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108TH CONGRESS *1st Session*	SENATE	REPORT 108–129

SURFACE TRANSPORTATION BOARD REAUTHORIZATION ACT OF 2003

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1389

AUGUST 26, 2003.—Ordered to be printed

Filed, under the authority of the order of the Senate of July 29 (legislative day, July 21), 2003

U.S. GOVERNMENT PRINTING OFFICE

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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SURFACE TRANSPORTATION BOARD REAUTHORIZATION ACT OF 2003

AUGUST 26, 2003.—Ordered to be printed

Filed, under authority of the order of the Senate of JULY 29 (legislative day, JULY 21), 2003

Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, submitted the following

R E P O R T

[To accompany S. 1389]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1389) "A Bill To authorize appropriations for the Surface Transportation Board for fiscal years 2004 through 2008, and for other purposes", having considered the same, reports favorably thereon with amendment and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The primary purpose of S. 1389 is to authorize funds for the Surface Transportation Board (STB) for fiscal years (FYs) 2004 through 2008.

BACKGROUND AND NEEDS

The STB was established on January 1, 1996, by the ICC Termination Act of 1995 (ICCTA), as an independent agency within the Department of Transportation (DOT). The STB's primary function is to oversee the economic regulation of the nation's freight railroads. The Board has jurisdiction over railroad rate and service matters, railroad restructuring transactions (mergers, line sales, line construction, and abandonments), and related labor issues. In addition to these responsibilities, the STB oversees certain trucking company, moving van, and non-contiguous ocean shipping company

rate matters; certain intercity passenger bus company structure, financial, and operational matters; and certain pipeline matters, including rate-related matters, not regulated by the Federal Energy Regulatory Commission.

The STB is comprised of three members appointed by the President and confirmed by the Senate. Not more than two members of the STB may belong to the same political party. The Board's Chairman is designated by the President. The term of each member is for five years and no individual may serve as a member of the Board for more than two terms. Upon the expiration of a term, the law permits a member to continue to serve until a successor is appointed, but not for more than a one-year period.

The Board has approximately 145 employees and its FY 2003 appropriation was $19.5 million. The agency has remained unauthorized since the end of fiscal year 1998.

SUMMARY OF PROVISIONS

S. 1389 would authorize funding for the activities of the STB for FYs 2004 through 2008. It would also amend current law to provide that the designation by the President of one STB member to serve as Chairman is subject to Senate confirmation.

During consideration of the bill, the Senate Committee on Commerce, Science, and Transportation (the Committee) adopted an amendment offered by Senators McCain and Hollings to address a long-standing concern about the ability of small shippers to challenge railroad rates at the STB. The amendment would direct the Board, within 180 days following enactment, to supplement its existing guidelines for handling challenges to the reasonableness of rail rates in those cases in which a full stand-alone cost presentation is too costly.

A rulemaking proceeding to develop simplified rate guidelines was first initiated in 1986 by the Interstate Commerce Commission (ICC), the STB's predecessor. In 1995, because little had been accomplished, Congress, in the ICCTA, directed the newly-created STB to complete the rulemaking proceeding within one year following enactment[1] and established that the guidelines were to apply to ". . . cases in which a full stand-alone cost presentation is too costly, given the value of the case." Those guidelines were adopted in Rate Guidelines -- Non-Coal Proceedings, 1 S.T.B. 1004 (1996).

Not a single case has been filed under the simplified guidelines. Shippers charge that the guidelines are unclear as to who may be eligible to use them and how the simplified rate criteria would be applied. They also have expressed concern about the potential cost and duration of the regulatory process. At the same time, the Association of American Railroads, the trade association for the freight rail industry, has challenged the new guidelines in Federal court, contending that the guidelines did not fulfill Congress's directive to establish a simple and expedited method to determine whether rates in small cases are reasonable.

[1] The ICCTA became effective December 29, 1995. The following October, Congress approved legislation to codify transportation laws (P.L. 104-287) that, among other provisions, modified the due date for the expedited procedures to January 1, 1997.

The Committee is concerned that these uncertainties have had the effect of deterring small shippers with low-value cases and little negotiating leverage from seeking regulatory relief. Accordingly, the amendment would direct the Board to provide clarity in both the eligibility criteria and the tests for rate reasonableness. The amendment also would set a time limit for the Board to decide such cases and caps the filing fee that may apply to these cases. The Committee will take further steps if the STB fails to meet the requirements of S. 1389 or the supplemental guidelines are not utilized in small rate cases because they are difficult to use or conducive to dilatory tactics by litigants.

The amendment would direct the STB to consider the size of the shipper, the value of the case, and other relevant factors in determining the types of rate challenges that will be eligible for the expedited procedures. The Committee expects the Board to have the flexibility to consider any and all factors it considers relevant in defining eligibility. However, the Committee believes that the expedited procedures should apply to small rate cases and not be limited to small shippers. Whether a rate is reasonable or unreasonable is unrelated to a shipper's size, revenues, or ability to pay, and the same rate standards should apply to any shipper who brings a small rate case.

Reflecting the need for expedited handling of these cases, the amendment directs the Board to streamline the evidentiary requirements in these cases. The amendment also would permit an initial decision in expedited rate cases to be made by an administrative law judge (ALJ). This authority is intended to further accelerate the timetable for adjudicating small rate cases. ALJ's would be bound by the legal standards for determining rate reasonableness established by the Staggers Rail Act of 1980 and subsequent legislation. The Committee intends that the parties will retain the ability to obtain a review by the full Board of the initial decision by an ALJ.

The amendment also would limit the filing fee in small rate cases to the fee charged to bring a civil action in United States District Court. The filing fee for District Court cases is currently $150. STB filing fees have been a topic of debate and concern for some time. In 1984, the ICC adopted a fee of $500 for all rate cases. The fee was subsequently raised to $550 in 1990, to $600 in 1991, and to $1,000 in 1992. In 1996, the Board proposed increasing fees dramatically for all rate cases, suggesting a fee of $23,100 for smaller complaints not filed under the Board's coal rate guidelines. Ultimately, the Board maintained the $1,000 fee for small rate cases (the filing fee for large rate cases was raised and is now a maximum of $64,000) and in August 2002, proposed a filing fee at the level charged to file a case in United States District Court, based on legislation introduced by Senator Rockefeller. The Committee believes this is a reasonable fee for small rate cases. However, the filing fees for all rate cases, both large and small, do not nearly cover the STB's actual costs for handling such rate cases. In the event that the supplemental small rate case procedures are widely used, it may be necessary to supplement the STB's annual appropriation.

The Committee also approved an amendment offered by Senators Smith and Wyden that would codify the voluntary agreement

reached by 11 railroad labor unions and 6 Class I railroads in March 2001 with respect to the implementation of collective bargaining agreements in the event of new mergers. In past mergers, decisions by arbitrators about the terms of collective bargaining agreements that will apply after a merger have usually been decided in favor of the carrier. These new agreements are not reached through the collective bargaining process. While the Railway Labor Act normally protects unions from a railroad's unilateral changes to collective bargaining agreements, this protection is lost during the merger process.

The labor/management agreement will provide that when newly consolidated rail operations involving signatories to the agreement are subject to multiple collective bargaining agreements, the labor union parties, rather than the rail management parties, may choose which collective bargaining agreement will govern the new operations. Codifying this agreement would ensure that it will not be set aside by STB appointed arbitrators.

The Committee's adoption of the amendment in no way indicates the Committee's support of additional railroad mergers. There are now only 7 Class I carriers, including 2 based in Canada. Any further consolidation would require close scrutiny by the STB and the Congress.

LEGISLATIVE HISTORY

S. 1389, the Surface Transportation Board Reauthorization Act of 2003, was introduced by Senators McCain and Hollings on July 10, 2003, and was referred to the Committee on Commerce, Science, and Transportation.

On July 17, 2003, the Committee ordered S. 1389 to be favorably reported to the Senate with two amendments.

By voice vote, the Committee adopted an amendment offered by Senators McCain and Hollings to require the STB to issue new rules to address small rate challenges within 180 days following enactment. The amendment also would lower the filing fee in small rate cases and allow an initial decision in small rate cases to be made by an ALJ with an opportunity for appeal to the Board.

Also by voice vote, the Committee adopted an amendment offered by Senators Smith and Wyden to adopt the terms of an agreement negotiated between all of the railroads and labor organizations that participate in national collective bargaining. The agreement provides that in any future merger or consolidation involving the signatories, rail labor organizations will choose the collective bargaining agreements that will apply upon consummation.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 29, 2003.

Hon. JOHN MCCAIN,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1389, the Surface Transportation Board Reauthorization Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Rachel Milberg.

Sincerely,

ROBERT A. SUNSHINE
(For Douglas Holtz-Eakin, Director).

Enclosure.

S. 1389—Surface Transportation Board Reauthorization Act of 2003

Summary: The Surface Transportation Board (STB) regulates rates, services, and company structures for firms involved in interstate transportation, including railroads, truckers, ocean shippers, and intercity buses. The STB also provides a forum for resolving disputes among firms in these industries. S. 1389 would authorize the appropriation of about $112 million for the STB's operations over the 2004–2008 period.

Assuming appropriation of the authorized amounts, CBO estimates that implementing S. 1389 would cost $109 million over the 2004–2008 period. enacting S. 1389 would not affect direct spending or revenues.

S. 1389 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated Cost to the Federal Government: The estimated budgetary impact of S. 1389 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation). For this estimate, CBO assumes that S. 1389 will be enacted near the start of fiscal year 2004, and that the authorized amounts will be appropriated for each year. Estimates of outlays are based on information from the Surface Transportation Board and historical spending patterns for its operations.

	By fiscal year, in millions of dollars—					
	2003	2004	2005	2006	2007	2008
SPENDING SUBJECT TO APPROPRIATION						
STB spending under current law:						
Budget authority	18	0	0	0	0	0
Estimated outlays	18	2	0	0	0	0
Proposed changes:						
Authorization level	0	21	21	24	23	23
Estimated outlays	0	18	21	24	23	23
STB spending under S. 1389:						
Authorization level	18	21	21	24	23	23
Estimated outlays	18	20	21	24	23	23

[1] The 2003 level is the amount appropriated for that year.

Intergovernmental and Private-Sector Impact: S. 1389 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate Prepared by: Federal Costs: Rachel Milberg. Impact on State, Local, and Tribal Governments: Gregory Waring. Impact on the Private Sector: Jean Talarico.

Estimate Approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The legislation reauthorizes existing programs. Therefore, the number of persons covered should be consistent with current levels.

ECONOMIC IMPACT

S. 1389 would authorize appropriations of $20.5 million for fiscal year 2004, rising to $23.5 million by fiscal year 2008. These funding levels are modest and are not expected to have an inflationary impact on the nation's economy.

PRIVACY

This legislation will not have any adverse impact on the personal privacy of the individuals affected.

PAPERWORK

An amendment to the bill adopted by the Committee would require the STB to issue new rules to address small rate challenges, defined in existing law as ". . . cases in which a full stand-alone cost presentation is too costly, given the value of the case" (49 U.S.C. Sec. 10701(d)(3)). The new rules may create additional paperwork for shippers involved in challenging small rate cases, as that term is defined by the STB as part of the new rules, and for railroads affected by such rate challenges. However, new paperwork requirements will only arise because the new rules provide an effective means of challenging rates before the STB. Similar paperwork requirements exist today, but no cases have been filed under the STB's existing rules for small shippers.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title

This Act may be cited as the "Surface Transportation Board Reauthorization Act of 2003".

Sec. 2. Authorization of Appropriations

Section 2 would authorize the following sums to be appropriated to the STB: $20,516,000 for FY 2004; $21,215,000 for FY 2005; $23,770,000 for FY 2006; $22,564,000 for FY 2007; and $23,488,000

for FY 2008. The somewhat higher authorization for FY 2006 includes $2.2 million for relocating the Board's offices.

Sec. 3. Chairman Designated with Senate Confirmation

Section 3 would make the President's designation of one of the STB members to serve as Chairman subject to Senate confirmation.

Sec. 4. Expedited Procedure for Small Rate Challenges

Section 4 would require the STB to issue new regulations to address small rate challenges within 180 days following enactment. The rules would establish standards for determining what rate cases will be eligible to use expedited procedures taking into account the size of the shipper, the value of the case and other relevant factors, and establish the specific test or tests for determining whether the challenged rate is reasonable. Filing fees in small rate cases would not exceed the fee charged to bring a civil action in United States District Court. An initial decision could be made by an ALJ, with an opportunity to appeal the ALJ's decision to the Board. Finally, the amendment would require the STB to make recommendations to Congress for any additional legislative changes the Board determines are necessary to address the handling of small rate cases.

Sec. 5. Application of Certain Agreements

This section would codify the voluntary agreement reached by railroad labor and railroad management in March 2001 with respect to the implementation of collective bargaining agreements in the event of additional mergers. It provides that when newly consolidated rail operations involving the signatories to the agreement are subject to multiple collective bargaining agreements, the labor union parties, rather than the rail management parties, may choose which collective bargaining agreement will govern the new operations. Codifying this agreement would ensure that it will not be set aside by STB-appointed arbitrators in the event of another round of mergers.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

SUBTITLE I—DEPARTMENT OF TRANSPORTATION

CHAPTER 7. SURFACE TRANSPORTATION BOARD

SUBCHAPTER I. ESTABLISHMENT

§ 701. Establishment of Board

(a) ESTABLISHMENT.—There is hereby established within the Department of Transportation the Surface Transportation Board.

(b) MEMBERSHIP.—

(1) The Board shall consist of 3 members, to be appointed by the President, by and with the advice and consent of the Senate. Not more than 2 members may be appointed from the same political party.

(2) At any given time, at least 2 members of the Board shall be individuals with professional standing and demonstrated knowledge in the fields of transportation or transportation regulation, and at least one member shall be an individual with professional or business experience (including agriculture) in the private sector.

(3) The term of each member of the Board shall be 5 years and shall begin when the term of the predecessor of that member ends. An individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, shall be appointed for the remainder of that term. When the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified, but for a period not to exceed one year. The President may remove a member for inefficiency, neglect of duty, or malfeasance in office.

(4) On January 1, 1996, the members of the Interstate Commerce Commission serving unexpired terms on December 29, 1995, shall become members of the Board, to serve for a period of time equal to the remainder of the term for which they were originally appointed to the Interstate Commerce Commission. Any member of the Interstate Commerce Commission whose term expires on December 31, 1995, shall become a member of the Board, subject to paragraph (3).

(5) No individual may serve as a member of the Board for more than 2 terms. In the case of an individual who becomes a member of the Board pursuant to paragraph (4), or an individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, such individual may not be appointed for more than one additional term.

(6) A member of the Board may not have a pecuniary interest in, hold an official relation to, or own stock in or bonds of, a carrier providing transportation by any mode and may not engage in another business, vocation, or employment.

(7) A vacancy in the membership of the Board does not impair the right of the remaining members to exercise all of the powers of the Board. The Board may designate a member to act as Chairman during any period in which there is no Chairman designated by the President.

(c) CHAIRMAN.—

(1) There shall be at the head of the Board a Chairman, who shall be designated by the [President] *President, by and with the advice and consent of the Senate,* from among the members of the Board. The Chairman shall receive compensation at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5.

(2) Subject to the general policies, decisions, findings, and determinations of the Board, the Chairman shall be responsible for administering the Board. The Chairman may delegate

the powers granted under this paragraph to an officer, employee, or office of the Board. The Chairman shall—

(A) appoint and supervise, other than regular and full-time employees in the immediate offices of another member, the officers and employees of the Board, including attorneys to provide legal aid and service to the Board and its members, and to represent the Board in any case in court;

(B) appoint the heads of offices with the approval of the Board;

(C) distribute Board business among officers and employees and offices of the Board;

(D) prepare requests for appropriations for the Board and submit those requests to the President and Congress with the prior approval of the Board; and

(E) supervise the expenditure of funds allocated by the Board for major programs and purposes.

§ 11326. Employee protective arrangements in transactions involving rail carriers

(a) Except as otherwise provided in this section, when approval is sought for a transaction under sections 11324 and 11325 of this title, the Board shall require the rail carrier to provide a fair arrangement at least as protective of the interests of employees who are affected by the transaction as the terms imposed under section 5(2)(f) of the Interstate Commerce Act before February 5, 1976, and the terms established under section 24706(c) of this title. Notwithstanding this part, the arrangement may be made by the rail carrier and the authorized representative of its employees. The arrangement and the order approving the transaction must require that the employees of the affected rail carrier will not be in a worse position related to their employment as a result of the transaction during the 4 years following the effective date of the final action of the Board (or if an employee was employed for a lesser period of time by the rail carrier before the action became effective, for that lesser period).

(b) When approval is sought under sections 11324 and 11325 for a transaction involving one Class II and one or more Class III rail carriers, there shall be an arrangement as required under subsection (a) of this section, except that such arrangement shall be limited to one year of severance pay, which shall not exceed the amount of earnings from the railroad employment of that employee during the 12-month period immediately preceding the date on which the application for approval of such transaction is filed with the Board. The amount of such severance pay shall be reduced by the amount of earnings from railroad employment of that employee with the acquiring carrier during the 12-month period immediately following the effective date of the transaction. The parties may agree to terms other than as provided in this subsection.

(c) When approval is sought under sections 11324 and 11325 for a transaction involving only Class III rail carriers, this section shall not apply.

(d) CERTAIN AGREEMENTS.—The terms of the agreement entitled "Revised Standards for Preemption of Collective Bargaining Agreements for Transactions Initiated Pursuant to Section 11323 of the

Interstate Commerce Act" dated March 21, 2001, by and between 6 Class I railroads and 11 labor organizations, and the terms of the agreement entitled "Revised Standards for Preemption of Collective Bargaining Agreements for Transactions Initiated Pursuant to Section 11323 of the Interstate Commerce Act" dated February 11, 2000, by and between 5 Class I railroads, the National Carriers' Conference Committee, and the United Transportation Union (except for the provisions in both agreements stating "The terms of this agreement will become null and void when enacted into law"), shall apply to the signatories to such agreements in connection with transactions that are approved under sections 11324 and 11325 and that are covered by such agreements, unless the affected rail carriers and the applicable labor organization or organizations agree on alternative terms. The terms of such agreements shall not be subject to the exemption provisions of section 11321(a) or any future exemption provisions.

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