



**Annual Rail Customer Day**  
Washington, D.C.  
**May 5, 2010**

**SHOW YOUR SUPPORT FOR PASSAGE OF  
RAIL REFORM LEGISLATION IN 2010**

**OVERVIEW**

The National Association of Wheat Growers supports passage of currently pending rail legislation including S. 2889, the Surface Transportation Board Reauthorization Act of 2009, which passed out of the Senate Commerce Committee in December 2009 and can move to enactment in 2010.

Now is our opportunity to highlight the importance of this legislation to wheat growers that are captive rail customers, and the need to move these pieces of legislation this year.

**KEY POINTS**

- Wheat producers rely on an effective railroad system to stay in business. For many, rail shipment is the only cost-effective transportation mode available.
- Producers recognize the need for railroads to attract investment. Producers also need and deserve reasonable rail rates and service, necessitating a strong, reformed Surface Transportation Board (STB) to oversee the sector in a balanced manner.
- The Surface Transportation Board Reauthorization Act of 2009 (S. 2889) represents a balanced compromise that enhances competition and addresses both the needs of the shipping community and the need for railroads to attract needed investment.
- This legislation will bring much-needed balance back to the STB, and create a more level playing field for both railroads and shippers.
- We have a **narrow window to put this issue to rest this year** with the passage of S. 2889. We urge Members to cosponsor S. 2889, and relay the importance of passage to Senate leadership.
- *NOTE: NAWG also supports passage of pending rail antitrust bills (S. 146/H.R. 233). We urge Senators Rockefeller and Kohl to come to an agreement on a single, comprehensive rail bill that can be voted on and passed in the Senate this year.*

## KEY COMPONENTS OF THE LEGISLATION

In short, the Surface Transportation Board Reauthorization Act of 2009 (S. 2889) brings our nation's rail policy up to the 21<sup>st</sup> Century, enhances rail competition and strengthens the Surface Transportation Board to be a more effective oversight body that is responsive to the needs of shippers both small and large, including agricultural producers.

### Overview

- The STB Board membership will increase from 3 to 5 and the two members are to have shipper backgrounds (with professional or business experience – including agriculture – in the private sector). In addition the STB is established as an independent agency and not part of the DOT as it is today.
- The legislation clearly defines the objectives of the STB. It gives the railroads the right to earn an adequate return; however, rates must be reasonable to captive shippers.
- The legislation also redefines the Transportation policy - elevating competition to being one of the prime directives at the STB - while promoting a safe and efficient rail transportation system. This bill focuses the Congressional spotlight on maintaining reasonable rates where there is an absence of competition.
- Establish an Office of Public Assistance, Governmental Affairs and Compliance - to mediate, monitor and act as STB's point of contact with shippers and carriers.
- The STB is now being directed by Congress not to be a 'reactive' or 'adjudicatory' agency but to be a pro-active agency - initiating its actions on its own dealing with all aspects of rail transportation including rates and service
- The STB must also perform the following studies:
  - Within two years after enactment examine all class exemptions to determine if any should be revoked to protect shippers from railroad abuse of market power.
  - Within two years require rail carriers to report metrics on performance.
  - Within three years update or revise the Uniform Railroad Costing System (URCS).
  - Within 180 days initiate and then complete within 2 years a study to determine if replacement costs should be used by the railroads rather than original costs.
  - Within 180 days start studies on Rail Practice and Interchange. Then report to Congress within 180 days after completing the studies.
- The legislation also addressed key issues raised by captive shippers:
  - Paper barriers will not be allowed except if they are in the public interest.

- Bottleneck rates must be quoted by the railroad. The burden of proof for the rate will be shifted to the railroad. However, the STB may determine a level of recovery of lost profits for the railroad.
- The STB may require terminal access for one railroad to access another railroad's terminal. Rates and conditions for terminal access must be developed within one year of enactment of legislation.
- The bill will set forth in its legislative language the right of agricultural producers to have standing to file rate and service cases and the right of Attorney Generals to utilize the principles of *Parens patriae* to represent protect its citizens from abuse by railroads before the STB.
- In challenging rates the following changes have been made:
  - Large rate cases must be completed within 1.5 years. Today nearly 3 years is expected to complete a case.
  - In small rate cases the maximum relief under the Three-Benchmark test increases from \$1 million to \$1.5.
  - For Simplified Stand Alone Cases the increase is from \$5 million to \$10 million.
  - The legislation provides for a "binding arbitration" process on rates, service and common carrier expectations. The level of settlement is limited to \$250,000 a year and not to exceed two years in length. The list of arbitrators will be maintained by the STB. The timeline to complete the arbitration is:
    - After STB approves arbitration, the arbitrator must be chosen within 14 days
    - Submit evidence within 90 days.
    - Decision by arbitrator within 30 days after close of evidence.
  - The Board has the duty to periodically review these maximum award levels and increase them when necessary.

## STATUS OF THE LEGISLATION

### **S. 2889 – STB Reauthorization Enforcement Act of 2009**

Senate Commerce Committee Markup 12/17/2009 – passed by voice vote  
 Cosponsors: Sen. Rockefeller [D,WV] Sen. Dorgan [D,ND] Sen. Thune [R, SD] Sen. Hutchison [R, TX] Sen. Lautenberg [D, NJ]

### **S. 146 – Railroad Antitrust Enforcement Act of 2009**

Senate Judiciary Committee Markup 3/5/09 – passed by roll call vote 14-0

### **H.R. 233 – Railroad Antitrust Enforcement Act of 2009**

House Judiciary Subcommittee markup 7/30/09 – passed by voice vote  
 House Judiciary Committee markup 9/16/09 – passed by voice vote