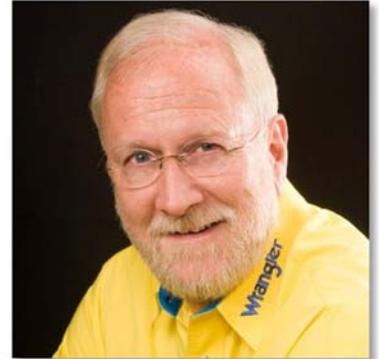


TRANSPORTATION NEWFLASH

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NEWSFLASH: LATE YESTERDAY, THE SENATE COMMERCE COMMITTEE UNDER THE LEADERSHIP OF SENATOR THUNE ANNOUNCED PLANS TO INTRODUCE A BIPARTISAN STB REAUTHORIZATION BILL (MARCH 19TH). THE BILL IS BEING COSPONSORED BY CHAIRMAN THUNE AND RANKING MEMBER BEN NELSON

The bill introduced by Chairman Thune and Ranking Member Nelson would reauthorize the STB for the first time since it was created and would make the Board a more effective agency for handling freight rail issues. The legislation would streamline rate case procedures, create a meaningful alternative dispute resolution process, and require an analysis of the rules under which the Board operates.

Other common-sense improvements include allowing the Board members to discuss agency matters with each other, permitting the Board to launch its own investigations, and creating much needed timelines for completing cases.

Much has changed since Congress created the STB to address freight rail issues. Now, it must ensure that the Board is properly equipped to deal with the dramatic transformation of the railroad industry and serve as a viable, timely forum for both shippers and railroads.

Quite simply, the legislation proposed by the Chairman and Ranking Member will make important and necessary improvements that are consistent with the direction Congress set for the STB when it was first created.

This is the STB Reauthorization bill that Senator Thune and the railroads and shippers have been working on since the first of the year. Look for this bill to get introduced immediately – and then marked up in Senate Commerce Committee next week.

A Brief Summary of the Bill is outlined below:

Surface Transportation Board Reauthorization Act of 2015: Section by Section Analysis

Section 1. Short title; table of contents.

This section titles the bill, the “Surface Transportation Board Reauthorization Act of 2015.”

Section 2. References to title 49, United States Code.

The section explains that changes made in this bill, except where expressly provided otherwise, are made to Title 49 of the U.S. Code.

Section 3. Establishment of Surface Transportation Board as an independent establishment.

This section amends administrative provisions to clarify STB’s role as an independent body and requires that submissions or transmissions of budgetary or legislative matters be submitted concurrently to the President/Office of Management and Budget and the U.S. Senate Commerce, Science, and Transportation Committee and the House Transportation and Infrastructure Committee. This section also repeals a requirement that DOT provide administrative support to the STB. The section makes other technical amendments re-organizing the location of text in the U.S. Code.

Section 4. Surface Transportation Board Membership.

This section expands membership of the STB board from three members to five in order to address inefficient quorum requirements.

Section 5. Nonpublic Collaborative Discussions.

This section allows for limited instances in which a majority of Board members can communicate without requiring a full public meeting. During such communications, no vote may be taken, the STB General Counsel must be present, and only Board members or staff may attend. In addition, the STB must disclose of meeting topics and participants within two business days of the meeting, unless the discussion relates to an ongoing proceeding, in which case the disclosure must be made on the date of the final Board decision. This section also requires the STB to provide a summary with as much general information as possible on any sensitive matter withheld from the public based on current law.

Section 6. Reports.

This section requires the STB to submit an annual report on its activities, including each instance where it initiates an investigation on its own initiative.

This section also requires the STB to post on its public website a quarterly report of rail rate review cases pending or completed by the STB during the previous quarter. To help with compliance monitoring of the rate case procedures in section 11 of this Act, such a report must include summary information and key dates involved in the case.

This section also requires the STB to post on its public website a quarterly report formal and informal service complaints received by the STB during the previous quarter. The database must include the type, geographic origin, and resolution of each complaint.

Section 7. Authorization of appropriations.

This section authorizes STB appropriations for FYs 2015 to 2019 at \$33 million, \$35 million, \$35.5 million, \$35.5 million, and \$36 million, respectively.

Section 8. Agent in the District of Columbia.

This section allows for a rail carrier’s agent to be located outside of Washington, D.C.

Section 9. Department of Transportation Inspector General authority.

This section authorizes the DOT Office of Inspector General (OIG) to review financial management, property management, and business operations of the STB. It requires the DOT OIG to keep the

appropriate Congressional committees informed, issue findings and recommendations, and report on STB progress in addressing problems. It allows the DOT OIG use of investigative powers (e.g., subpoenas), authorizes DOT to use necessary sums for DOT OIG activities, and authorizes reimbursable agreements.

Section 10. Amendment to table of sections.

This section makes conforming technical amendments to the table of contents.

Section 11. Procedures for rate cases.

This section requires the STB to maintain one or more streamlined processes for rate cases in which the full stand-alone cost presentation is too costly, given the value of the case. This requirement builds on existing work at the STB, and it ensures the simplified reviews are accompanied by expedited handling.

This section also sets rate review timelines for full stand-alone cost rate challenges to ensure the STB efficiently decides on relief. Timelines apply to: discovery (150 days); development of evidentiary record (155 days); closing brief (60 days); and final Board decision (180 days). The section provides an option for a Board-granted extension upon request or in the interest of due process.

Finally, the section requires the STB to initiate a proceeding to access other procedures, including procedures common in other litigation settings, to help expedite rate cases.

Section 12. Investigative authority.

This section allows the STB to initiate investigations on its own initiative and sets restrictions on those investigations. Current policy only allows investigations upon complaint. For STB-initiated investigations, the STB must: provide 30-day notice to parties under investigation; investigate issues of national or regional significance; permit parties under investigation to file a written statement on the matter subject to investigation; make available to parties under investigation and Board members any recommendations and a summary of findings; dismiss any investigation that is not concluded by the STB with administrative finality within in 1 year after the date on which it was commenced; requires the STB to separate investigating and decision-making functions of staff to the maximum extent practicable; and, within 90 days of receiving findings or recommendations, dismiss an investigation or initiate a proceeding to determine whether a violation has occurred.

For STB-initiated investigations, if the Board determines a violation has occurred, this section allows for de novo review of the Board's order and provides authority for the United States court of appeals to affirm, modify, or set aside whole or part of the order or remand the proceeding. This section also limits any Board-ordered remedies to be prospective-only.

Finally, this section requires, not later than 1 year after the date of enactment of this act, the STB to issue rules for the investigations that it initiates.

Section 13. Arbitration of certain rail rates, practices, and common carrier service expectation disputes.

This section expands existing work at the STB to encourage and provide arbitration for dispute resolution. This section requires, not later than 1 year after the enactment of this Act, the STB to promulgate regulations establishing a voluntary and binding arbitration process for rate and practice issues. Among other issues, this arbitration process would apply to rates, charges, rules, and practices, but it would not apply to labor protective conditions, issues of industry-wide applicability, certain license issues, and disputes solely between two or more carriers.

This section requires arbitration process only to be commenced when relevant parties opt-in. The process is available only if the rail carrier has market dominance. This section sets forth terms that require any arbitration decision shall: be consistent with sound principles of rail regulation economics; be in writing; contain findings of fact and conclusions; bind the parties; and not have any precedential

effect. It limits the STB from separately reviewing cases, and it requires that arbitrators give due consideration to certain rail rate regulation issues.

This section specifies timelines for the: arbitrator selection (14 days after initiation); evidentiary process (90 days); and decision (30 days after evidentiary record closes). It allows certain discretionary extensions. The section also sets a selection process for arbitrators and establishes equal sharing for the cost of the arbitrators, but not other associated arbitration costs.

This section caps relief at \$2 million for practice disputes and \$25 million for rate dispute damages. It limits rate prescription from arbitration to not longer than five years from the date of the decision. The Board can only review an arbitration decision if it does not comply with statute, the relief award cap, or sound principles of rail regulation economics.

Section 14. Effect of proposals for rates from multiple origins and destinations.

This section requires, within 90 days of the date of the enactment of this Act, the U.S. Government Accountability Office to commence a study of rail transportation contract proposals containing multiple origin-to-destinations movements and to report results to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure.

Section 15. Reports.

This section requires the STB to provide, within 60 days of enactment of this Act, quarterly reports to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure that describes the STB's progress toward addressing the issues raised in unfinished regulatory proceedings.

Section 16. Criteria.

This section clarifies standards and procedures establishing revenue levels for all carriers factor in the infrastructure and investment needed to meet the present and future demand for rail services.

Section 17. Construction.

This section clarifies that nothing in the bill affects any cases being considered by the STB at the time of enactment.

Editor's Note: This not a perfect bill, but it is probably the best that can be brought to the floor in this Congress and possibly blended with the Highway bill or the rail passenger or Positive Train Control mandate adjustments. The shipper coalitions together have been working with Senator Thune and Commerce Committee staff for weeks to try and get the best bill possible. Thanks to Meyers and Associates who are the Alliance for Rail Competition's Washington Representatives and who represent captive shipper interests. We will provide an in-depth analysis in upcoming Transportation Reports.