

LEGISLATIVE UPDATE – OCTOBER 2009

Railroad Antitrust Legislation

The House Judiciary Committee approved H.R. 233, by voice vote without amendment on September 16. This bill, introduced in January by Rep. Tammy Baldwin (D-Wis), would repeal the antitrust exemptions for freight railroads that have been in place since 1914. These exemptions have allowed the railroads to seek clearance for rate changes or mergers from the Surface Transportation Board (STB) rather than the Department of Justice. The new legislation would require the Justice Department's approval for any mergers, acquisitions, or collective rate-making agreements, as is the case with the trucking and airline industries. It would also allow state attorneys general and private parties to file antitrust suits in federal court. Under the current law, parties can file a complaint with the STB but are not allowed to file lawsuits. Lamar Smith of Texas, ranking Republican on the Judiciary Committee, stated that he is concerned that this legislation could cause pending lawsuits to shut down entire railroads, but also said that he would not oppose the legislation and would try to find a compromise.

In the Senate, the Commerce, Science & Transportation Committee is still working on coming up with a plan to reform rail economic regulations, and Committee Chairman Jay Rockefeller (D-W.Va.) said on September 16 that they are "very close." Their proposed measure would reauthorize the STB, the rail regulator for economic issues between rail shippers and railroads, making it easier for shippers to challenge railroads on rates, access, and service issues. Shippers have complained that the STB is pro-railroad and that many customers are held captive to a single railroad, without enough power to negotiate rates or service issues. The new law could also expand the STB from three to five members and beef up the agency's budget. Some think that the legislation could also authorize the STB to initiate more enforcement actions themselves rather than wait for shippers or other parties to file challenges. The railroads argue that toughening regulation could endanger the solid profits that have allowed them to invest in track system upgrades and head them back toward bankruptcies that led to deregulation in the first place.

Sen. John Thune of South Dakota, the ranking Republican on the Committee, stated that there is a tremendous amount of interest in coming up with a good solution for regulatory change that would bridge the issues between the shippers and the carriers. He went on to say that there is a consensus that the STB process has to be reformed so that there is a less expensive way for shippers to challenge railroads on rates, etc., but the details are still being worked out. Stock analysts have warned rail shares investors, whose investments have held strong despite the recession, that regulatory reform could pose more risk for rail firms. Morgan Stanley Rail Stocks Analyst William Greene told clients that the "mere introduction of rail legislation will create headline risks for rails." He also stated that the fast timeline to get a bill passed by Congress "decreases risk of draconian legislation" and that it may be in the best interest of the railroads to support a compromise bill to avoid potentially more onerous legislation, while shippers may accept a compromise bill to avoid walking away with nothing.

Rail Security

Teamsters General President Hoffa recently expressed that our nation's rail system remains vulnerable to terrorist attack, stating that rail workers do not have adequate security training. Engineers, trainmen, and track and bridge workers need to know how to thwart a train hijacking, an attack on critical infrastructure, or the planting of a bomb on freight or passenger train cars. We are aware that rail lines routinely run through our communities carrying hazardous materials, yet freight rail corporations are not providing fire and rescue operators with real-time information about the cargo that is traveling through their cities and towns.

On September 10, law enforcement officers from Amtrak, the Transportation Security Administration, and more than 100 federal, state, local railroad and transit police agencies conducted Operation ALERTS, an expanded counter-terrorism and incident response exercise, by patrolling 150 stations in the Northeast Corridor. Operation ALERTS (Allied Law Enforcement for Rail Transit Security) involved heightened station patrols, increased security presence onboard trains, performing explosive detection canine sweeps, and random passenger bag inspections at unannounced locations in 13 states, and Washington, D.C. The exercise is now being reviewed by the involved parties to help evaluate effective tactics for preventing and responding to possible threats or incidents. Similar future ALERTS exercises are being planned for the Northeast Corridor and other parts of the U.S. rail system.

The "Surface Transportation Act of 2009: A Blueprint for Investment and Reform"

SAFETEA-LU (the Safe Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users), signed into law on August 10, 2005, will expire at the end of September. This bill authorized \$286 billion in spending for the six-year period 2004-09 for numerous surface transportation programs, such as highways, transit, freight, safety and research.

In the past, the reauthorization bill has been funded through the highway trust fund; however with gas tax receipts a decline in the last few years. The current user fees generate only enough revenue to finance \$35.1 billion of investments from this year's \$53.1 billion funding level. And without additional revenues, a six-year surface transportation authorization bill could fund only \$236 billion in highway, highway safety, and transit investment—that is \$90 billion less than the current investment level over the next six years, according to Oberstar.

Some feel that the current debate on health care reform has overshadowed the importance of focusing on the transportation reauthorization; however, with the expiration of the current bill, some kind of action must be taken. On September 22, Congressman James Oberstar (D-Minn) introduced H.R. 3617, the Surface Transportation Extension Act of 2009. This bill extends federal surface transportation programs for three months, through December 31, 2009. The bill passed on the House on September 23 and has been sent to the Senate. While a three-month extension beats the alternative of having no funding in place past September 30, Oberstar made it clear it is not more than a stop-gap measure.

The Obama Administration released a plan in August that would keep surface transportation programs in the black until March 2011 in the form of a \$20 billion transfer from the United States General Treasury Fund that would be put into a federal trust for highway and transit infrastructure projects.

One thing is clear—we need more than a short-term fix for our nation's transportation infrastructure issues. Without investment in infrastructure, we will not see long-term economic growth.

Department of Transportation Appropriations

H.R. 3288, the Department of Transportation Appropriations Act of 2010 was introduced by Rep. John Olver (D-Mass) on July 22, 2009, to appropriate funds for the Department of Transportation, Housing, and Urban Development for the fiscal year ending September 30, 2010. It passed in the House on July 23, 2009, and in the Senate on September 17, 2009. It is now being conferenced in the two houses to work out the differences. Please continue to encourage your Senators to keep the funding for high speed rail at the level that was included in the legislation that was passed by the U.S. House of Representatives in July.

Firearms on Amtrak... no way!

During consideration of H.R. 3288 (see above), Senator Roger Wicker (R-Miss.) offered an NRA-backed Amendment to reform policies regarding the transportation of firearms on Amtrak trains. Currently, passengers who choose to travel by passenger rail in the United States cannot transport a firearm in checked baggage as they can on airlines.

Known as the Wicker Amendment, the measure was adopted by the Senate on Wednesday, September 16, by a [vote of 68-30](#), and would allow law-abiding Amtrak passengers the ability to securely transport firearms in their checked baggage while traveling by Amtrak train.

The BLET and the UTU have joined forces to oppose this amendment, citing safety, occupational, and financial concerns. In a joint letter to the Senate and House Appropriations Committee, presidents of both unions stated: ““We strongly believe that this provision would seriously jeopardize the safety of our membership, of other crew members on Amtrak trains, and of the intercity rail traveling public.”

From a safety and security standpoint, the weapons would be too easily accessible to terrorists or other passengers. When firearms are transported in checked baggage on aircraft, passengers do not have access to the firearms because they are stored in a segregated cargo hold. However, the possibility remains that anyone traveling on an Amtrak train could overpower the on-board crew and gain access to the baggage car and any weapons being transported therein.

The amendment makes no provision for additional funding to train Amtrak personnel to handle baggage with checked firearms. Even if Amtrak were given additional funds to accommodate the changes necessary to transport firearms, the extra procedures during check-in and baggage handling could affect on-time performance, and any additional funds could be better spent elsewhere on the Amtrak system, such as infrastructure and rolling stock.

Please let your Senators know that we strongly oppose the Wicker Amendment.

Hours of Service Law

Discussion continues as to the myriad of issues created by the changes in the Hours of Service Requirements following the passage of the Rail Safety Improvement Act of 2008. The BLET released a Newsflash on September 25 regarding Deadheading and New Hours of Service Regulations. To see the complete Newsflash, go to www.ble-t.org. A chart has also been posted online at www.ble-t.org/pr/pdf/HOSchart.pdf to help members understand the Hours of Service process.