



# ARC

## Alliance for Rail Competition

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### **The Big Question - Will the captive shipper legislation get through the 111th Congress? Or alternatively - will any meaningful legislation get through the rest of the 111th Congress?**

#### **Chairman Rockefeller Holds Commerce Committee Hearing On September 15th**

Chairman Rockefeller held a hearing on September 15th and it was clear that Chairman Rockefeller was not happy with the railroads. Chairman Rockefeller chastised the railroads for stalling his efforts to get S2889 to the floor of the Senate. He indicated that he had repeatedly asked both the shippers and the railroads to prioritize the planks in the S2889 and the shippers complied and the railroads indicated that it was just too difficult for them to find agreement. The Commerce Committee issued a report on the Railroads entitled:

*Chairman Rockefeller continued his verbal assault on the railroads and indicated that he intends to get this STB Reauthorization/Shipper reform bill through in this Congress or next. Chairman Rockefeller continues to enjoy full Committee support for passage of the bill.*

#### **Summary of Hearing:**

- Chairman Rockefeller issues a blistering edict to railroads – he will pass captive shipper legislation in spite of the railroads 'bad' faith conduct – now or in the near future
- Chairman Rockefeller accuses RR's of stalling after agreeing to S2889 – when he asked for them to 'prioritize' their wants in the bill
- Chairman Rockefeller praises the captive shippers for compromising and working with the Committee staff on this bill

In a report to the Chairman by the Commerce Committee staff there are notable quotes:

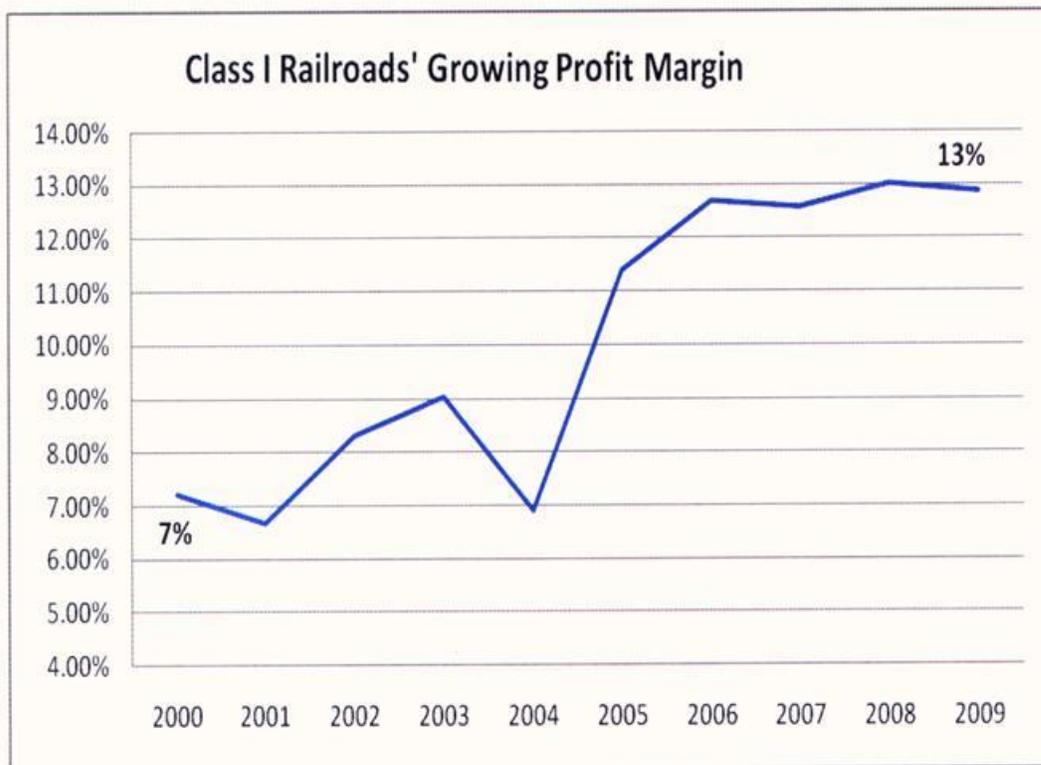
- "While the freight railroads have been investing record amounts of their profits into much-needed capital projects, they have also doubled dividend payments to their shareholders and spent billions more dollars repurchasing their publicly-traded shares to boost the short-term value of their stocks."
- "In spite of the obvious financial strength of the Class I Railroads, their industry association, the AAR, continues to tell Congress and the STB that the freight rail industry is not yet capable of meeting its capital needs without the differential pricing powers the Staggers Act gave the railroads in 1980."

- In April 2008 (STB Ex Parte No. 677 April 17, 2008) the AAR in written testimony stated that “the railroad’s profitability was ‘still far from stellar in comparison to the many other industries against which railroad’s compete for capital’ and that the rail industry profitability has consistently lagged most other industries – and that is still the case today”
- A review of the largest four railroads by the SEC filings shows just how profitable the large railroads have become over the last decade.
- Railroads Rank the 5<sup>th</sup> Most Profitable Industry Group in U.S. 2008 – Fortune Magazine

**Top industries: Most profitable**

<b>Industry Rank</b>	<b>Industry</b>	<b>2008 Profits as % of Revenues</b>
1	<u>Network and Other Communications Equipment</u>	20.4
2	<u>Internet Services and Retailing</u>	19.4
3	<u>Pharmaceuticals</u>	19.3
4	<u>Medical Products and Equipment</u>	16.3
5	<u>Railroads</u>	12.6
6	<u>Financial Data Services</u>	11.7
7	<u>Mining, Crude-Oil production</u>	11.5
8	<u>Securities</u>	10.7
9	<u>Oil and Gas Equipment, Services</u>	10.2
10	<u>Scientific, Photographic, and Control Equipment</u>	9.9

- “In 2008, the railroad companies’ 12.6% profit margin placed the industry fifth out of the 53 industries on the Fortune’s list of “most profitable industries” trailing only the communications, Internet, pharmaceutical, and medical device industries<sup>1</sup>”
- “Between 2001 and 2008, the railroad industry was ranked in the top ten on Fortune’s profitability list SEVEN out of EIGHT times” (emphasis added)



*Figure 1 – Combined Profit Margins (Net Income/Revenue) for BNSF, Union Pacific, CSX, and Norfolk Southern, 2000-09 (Source: SEC filings)*

Commerce Committee staffers in August and September spent considerable research time with many ARC members seeking their input on state of rail transportation in their association with the nation's railroads. This input provided some of the input into the published report issued at the September 15, 2010 Commerce Committee Report to the Chairman.

ARC together with other members of the Rail Advocacy Group continue to meet and discuss possible legislative strategies and possibilities for movement of captive shipper legislation in the lame-duck session following the November elections and in the 111<sup>th</sup> Congress which will convene early next year. All members of the group and other shipper companies and organizations are strongly committed to the passage of reform legislation and actively working toward that end.

### **Some Rails - Want to Get The Captive Shipper Issue Behind Them:**

Meanwhile, the BNSF in meetings with shippers indicate that they are not opposed to the bill and just want to get the issue behind them.

Just before leaving town for the August recess, Senators Cantwell (D-WA), Murray (D-WA), and Lautenberg (D-NJ) introduced the :**Focusing Resources, Economic Investment, and Guidance to Help Transportation (FREIGHT) Act of 2010**. According to the authors of the bill it would establish the first comprehensive freight transportation policy and create a new Office of Freight Planning and development

within the Department of Transportation that would coordinate efforts to improve the efficiency and operation of all modes of the national freight transportation system. <http://lautenberg.senate.gov/assets/FREIGHT> . On Labor Day, President Obama initiated a push for massive infrastructure spending on Highway, Rail and Airports - initially \$50 Billion of a proposed \$200+ Billion package to be pushed in the lame duck Congressional session. While a great deal of the proposed railroad infrastructure will be focused on passenger rail service - most of the track will involve Class I freight rail routes.

The captive shippers are pushing for lame duck session action on S2889 - STB Reauthorization/Captive Shipper.

### **STB Grain Car Council Meeting - Omaha, NE**

ARC via Terry Whiteside was represented at the STB's Grain Car Council meeting in Omaha on September 16th and while the railroads stated repeatedly that while there was an expected record movement anticipated of corn and wheat and in spite of every railroad having grain cars still in storage coupled with idled crews and locomotives - they anticipate no major flow issues with this year's grain crops even though they are currently running 7-10 days behind. In addition, train velocities are lower than last year. Naturally, several shippers including Terry Voss with Ag Processors expressed concerns that we are perhaps entering the 'perfect storm' – assurance by rails that they can handle it, above average production, heavy movement anticipated in corn, wheat and beans, and lack of excess rail capacity. Quote: “I am more frightened than I have ever been about the shipping of this grain to market.” The concerns – were echoed by other merchandisers that any weather disruption, which are likely to happen will cause more problems than normal due to tight rail supply – and the massive movement requirements. Several elevator companies commented that they are trucking more and more each year as rails continue to raise prices – quote: “rail rates too high.”

Questions to the BNSF and UP by the audience about the pending Columbia river shutdown for maintenance in Dec 2010 – March 2011 – were answered by the railroads – that they have it covered – working with grain merchandisers and see no problems

ARC's chairman, Terry Whiteside visiting Washington D.C. in late September - met with Senator Jon Tester and his staff and discussed possible scenarios for the S2889 bill. Terry, Fran Boyd and Rick Meyers (Meyers and Associates) together John Cutler (McCarthy, Sweeney and Harkaway) also visited with Chairman Elliot and Vice Chairman Mulvey of the STB about freight rail issues. They discussed the importance of dealing with freight rate levels for captive shippers, and how very critical a pro-active - shipper friendly STB will be in the revenue adequate era of 21st Century railroading. Terry displayed charts and graphs to the two officials to illustrate the concern of ARC's members.