



March 13, 2009

Surface Transportation Board

As of today, the Surface Transportation Board (STB) is short one member. Douglas Buttrey announced on February 20th that he would conclude his term (which expired on 12/31/08) on the Board on March 13, 2009. No names have surfaced publically regarding his replacement.

The Surface Transportation Board is the regulatory agency created by the United States Congress to resolve railroad rate and service disputes and reviewing proposed railroad mergers. The STB is administratively affiliated with the U.S. Department of Transportation. The organization is governed by a three member board – appointed by the President and confirmed by the Senate – each with a five-year term of office.



Chairman Charles Nottingham
(8/14/2006 – 12/31/2010)



Vice Chairman Francis Mulvey
(5/21/2004 – 12/31/2007)
(1/01/2008 – 12/31/2012)



Board Member Douglas Buttrey
(5/04/2004 – 3/13/2009)

LLC Approved – On March 10th, the STB approved, subject to imposed conditions, the joint control and ownership of a new railroad carrier in New England – the Pan Am Southern LLC (PAS). Companies involved are the Norfolk Southern Railway Company (NS), Pan Am Railways, Inc. (PARI), and two of PARI's rail subsidiaries, the Boston and Maine Corporation and the Springfield Terminal Railway Company. The STB determined in making this decision that the 437 miles of track operated by the new LLC in New England would produce substantial transportation benefits. NS has agreed to \$87.5 million of infrastructure improvements as part of the LLC agreement

Hazardous Material Comments Sought – On March 10th, the STB sought public comment *through March 31st* on the Union Pacific Railroad Company’s petition for a declaratory order on the extent of the common carrier obligation to quote rates for new, lengthy movements of chlorine that would average 1,900 miles including urban areas. UP has declined to quote rates for these shipments pending the outcome of the petition and believes the destinations are located fewer than 300 miles from alternative supplies.

The ruling on this petition could have an effect on the transportation of agricultural products such as anhydrous ammonia.

Transportation Legislation

S 146, The Railroad Antitrust Enforcement Act of 2009 – The Senate Judiciary Committee voted 14 to 0 (5 not voting) to report S. 146 to the full Senate. The legislation would amend federal antitrust laws to eliminate exemptions for railroads so that the U.S. Department of Justice and State Attorneys General would not have to defer to the STB in antitrust suites and when reviewing proposed mergers. Voting to Report S. 146 out of Committee were Senators Leahy (VT); Kohl (WI); Feinstein (CA); Feingold (WI); Schumer (NY); Durbin (IL); Cardin (MD); Whitehouse (RI); Wyden (OR); Klobuchar (MN); Kaufman (DE); Hatch (UT); Grassley (IA); and Kyl (AZ). Not voting were Senators Specter (PA); Sessions (AL); Graham (SC); Cornyn (TX); Coburn (OK).

HR 233, House companion to S 146 – Judiciary Committee Chairman Conyers had scheduled the mark-up of HR 233 for March 18th, but the Committee now says scheduling changes have delayed consideration but that the mark-up is still expected within the next couple of weeks. Supporters of the legislation have been encouraged to continue to reach out to the Committee urging prompt action.

Senator Kohl, Majority Leader Reid agree to move S 146 – An agreement has been reportedly struck between Kohl and Reid to bring S 146 to the Senate floor for consideration and a vote prior to the Memorial Day recess. After receiving 14 positive votes from the Judiciary Committee, odds favor passage of the rail antitrust legislation. The rapid turn of events has shipping advocates working to suggest/support additional language to the Senate Transportation Committee that would include further reform of the Surface Transportation Board in a manner that would seek to ensure that shippers were treated with the same deference as railroads in their deliberations.

Oberstar: Highway Bill by early June – House Transportation and Infrastructure Chairman James Oberstar told the American Public Transit Association on March 9th that his goal was to pass the reauthorization bill for mass transit and highways “out of the House by the first week of June.” Oberstar estimated the total cost of the six-year bill at \$450-\$500 billion. The previous reauthorization bill cost \$286 billion.

FY2009 Appropriations Process Finally Over – After the 62-35 Senate vote to end a filibuster, President Obama signed the \$410 billion FY2009 Omnibus Appropriations bill into law on March 11th bringing to an end the debate over the annual spending bills five and a half months into the new fiscal year. The Omnibus contained 9 unfinished appropriation bills from the 110th Congress, including \$55 billion for the Transportation bill, of which \$40.7 billion was slated for

highway infrastructure; and \$33.3 billion for the Energy and Water bill with the Army Corps of Engineers receiving \$5.4 billion of that total.

For the Upper Mississippi River Restoration project in Illinois, Iowa, Minnesota, Missouri & Wisconsin, \$17.7 million is provided for the Enviro Management Program (EMP) and \$8.6 million for Preconstruction Engineering and Design (PED). The Corps is also directed to complete a plan to transition the EMP to the Navigation & Ecosystem Sustainability Program (NESP); and the bill further states that “funding will be considered for this new project when an adequate plan to complete ongoing projects and transition future projects to the (NESP) is received by the Committee on Appropriations.” The Corps did not comply with past directives of this nature because the Bush administration did not support NESP funding, resulting in a slowdown in progress towards construction. The Obama administration’s position on EMP/NESP is not yet known.

“Rail Customer Day on the Hill” to be held on March 25th

The agenda:

- 8:00 - 9:30 am Breakfast rally with Members of Congress - 325 Russell
- 9:30 am - 5:30 pm Congressional Visits
- 5:30 - 7:00 pm Reception - B-338 Rayburn

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