

Section-by-Section Analysis of a Bill

To amend the Interstate Commerce Act, as amended, to modernize and reform the regulation of railroads, to allow more flexibility in establishing rates, to provide adequate prior notice of the abandonment of rail lines, and to assist in the financing of rail transportation and to develop a rolling stock scheduling and control system, and for other purposes.

Sec. 1. Cites the proposed Act as the "Railroad Revitalization Act".

Railroad Ratemaking and Abandonment

Sec. 2(a)(1). Amends section 1(5) of the Act by (i) incorporating the definition of "rates" and, with some modification, certain ratemaking considerations now appearing in Section 15a(1) of the Act; (ii) adding to the existing requirement that rates be just and reasonable a provision that a compensatory rate may not be held to be unjust or unreasonable because it is too low; (iii) incorporating provisions from subsections 15a(2) and (3) requiring the Commission to consider the effects of rates on the movement of traffic and the need for adequate and efficient railway transportation service, and prohibiting the Commission from holding up to a particular level the rate of a carrier or freight forwarder subject to the Act to protect the traffic of a carrier of another mode; (iv) providing that a carrier's rate is compensatory when it equals or exceeds the particular carrier's variable cost of providing the specific transportation to which the

rate applies; and (v) prohibiting rate decreases below variable cost, and prohibiting the Commission from disallowing a carrier's rate increases where the increase does not increase that rate beyond the carrier's variable cost.

(5). Strikes the existing paragraph (22) of section 1 of the Act (paragraph 22 is restated in paragraph 26) and adds paragraphs (22) through (26) establishing new rail abandonment procedures to ensure adequate prior notice of rail abandonments, as follows:

(22)(a). Within 90 days after enactment of the bill, the Secretary of Transportation (hereafter "the Secretary"), in consultation with the Commission, must develop and publish standards for the classification of low density railroad lines according to their level of usage and probable economic viability.

(22)(b). Within 90 days of the publication, each railroad must submit to the Secretary and the Commission a schedule of low density lines, as determined by applying the classification standards.

(22)(c). A carrier may initiate an abandonment proceeding by filing a notice with the Commission at least 90 days prior to the proposed date of abandonment. Unless a line has been listed for at least 6 months on the schedule required by subparagraph (b), it may not be abandoned if it is opposed by a user or State or local government served by the line.

(22)(d). If the Commission permits abandonment of a line, it must calculate the difference between the "revenue attributable to the line" and the "cost of operating the line".

(23). If a State or local agency or shipper notifies the Commission of its intention to provide an operating subsidy and the Commission determines that the State or local government has or will acquire within six months the legal capacity to provide the subsidy or that the shipper is willing and able to provide the subsidy, it may order an additional postponement for not more than six months to implement a subsidization plan. If the Commission determines that the revenues for the line, including the subsidy, are at least equal to the cost of operating the line, the Commission must order continued operation of the line.

(24). The Secretary and the Commission are required to develop within 90 days following the date of enactment of the bill interim standards for determining the "cost of operating the line" and "revenue attributable to the line". Such standards must recognize that "cost" means all costs, including capital recovery and a reasonable return on investment, which would change if the line were abandoned, and "revenue" means all revenue which

would be lost if the line were abandoned. The interim standards must be adopted by the Commission and within one year the Secretary, in consultation with the Commission, must develop final standards for determining these terms and those standards must be adopted by the Commission.

(25). Provides that if the Commission permits abandonment, it shall impose labor protection at least equal to the 4 year protection provided in section 5(2)(f) of the Interstate Commerce Act.

Rate Bureau Procedures

Sec. 3(a). Amends section 5a of the Act by:

(1). Amending paragraph (3) to require that all rate bureaus maintain records of the votes of their members on each matter voted on, and that the records of all rate bureaus be available to public inspection through the Commission.

(2). Renumbering the existing paragraphs (7) through (10) as (8) through (11) and adding a new paragraph (7)(A) prohibiting agreements among railroad carriers that (i) permit discussions, agreements or voting on a single-line movement; (ii) permit carriers that do not hold themselves out to participate in a joint movement to participate in the consideration of rates related to the movement;

or (iii) permit joint consideration or action protesting or seeking to suspend rates. As used in paragraph (7), a "movement" is the transport of a commodity between any two points for which a tariff has been filed. Paragraph 7(B) precludes discussions, agreements, and votes relating to across-the-board percentage changes in freight rates three years after the enactment of this Act except for general rate increases based solely on increases in fuel or labor costs.

(3). Making a conforming amendment to paragraph (9).

(4). Requiring every rate bureau to take final action within 120 days on any rule, rate, or charge docketed with it.

(b) Invalidates all agreements to the extent they permit actions prohibited by the new paragraph (7).

Intrastate Railroad Rate Proceedings

Sec. 4. Amends section 13 of the Act by adding a new paragraph (5) vesting the Commission with exclusive authority to determine and prescribe an intrastate rate which is a counterpart to an approved intrastate rate if a carrier has filed with the appropriate State agency a change in an intrastate rate, and the State agency has not finally acted on the rate change within 120 days from the filing of the rate.

Suspension of Railroad Rates

Sec. 5. Amends section 15(7) of the Act to provide that:

(1) The Commission may initiate hearings with respect to new rates upon complaint or upon its own initiative and after hearing issue an appropriate order. Hearings must be completed within 7 months of the date the rate was scheduled to become effective, unless the Commission reports to the Congress the reason it is not possible to comply with this requirement. If a report is made the Commission must still complete the hearing within 10 months of the date the rate was scheduled to go into effect. If the hearing is not completed, the rate goes into effect. That rate may be later contested, but the burden of proof shifts to the complainant. This section, therefore, preserves the existing burden of proof presently provided in the Interstate Commerce Act.

(2) This section institutes a 4-year phasing to allow for more rate flexibility and limits the Commission's suspension power. A rate may still be suspended for 7 months (or for 10 months if the report to Congress is made) but a rate may not be suspended on the ground that it exceeds a just and reasonable level or that it is below a just and reasonable level if the rate increase or decrease is within certain percentage limits. 7% for the first year; 12% for the second year; and 15% for the

third year. After the end of the third year, rate decreases may not be suspended for being unreasonably low and rate increases may not be suspended if not more than 15%. The percentage limits are yearly aggregates. This limitation upon the Commission's suspension power does not apply to general rate increases or to challenges to the increase or decrease under sections 2, 3, and 4 of the Act, but in order to suspend under these sections or any other section the Commission must make findings similar to those a court would have to make to issue a temporary restraining order. It should also be noted that the limitations upon the Commission's suspension power does not affect the Commission's power to make a final determination.

(3) If the hearing involves a proposed rate increase and the rate is not suspended pending hearing, the Commission must require the carrier to keep an account of all amounts it receives because of the increase, from the date the rate became effective until an order is issued, until seven months elapse (or ten months if the hearing is extended) whichever is sooner. Interest must be paid by the carrier at a rate determined by the Commission, but in no event may the interest rate be lower than the rate on three month government securities.

(4) This section provides a special procedure for the initial consideration and subsequent consideration of tariffs requiring large capital expenditures. A carrier is authorized to file a notice of intention to file a tariff when the implementation of the tariff would require a total capital investment of \$1,000,000 or more by the carrier, or a shipper or receiver, or other interested party, individually or collectively. The filing must be accompanied by a sworn affidavit as to the investment required. An interested person may request a hearing, and the Commission must hold a hearing, but it can be an informal hearing. Unless the Commission determines within 180 days from the date of filing that the proposed tariff would be unlawful, the carrier may file the tariff anytime thereafter and it may not be suspended or set aside as being unlawful under parts 1, 2, 3, or 4 of the Act, but it may be set aside if found to be noncompensatory.

(5) After two and half years after the initiation of the no-suspend zone, the Secretary of Transportation, in consultation with the Commission is to make a report to Congress, indicating the effects of the rate flexibility introduced by this Act upon the efficiency of the national transportation system.

Railroad Revenue Levels

Sec. 6. Amends section 15a of the Act by repealing all of its provisions and re-enacting certain of them in the new section 15a and others in section 1(5) of the Act (section 2 of the bill). Also provides that the Commission, in determining adequacy of revenue, shall prescribe uniform criteria for estimating the rate of return on capital, cost impact of changes in the general level of prices, and adequacy of cash flow.

Prohibiting Discriminatory Taxation

Sec. 7. Adds a new section 26 to the Act prohibiting the levying of discriminatory State or local property taxes on common carriers subject to regulation by the Commission.

Uniform Cost and Revenue Accounting

Sec. 8. Requires the Commission, jointly with the Secretary, to study and recommend uniform cost accounting and revenue accounting methods for rail carriers. The Commission would be required to issue regulations prescribing the uniform cost and revenue accounting methods within two years from the date of enactment of the bill.

Railroad Loan Guarantees

Sec. 9. Authorizes the Secretary to guarantee any lender against the loss of principal and interest on securities, obligations, or loans issued for the purpose of financing the acquisition, construction, maintenance, or development of:

- (i) track and roadbed subject to projected traffic usage of at least 5 million gross ton-miles per mile of road per year;
- (ii) electrical, communication, and power transmission systems;
- (iii) signals;
- (iv) terminal facility modernization and consolidation;
- (v) new and rebuilt rolling stock; and
- (vi) computer based data and information system.

Prior to making a guarantee the Secretary must make several findings which are designed to assure adequate protection to the U.S. in the event of default, and to assure that the improvements will contribute to a more rational, efficient, and economical rail transportation system. In addition, the Secretary must make a

finding that adequate labor protection, of at least 4 years, has been provided. Different findings must be made with respect to guarantees for rolling stock. Loan guaranteed by the Secretary pursuant to Act may be financed through the Federal Financing Bank. The guaranteed amounts outstanding at any one time may not exceed \$2,000,000,000.

Railroad Restructuring

Sec. 10. This section would authorize the Secretary to condition the granting of loan guarantees on an agreement among the applicants or other railroads to restructure their facilities. Such restructuring could include merger, consolidation, sale or acquisition of assets, and joint use of facilities. Such agreements would be voluntary, and the Secretary could not require a railroad to enter into such an agreement except as a condition for loan guarantee.

These agreements would be approved in a new two part procedure with a new "public interest test". The ICC in its interpretation of Section 5 of the IC Act has hindered needed restructuring of the railroads by failing to reach a decision within a reasonable time and by dissipating the benefits of proposed agreements by imposing unnecessary third party conditions to such agreements. This section will remedy these two defects by requiring a new procedure for consideration of proposed agreements and new definition

of "public interest." Agreements will first be considered by the Secretary in a public procedure similar to that used in rule making. Notice of the agreement will be given to the public, and comments may be made in writing or in an informal oral hearing. The Secretary will then initially approve the agreement which contains the restructuring terms if it is in the public interest and certify the agreement to the ICC. The ICC will then have 6 months to decide whether the agreement is in the public interest. The "public interest" is defined in the bill to mean that (1) the efficiency gains of the transaction substantially outweigh any adverse effects on competition, and (2) there is no clear and substantially less anti-competitive transaction available. Unless the ICC specifically finds, by "clear and convincing evidence," that the proposed agreement is not in the public interest, it must approve the agreement. The Act, in addition to its concern for the preservation of competition, makes specific provision for the rights of labor and shippers. If the ICC should fail to act within the specified time, it must certify the proceeding back to the Secretary, and the Secretary, with the concurrence of the Attorney General, must, on the basis of the ICC proceedings and his own information and data, approve, modify, or reject the proposed agreement in accordance with the public interest standard. Both the final decisions of the Secretary and the ICC can be appealed to the United States Court of Appeals for the District of Columbia.

Rolling Stock Scheduling and Control System

Sec. 11. Authorizes the Secretary to promote the development of the design of a national rolling stock scheduling and control system, and requires the Secretary to develop recommendations for implementing a system. The Secretary is also required to study, and develop recommendations for participation by individual railroads in a national system.

National Transportation Policy

Sec. 12. Amends the National Transportation Policy which precedes the various parts of the Interstate Commerce Act to recognize the importance of competition.