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THE SENATE SURFACE TRANSPORTATION BILL MOVES FORWARD BUT THERE WILL BE NO VOTE ON THE KOHL AMENDMENT (ANTI-TRUST) AT THIS TIME

The Senate is moving towards a vote on S.1813, which is the Senate version of the House Surface Transportation bill. Support for the House version seems unlikely and the Senate version of the bill is a long way from mirroring the House version.

The Senate agreement on this bill allows for votes on roughly 30 amendments. Votes on these amendments, and potentially a vote on final passage, are expected to occur over the next few days. Late Wednesday night, Senate Majority Leader Reid announced an agreement that provides a path forward.

Unfortunately, Amendment No. 1591, sponsored by Senators Kohl, Vitter, Klobuchar and Franken, which lifts antitrust exemptions from the railroads, is not among the amendments that will receive a vote. The combined lobbying efforts of the railroads and rail labor were intense in this election year, and several Democratic Senators who are facing re-election in November raised strong objections having to register a vote on the Kohl amendment even though this bill (S 49) came out of the Senate Judiciary Committee with a 14-1 vote. Ultimately, the Majority Leader ceded to their objections and did not include Amendment No. 1591 in the final agreement. One of the roles of Majority Leader Reid continues to be to shield the Senate Democrats from voting on issues that might make re-election more difficult.

In talking with the Senate Judiciary Committee staff Thursday morning, they have expressed their appreciation for the strong lobbying efforts by rail shippers. They indicated that they received many expressions of support for S. 49 from Senators and that several of these Senators presented a strong case for a vote on the amendment to the Majority Leader. Senator Kohl and the other sponsors of S. 49, as well as their staff, will continue to work to identify other opportunities for consideration of the provisions of S. 49. In all likelihood there will be more opportunities to present this bill during the current Congress. The major fear by the railroads was that Senator Kohl's amendment had the votes to pass given the opportunity. Senators, especially those running for re-election on both sides of the aisle, rarely like to be faced with choosing between their friends (and donors) – the rail shippers and the railroads.

Senate Bill S. 1813 still contains the Senate Commerce Committee rail customer provisions that were reported on earlier. These provisions, while not as robust as many captive shippers would like to see, raise the limits on small rate cases and call for a more pro-active STB while stressing the need for more data on captive shipper issues.

The passage of S. 1813 is expected in the next few weeks and because the House version of the Surface Transportation bill has a long way to go to get passed – it is expected that a joint House/Senate conference committee will have to work out their differences. It is still unclear how Congress will propose payment for the very different bills that are being moved by the House and Senate.