

## TRANSPORTATION FOCUS

**R**umors are swirling in the rail industry that long delayed Surface Transportation Board (STB) Re-authorization bill will be released by the end of the year by Senator Jay Rockefeller, with an impact on rail carriers or shippers that remains a tight secret.

Earlier this year, Rockefeller, along with Senator Herb Kohl of Wisconsin, jointly agreed to postpone bills each of them were sponsoring, with Rockefeller working on the STB bill and Kohl separately working on new rail anti-trust legislation.

In a shipper-friendly [letter to majority leader Henry Reid pulling](#) the vote on the bill, the Senators in June said, "The Commerce and Judiciary committees intend to work together on comprehensive rail competition legislation."

Now, there are rumors that the STB bill will soon see the light of day, though the direction of the bill has been kept a well-guarded secret to date, with almost no information shared with the media or industry groups. Some see that as a sign that the bill will be tough on the rail carriers, while others are less sure.

"Lacking much concrete information, there has been a lot of speculation about what an STB Reauthorization bill might include," says John Larkin, an industry analyst for investment firm Stifel Nicolaus. "For example, it has been speculated that an STB Reauthorization bill may increase the size of the STB from 3 board members to 5 board members which would add \$2 million or more to the STB's budget. Some have even speculated that the STB might be expanded from its current size of around 150 total employees to 1,500."

In theory, the sharp rise in employees, if directionally accurate, would be to han-

## Is New STB Re-authorization Bill Looming Soon?

Shrouded in Secrecy, Rumors Say Sen. Rockefeller will Release within Month; Boon for Rail Shippers, or more Balanced Approach?

### SCDigest Editorial Staff

dle a surge of rate cases brought to the STB by shippers given new rights versus the rails in the new legislation. Regardless, it would probably take several years for the STB to ramp up staff by several times current levels.

Kohl's Rail Anti-trust bill that was temporarily withdrawn in June included the following provisions:

- Eliminated the provision against court injunctions against the railroads: This may enable rail shippers to sue in federal courts to test various rail carrier policies, such as so-called "bottleneck pricing," and perhaps get a court to force the carrier to quote separately each leg of a multi-leg route.
- Eliminated the "rate file" doctrine: Currently, shippers cannot sue for damages for excessive rates due to perceived "rail car-

tel" pricing if the rail carrier has filed those rates with the Surface Transportation Board. The bill would eliminate this precedent.

- New Federal Trade Commission Authority: The FTC would have some new jurisdiction over the rail carriers, including anti-trust authority/unfair competition, which it now lacks due to the anti-trust exemption.
- Stripped STB of Merger Authority: The bill would hand authority over mergers and acquisitions in the rail industry over to the FTC and Justice Dept., where it resides for most other businesses.
- Change Law so that Courts are not Required to Defer to STB Primary Jurisdiction in Anti-trust actions: This policy severely limited what courts could

really do in various law suits.

A key theme across these provisions should be clear: pulling authority away from the Surface Transportation Board, which many see as having historically been too friendly to the railroads, and over to either the FTC or the federal court system.

Whether some or all of these concepts will now be included as part of the STB bill is unclear.

### A Balanced Approach?

While the above elements of a bill would be considered a broadside hit to the rail carriers, others think a more middle ground approach is likely.

The new administrator of the Federal Railroad Administration (FRA), Joseph Szabo, says he supports a "balanced approach" between the needs of the shippers and the rails.

Similarly, Bruce Carlson, President and CEO of The National Industrial Transportation League (an organization of mostly shoppers), says he supports an outcome that is "between the 45-yard lines."

Larkin says he does "not expect the legislation to be overly burdensome to the rails because of the aforementioned difficulty involved with expanding the STB's arbitration capacity, the fact that most Class I rails have only recently started earning their costs of capital, the improvements in service and productivity the industry has made since deregulation, and the decline in discretionary capital spending that would likely take place in the event of rate regulation."

Right now, everyone is in the dark waiting for the details of the bill to be released.

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