



# ARC

## Alliance for Rail Competition

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### **Federal News Update November 7, 2008**

#### **The New Congress and the Outlook on Washington**

Earlier this week, the Democratic Party widened its majorities in the Senate and the House of Representatives and secured the White House. While it is difficult to accurately predict how the expanded Democratic control will affect shipper legislative efforts, it is expected that Congress and the White House will seek and exercise more oversight of regulatory institutions such as the STB as well as market forces and conditions in general.

In the Senate, the Democrats have at least 55 seats at the time of printing. Three races remain undetermined while the ballot count is being finalized: Georgia (incumbent Saxby Chambliss (R)), Alaska (incumbent Ted Stevens (R)), and Minnesota (incumbent Norm Coleman (R)). Two Independents in the Senate – Bernard Sanders (VT) and Joe Liebermann (CT) – also caucus with Democrats, giving the party at least a 57-seat majority. The number is significant even if it stays unchanged because it makes it easier to secure 60 votes needed to counter a Republican effort to block the majority's priorities via a filibuster.

In the House, the Democrats will hold at least 254 seats – their largest caucus since 1994, when they held 259 seats.

At this time it is too early to report whether any of the new members will gain a seat on a committee relevant to shipper efforts, but we can report some changes due to election "casualties". On the House Transportation & Infrastructure Committee, Chairman James Oberstar (D-MN) and Ranking Minority Member John Mica (R-FL) are expected to remain at the helm. Five members – one Democrat and four Republicans – will not return in the 111<sup>th</sup> Congress. This leaves room for additional committee members, however, the Republican Party is expected to have a smaller percentage of seats due to a larger Democratic majority. It is important to note that the Committee will be working on a major, 6-year, piece of legislation governing surface (highway) transportation programs and funding, which will occupy much of the committee's time. It is important that all shippers continue advocating for rail competition reform in order to make sure that our effort does not get diminished in the shadow of the highway legislation.

On Friday afternoon, Sen. Robert Byrd, chairman of the Senate Appropriations Committee, announced that he would leave this post. As a result, Sen. Daniel Inouye (D-HI) will take over the gavel. This is an important development for the shippers as Sen. Inouye currently serves as the Chair of the Commerce, Science and Transportation Committee, which has jurisdiction of the Rail Competition and Service Improvement Act of 2007, and will have to give up that gavel. While no announcement has been made, it is widely expected that Sen. Jay Rockefeller (D-WV), a staunch supporter of shipper issues, will

assume the chairmanship of the Commerce Committee. If this assumption becomes a reality, it will create a more favorable legislative environment for the shippers in the Senate.

On the Republican side, Sen. Kay Bailey Hutchison (R-TX) has been serving as the top Republican of the Committee since Sen. Ted Stevens (R-AK) had to step aside due to an indictment and a subsequent felony conviction last month. It is still unclear whether Sen. Stevens has won his reelection, but regardless of his future in the Senate, it appears that Sen. Kay Bailey Hutchison will continue as the Ranking Republican member.

The Commerce Committee will lose one member in 111<sup>th</sup> Congress – Sen. John Sununu (R-NH).

The Rail Competition and Service Improvement Act of 2007 (H.R. 2125/S. 953) will “die” at the end of this Congress. The legislation will need to be reintroduced after the 111<sup>th</sup> Congress convenes on January 6<sup>th</sup>, 2009. All of the current co-sponsors will need to sign on anew. At the end of this document, a list of current co-sponsors of the bill is updated with election “casualties”.

**Rail Competition Study**

As discussed in a previous newsletter, Christensen Associates presented the results of their rail study to the STB on Thursday, November 6<sup>th</sup>. The Executive Summary and the total report can be viewed on [www.lrca.com/railroadstudy](http://www.lrca.com/railroadstudy). The interesting aspect of the hearing was the Study team testifying that it was difficult for an economist to determine whether the railroads were “abusing market power” or if there was “fair pricing”. Rather, they asserted, this was a policy decision. However, the Study group did say that shippers who lacked competitive alternatives paid higher rates than those who had alternatives.

Considerable time was spent by the Christensen team and the Board discussing the following chart.

**TABLE ES-8  
LIKELY ECONOMIC EFFECTS OF VARIOUS OPEN-ASSESS PROPOSALS**

	<b>Reciprocal Switching</b>	<b>Bottleneck Rates</b>	<b>Terminal Agreements</b>	<b>Trackage Rights</b>
Economies of Density	Potential gains	Gains unlikely	Potential gains	Potential gains
Length-of-Haul Economies	Small loss	Potentially large loss	No gain to small gain	No gain to small gain
Vertical Economies	Small loss	Potentially large loss	Small loss	Potentially large loss
Investment Incentives	Small effect	Potentially large effect	Small effect	Potentially large effect
Railroad Profitability	Small effect	Potentially large effect	Small effect	Potentially large effect
Coordination Costs	Small to moderate	Small to moderate	Small to moderate	Potentially large
Competitive Response	Most likely	Least likely	Most likely	Somewhat likely
Shipper Gains	Most likely	Least likely	Most likely	Somewhat likely

The table shows that reciprocal switching and terminal rights hold the most promise to shippers in the proposed rail competition legislation (H.R. 2125/S.953) and would provide a competitive response.

Trackage rights were seen by the study as having “somewhat” likely gains for the shippers and while providing a competitive response, may come with a “potentially large” effect on railroad profitability. On the other hand, bottleneck rates (rate quote over segments) would do little for shipper gains or increasing competition since the railroads would simply quote higher rates. It would then be up to the shipper to litigate at the STB the rate quoted over the bottleneck, a process that shippers have found little success in.

Of great interest to ARC members was a statement by the Christensen representatives that Final Offer Arbitration held promise for the shipper, provided the arbitrator had experience in the railroad industry. To quote the report, “to the extent that the threat or possibility of final-offer arbitration encourages parties to negotiate and reach voluntary agreement or resolve disputes, as suggested by a number of stakeholders we interviewed, it would improve the functioning of private matters without imposing additional regulatory burdens”. In reality the FOA removes the need to use the litigation process that involves the STB. ARC considers the FOA a key provision, which would provide relief to shippers, and continues to strongly advocate for its inclusion in the legislation.

The STD is seeking public comments on the study by December 2<sup>nd</sup>, 2008. Instructions are available on the following website:

<http://www.stb.dot.gov/85256593004F576F.nsf/0/823EAB29B52E5915852574F90078A5D3?OpenDocument>

### **H.R. 2125 The Rail Competition and Service Improvement Act** **Updated List of Co-Sponsors Following 2008 Election**

Rep. Oberstar, James (D-MN)  
Rep. Alexander, Rodney (R-LA)  
Rep. Andrews, Robert (D-NJ)  
Rep. Baldwin, Tammy (D-WI)  
Rep. Berry, Marion (D-AR)  
Rep. Bonner, Jo (R-AL)  
Rep. Boren, Dan (D-OK)  
Rep. Boustany, Charles (R-LA)  
Rep. Braley, Bruce (D-IA)  
~~Rep. Cubin, Barbara (D-WY)~~  
Rep. Delahunt, William (D-MA)  
Rep. Ellison, Keith (D-MN)  
Rep. Franks, Trent (R-AZ)  
Rep. Frelinghuysen, Rodney (R-NJ)  
Rep. Garrett, Scott (R-NJ)  
Rep. Gillmor, Paul (R-)  
Rep. Grijalva, Raul (D-AZ)  
Rep. Hare, Phil (D-IL)  
Rep. Herseth Sandlin, Stephanie (D-SD)

Rep. Hinojosa, Ruben (D-TX)  
Rep. Hirono, Mazie (D-HI)  
Rep. Holden, Tim (D-PA)  
Rep. Holt, Rush (D-NJ)  
Rep. Hooley, Darlene (D-OR)  
Rep. Inglis, Bob (R-SC)  
Rep. Jefferson, William (D-LA)  
Rep. Kagen, Steve (D-WI)  
Rep. Kind, Ron (D-WI)  
~~Rep. Lampson, Nick (D-TX)~~  
Rep. McCollum, Betty (D-MN)  
~~Rep. McNulty, Michael (D-NY)~~  
Rep. Melancon, Charlie (D-LA)  
Rep. Miller, Brad (D-NC)  
Rep. Mollohan, Alan (D-WV)  
Rep. Moore, Gwen (D-WI)  
Rep. Murphy, Patrick (D-PA)

~~Rep. Musgrave, Marilyn (R-CO)~~  
Rep. Obey, David (D-WI)  
Rep. Paul, Ron (R-TX)  
Rep. Perlmutter, Ed (D-CO)  
Rep. Peterson, Collin (D-MN)  
Rep. Poe, Ted (R-TX)  
Rep. Pomeroy, Earl (D-ND)  
~~Rep. Ramstad, Jim (R-MN)~~  
Rep. Rehberg, Dennis (R-MT)  
~~Rep. Renzi, Rick (R-AZ)~~  
Rep. Ross, Mike (D-AR)  
Rep. Simpson, Mike (R-ID)  
Rep. Sires, Albio (D-NJ)  
Rep. Snyder, Vic (D-AR)  
Rep. Space, Zack (D-OH)  
Rep. Towns, Edolphus (D-NY)  
~~Rep. Udall, Mark (D-CO)~~  
Rep. Walz, Timothy (D-MN)  
Rep. Wamp, Zach (R-TN)

### **S. 953 The Rail Competition and Service Improvement Act** **Updated List of Co-Sponsors Following 2008 Election**

Sen. Rockefeller, John (D-WV)  
Sen. Baucus, Max (D-MT)  
Sen. Cantwell, Maria (D-WA)  
~~Sen. Craig, Larry (R-ID)~~  
Sen. Crapo, Mike (R-ID)

Sen. Dorgan, Byron (D-ND)  
Sen. Feingold, Russ (D-WI)  
Sen. Johnson, Tim (D-SD)  
Sen. Klobuchar, Amy (D-MN)

Sen. Landrieu, Mary (D-LA)  
Sen. Tester, Jon (D-MT)  
Sen. Thune, John (R-SD)  
Sen. Vitter, David (R-LA)