

Railroad Industry Concerns with S. 2889

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San Antonio, TX February 18, 2010



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S. 2889 Concerns

1. Antitrust Provisions Not Finalized
2. Rail Transportation Policy Changes
3. Service Provisions
4. Arbitration
5. Bottleneck & Terminal Access Provisions
6. Interchange Commitments
7. Exemptions



S. 2889 Concerns

Antitrust Provisions Not Included in S. 2889

- Unresolved Issues
 - Dual Merger Jurisdiction
 - Retroactivity
 - Primary Jurisdiction Doctrine
 - Right of Private Injunctive Relief
 - Joint Rate Evidentiary Rule
 - Repeal of Keogh Doctrine
 - FTC Jurisdiction



S. 2889 Concerns

Rail Transportation Policy Changes

- Need for Minimized Regulatory Control (Stricken)
- Balancing Test
- Recognition of the possible impact of passenger traffic on freight service and capacity



S. 2889 Concerns

Service Provisions

- “Reasonable” Common Carrier Service Expectations
- Prosecutor, Judge and Jury (New STB Powers)
- Service Arbitration
- Prospective Relief Only



S. 2889 Concerns

Arbitration Section

- Limit arbitration to rates; application of service rules; service expectation ranges.
- Apply American Arbitration Association impartiality test to arbitrators.
- Limit both award and decision to specified amount and term.
- Conform standard of review with standard for decision



S. 2889 Concerns

Bottleneck & Terminal Access Provisions

- Railroads Willing to Quote Bottleneck & Terminal Access Rates—But Need Certainty on Lost Contribution
- Need Clear Definitions of Bottleneck
- Burden of Proof Issues
- Single Remedy



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Interchange Commitments

- Fair Market Value Considerations
- Clarify Definition of Interchange Commitment
- Exclusive Remedy



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Exemptions

- Reinststate “...to the maximum extent possible...”.
- Set standard to require consistency with Rail Transportation Policy and protection from market abuse for revocation of an exemption.