

107TH CONGRESS
1ST SESSION

H. R. 999

To strengthen the standards by which the Surface Transportation Board reviews railroad mergers, and to apply the Federal antitrust laws to rail carriers and railroad transportation.

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 2001

Mr. POMEROY introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To strengthen the standards by which the Surface Transportation Board reviews railroad mergers, and to apply the Federal antitrust laws to rail carriers and railroad transportation.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Rail Merger Reform
5 and Customer Protection Act”.

1 **SEC. 2. SURFACE TRANSPORTATION BOARD REVIEW.**

2 Section 11324(c) of title 49, United States Code, is
3 amended by striking “public interest. The Board” and in-
4 serting “public interest, except that no transaction shall
5 be approved and authorized under this section unless the
6 Board finds that the transaction—

7 “(1) will not reduce competitive rail routes
8 available to current railroad customers;

9 “(2) will provide additional rail to rail competi-
10 tion and competitive options for railroad customers;

11 “(3) will improve service to customers; and

12 “(4) is in conformity with the antitrust laws.

13 The Board shall consult with the Attorney General, and
14 may not make a finding under paragraph (4) unless the
15 Attorney General agrees with the finding. The Board”.

16 **SEC. 3. SURFACE TRANSPORTATION BOARD JURISDICTION.**

17 (a) AMENDMENTS.—Section 10501(b) of title 49,
18 United States Code, is amended—

19 (1) by inserting “, except that rail carriers and
20 rail transportation subject to the jurisdiction of the
21 Board shall also be subject to the antitrust laws. Ap-
22 plication of the antitrust laws pursuant to the pre-
23 vious sentence shall not limit or affect the avail-
24 ability of remedies under this part” after “is exclu-
25 sive”; and

1 (2) by inserting “other than the antitrust laws”
2 after “Federal or State law”.

3 (b) EFFECT OF PRIOR ORDERS.—Section 10501 of
4 title 49, United States Code, is further amended by adding
5 at the end the following new subsection:

6 “(d) All orders, determinations, rules, regulations,
7 permits, contracts, certificates, licenses, and privileges—

8 “(1) which have been issued, made, granted, or
9 allowed to become effective by any agency or official
10 thereof pursuant to chapter 113, or any predecessor
11 statutory provisions, or by a court of competent ju-
12 risdiction; and

13 “(2) which are in effect as of the date of the
14 enactment of the Rail Merger Reform and Customer
15 Protection Act,
16 shall continue in effect according to their terms until
17 modified, terminated, superseded, set aside, or revoked by
18 the agency, official, or court.”.

19 (c) DEFINITION.—Section 10102 of title 49, United
20 States Code, is amended—

21 (1) by redesignating paragraphs (1) through
22 (10) as paragraphs (2) through (11), respectively;
23 and

24 (2) by inserting before paragraph (2), as so re-
25 designated, the following new paragraph:

1 “(1) ‘antitrust laws’ has the meaning given it in
2 subsection (a) of the first section of the Clayton Act
3 (15 U.S.C. 12(a)), except that such term includes
4 section 5 of the Federal Trade Commission Act (15
5 U.S.C. 45) to the extent such section 5 applies to
6 unfair methods of competition;”.

7 **SEC. 4. RATE AGREEMENTS.**

8 (a) AMENDMENTS.—Section 10706 of title 49,
9 United States Code, is amended—

10 (1) in the section heading, by striking “: **ex-**
11 **emption from antitrust laws**”;

12 (2) in subsection (a)(2)(A), by striking “, and
13 the Sherman Act” and all that follows through “car-

14 rying out the agreement”;

15 (3) in subsection (a)(3)(B)(ii), by striking “a
16 Federal law cited in subsection (a)(2)(A) of this sec-

17 tion” and inserting “the antitrust laws”;

18 (4) by striking the second sentence of sub-

19 section (a)(4);

20 (5) in subsection (a)(5)(A), by striking “, and
21 the antitrust laws” and all that follows through
22 “carrying out the agreement”;

23 (6) by striking the second sentence of sub-

24 section (d); and

25 (7) by striking subsection (e).

1 (b) CONFORMING AMENDMENT.—The table of sec-
2 tions for chapter 107 of title 49, United States Code, is
3 amended by striking “: exemption from antitrust laws” in
4 the item relating to section 10706.

5 **SEC. 5. SCOPE OF AUTHORITY.**

6 Section 11321(a) of title 49, United States Code, is
7 amended—

8 (1) by inserting “, except that rail carriers and
9 rail transportation subject to the jurisdiction of the
10 Board shall also be subject to the antitrust laws”
11 after “is exclusive”;

12 (2) by striking “the antitrust laws and from”;
13 and

14 (3) by inserting “except for the antitrust laws,”
15 after “and municipal law,”.

16 **SEC. 6. ELECTION OF REMEDIES.**

17 Section 11701 of title 49, United States Code, is
18 amended by adding at the end the following new sub-
19 section:

20 “(d) A person proceeding against a rail carrier pursu-
21 ant to subsection (b) may not proceed against the same
22 rail carrier pursuant to other Federal or State law, and
23 a person proceeding against a rail carrier under other
24 Federal or State law may not proceed against a rail carrier

1 pursuant to subsection (b), with respect to the same
2 claim.”.

3 **SEC. 7. CLAYTON ACT AMENDMENTS.**

4 The Clayton Act is amended—

5 (1) in section 7 (15 U.S.C. 18)—

6 (A) by striking “Nor shall anything here-
7 in” and all that follows through “therein is so
8 acquired.”; and

9 (B) by striking “Surface Transportation
10 Board,”;

11 (2) in section 11 (15 U.S.C. 21), by striking
12 “in the Surface Transportation Board where appli-
13 cable to common carriers subject to jurisdiction
14 under subtitle IV of title 49, United States Code;”;
15 and

16 (3) in section 16 (15 U.S.C. 26), by striking
17 “: *Provided*, That nothing” and all that follows
18 through “title 49, United States Code”.

○