Authority
  - ▣ Rail Transportation Policy
  - ▣ Exempt Traffic
  - ▣ Rail Service
  - ▣ STB Studies / Proceedings
  - ▣ Rates and Remedies
  - ▣ Arbitration
- Next steps and process to enact S. 2889 into law

# STB Reorganization and Authority

- Establishes STB as an independent federal agency
- Increases STB from 3 to 5 members
  - ▣ 3 members must have transportation or economic regulation experience and 2 members must have business experience
- STB complaint fees may not exceed fees for federal court actions (approx. \$350)
- Grants STB authority to initiate proceedings on its own motion, without waiting for a complaint
- Enhances STB Office of Public Assistance
- Creates a Rail Customer Advocate

# Rail Transportation Policy

- Modifies and streamlines the statutory policies
- Policy changes benefiting shippers:
  - ▣ Protection of captive shippers
  - ▣ Fair and expeditious regulatory decisions and cost effective processes
  - ▣ Eliminates current policy of minimal regulation of rail industry
- Railroads benefit from policy change emphasizing carriers' need to earn adequate revenue to maintain and *expand* rail infrastructure, etc.
- Explicit requirement to “balance” statutory policies

# Exempt Traffic

- Modifies standards for granting and revoking exemptions
  - ▣ Eliminates requirement that STB grant exemptions “to the maximum extent” permitted
  - ▣ Permits STB to revoke exemptions if necessary “to protect shippers from the abuse of market power”
- STB must conclude a study of all class exemptions within 2 years
  - ▣ Requires public comment and hearing(s)
  - ▣ STB must determine whether any exemptions should be revoked based upon the study
- STB must establish process for periodic review of exemptions

# Rail Service

- Class I carriers shall report service metrics to the STB (e.g. cycle time, transit time, avg. train speed, terminal dwell time by traffic and region)
  - ▣ May extend reporting to other rail carriers
- Railroads must publish reasonable common carrier service expectation ranges (car cycle times, transit times, switching frequency, etc.)
  - ▣ Will be considered in arbitration proceedings
  - ▣ Not clear how deviation from these expectations would affect STB decisions on service complaints

# STB Studies/Proceedings

- Bill requires the STB to initiate several studies within 180 days of enactment
  - ▣ Some only require reports to Congress
  - ▣ Others require substantive action
- The issues involved are complex and require substantial industry input
- Congress determined that STB is better equipped to resolve such issues through administrative proceedings

# STB Studies/Proceedings

- Replacement Costs:
  - Within 2 years, STB must complete a study on the feasibility of using replacement costs in proceedings where they may be relevant
- Rail Practices:
  - STB shall initiate a study of rail practices, including switching, surcharges, demurrage, accessorial charges
  - No deadline for completion
- Rail Car Interchange:
  - Within 2 years, STB must complete a study on rail car interchange practices, including AAR car service, interchange, and other operating rules
- Uniform Rail Costing System:
  - Within 3 years, STB must update, revise or replace URCS (the STB's regulatory cost and accounting system)

# Bottleneck Rates

- Overturns STB's "Bottleneck" decisions
  - ▣ Requires railroads to quote rates over bottleneck segments to existing and practicable interchange
  - ▣ Bottleneck rate cannot "significantly impair" railroad service
  - ▣ Shippers no longer required to have a contract from the non-bottleneck carrier to get a bottleneck rate
- Bottleneck rate not required if railroad does not possess market dominance between the origin and destination
  - ▣ If railroad asserts lack of market dominance, it must seek an expedited determination from STB
  - ▣ Unclear when and how STB would conduct an expedited market dominance analysis and whether this determination would differ from market dominance in rate cases

# Bottleneck / Competitive Switching Rates

- Combines bottleneck and switching concepts
  - ▣ “Bottleneck segment” is defined to include rail facilities in terminal areas, between an origin or destination and an interchange
  - ▣ The bill applies the same standards and remedies to both competitive switching and bottleneck rates
  
- A bottleneck / competitive switching rate must be “reasonable”
  - ▣ Within one year, STB must establish a simplified and expedited process to determine reasonable rates
  - ▣ In order to challenge a bottleneck rate, market dominance must exist between the origin and destination
  - ▣ Railroad has burden of proof that rate is “reasonable”

# Bottleneck Rates

- The standard of “reasonableness” must include:
  - ▣ operating costs for service
  - ▣ maintenance costs for service
  - ▣ additional investment costs needed for service
  - ▣ a reasonable return on embedded capital
  - ▣ a reasonable contribution, “to the extent appropriate,” to network infrastructure costs on the competitive segment that is sufficient, “along with other traffic,” to maintain the competitive segment
  - ▣ any factors appropriate to the STB’s consideration of railroad’s need to earn adequate revenues

# Terminal Access

- Revises standards for one railroad to obtain terminal trackage rights over another railroad
  - ▣ Railroad must possess market dominance within terminal area
  - ▣ Access must be practicable and not have significant adverse effect on incumbent carrier's operations
  - ▣ Access must not have significant adverse effect on incumbent's network efficiency
  - ▣ Access must not significantly impair service to other customers
  - ▣ Access must be necessary to promote efficient operations and improve rail service
  - ▣ Access must be in the public interest
- Within one year, STB must establish a **simplified and expedited** process to determine whether compensation is reasonable

# Paper Barriers

## FUTURE PAPER BARRIERS

- Must be “reasonable and in the public interest”
- STB may not approve rail line purchases involving paper barriers that fail to meet the new standard

## EXISTING PAPER BARRIERS

- A person may challenge an existing paper barrier before the STB
- A complainant may obtain a copy of the paper barrier under confidentiality restrictions
- STB may eliminate an unlawful paper barrier if the rail carriers cannot comply with the new standard within a reasonable period of time and the purchaser compensates the seller
- Purchaser must buy out the paper barrier at fair market value (FMV)

# Other Rate Provisions

- Increases rate case relief caps from:
  - ▣ \$1 million to \$1.5 million in small cases
  - ▣ \$5 million to \$10 million in medium cases
- Shipper may challenge the reasonableness of a rate up to one year before using the rate
- STB must issue final decisions in large rate cases within 545 days, subject to extension at the request of the parties

# Arbitration

- Within 1 year, STB shall develop binding arbitration rules only for disputes over rates, practices, and common carrier service expectations
  - ▣ Does not include disputes between 2 railroads
- Either shipper or railroad may request arbitration after:
  - ▣ a complaint is filed with the STB, or
  - ▣ the conclusion of an informal STB mediation
- STB must determine market dominance before referring a rate dispute to arbitration
- Arbitration precludes STB determination of the dispute

# Arbitration Process

- STB must decide whether to permit arbitration within 30 days of receiving a request to arbitrate
- 14 days to select arbitrator from an STB list
- 90 days to receive evidence
- 30 days to issue a decision
- Deadlines may be extended upon agreement of the parties

# Arbitration Decisions / Appeals

- Arbitration decisions shall be consistent with the statute, be in writing, and have no precedential effect
- Relief is capped at \$250,000 per year for a 2 year period
  - ▣ adjusted periodically for inflation
- Parties may appeal an arbitration decision to the STB
- STB may review the arbitrator's decision to determine if:
  - ▣ it is consistent with Subtitle IV of the statute as applied by the STB; or
  - ▣ is within the maximum award limitations

# Next Steps and Process for Enactment of the Bill

- Possible melding of antitrust and reform bill
- Revisions to the reform bill, if any
- Consideration and vote by the full Senate
- Introduction of the same or an alternative bill in the House of Representatives (HR)
- Consideration and vote on HR bill by the Transportation and Infrastructure Committee
- Vote by the full HR
- Conference among the Senate and HR to resolve any differences between the bills; vote on amended bill by full Senate and HR
- Approval of the final bill by the President

Thank you!

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