

Railroad Re-Regulation Is Way Off Track: H.R. 2125/S. 953 Would Deny RRs Billions of Dollars Each Year

ASSOCIATION OF AMERICAN RAILROADS

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Consumers United for Rail Equity (CURE) and other groups have been calling for the re-regulation of U.S. freight railroads for 25 years. Today, they support passage of H.R. 2125/S. 953, the so-called "Railroad Competition and Service Improvement Act of 2007."

CURE says the bills would "ensure rail customer access to rail competition," "ensure a workable rate challenge process...for those rail customers without access to transportation competition," and clarify and enforce "the railroad obligation to serve."

These benign-sounding objectives conceal what the bills would actually do: use what amounts to price controls to deny railroads billions of dollars in needed revenue each year. This would significantly reduce the rail industry's profits — making it difficult, if not impossible, for railroads to maintain their existing networks, much less pay for the substantial new rail capacity that transportation experts, public policy officials, and shippers recognize our country desperately needs.

What would be the result if the CURE bills passed? Reduced rail capacity, higher shipping costs, more trucks on already-overcrowded highways, increased highway spending to handle the additional truck traffic, and more pollution and greenhouse gas emissions.

Railroads do not oppose competition. There is plenty of it out there already, either between two or more railroads or from trucks and barges. And where the marketplace cannot support more than single-railroad service, legal safeguards exist to protect against anti-competitive railroad behavior.

Here are the several CURE myths and the facts railroads want you to know:

Myth: CURE *"is not seeking changes to the fundamental principles of the current regulatory system."*

Fact: CURE denies that what it proposes is re-regulation at all, but the fact remains that H.R. 2125/S. 953 would substantially increase Washington's control over wide areas of rail operations. That's as good a definition of re-regulation as any. Under the bills:

- Washington could force railroads to interchange traffic with other railroads at the whim of shippers, with no regard to railroad operational efficiencies or cost recovery and even when the rail rate for the traffic is not unreasonably high.
- Washington could essentially cap rates for rail service at levels below the free market rate and below what railroads need to cover their expenses.
- Washington could label states and regions "areas of inadequate rail competition" and then, among other things, order railroads in those areas to allow other railroads to use their tracks.
- Washington could unilaterally void contracts willingly entered into by private parties, even if none of those parties wanted them voided.
- Washington could force railroads to have on hand whatever assets they might possibly need to overcome any potential obstacle to "reliable and efficient" service, and to pay damages associated with shipping delays that occur because of those obstacles, but without allowing railroads to recoup the costs associated with these "just in case" assets.
- Washington could order railroads to resolve disputes with their customers through binding final offer arbitration. No other industry must do this.

This isn't more "competition" or "balance," as CURE claims. It's re-regulation.

Myth: *“Ours is a [freight] rail system that does not meet the needs of the 21st century.”*

Fact: Ours is a freight rail system that every other country in the world would love to have. It is the best for shippers in price and service, best for employees in compensation and safety, and best for the public in reduced pollution and highway gridlock.

Prior to the Staggers Rail Act of 1980, excessive regulation nearly destroyed the rail industry. CURE’s bills would take railroads back to that troubled era. The consequences of CURE’s legislation may be unintended, but if it became law, the rail industry’s physical plant would deteriorate; essential new capacity would not be added; and rail service would become slower and less reliable. CURE doesn’t even try to explain how railroads, in the face of the huge revenue loss they would confront from re-regulation, could possibly make the massive ongoing investments in rail capacity our nation desperately needs. America has a great freight rail network. It just needs more of it, and CURE’s proposals will not help achieve that.

Myth: Railroads *“have not invested in their infrastructure or even done appropriate maintenance.”*

Fact: To the contrary, America’s freight railroads today are in their best physical shape ever. Since Staggers, U.S. freight railroads have spent approximately \$420 billion on capital expenditures and maintenance expenses related to their infrastructure and equipment. Railroads are investing record amounts — investments were higher in 2007 than ever before — in order to provide reliable, efficient service to their customers and meet the tremendous growth in freight demand everyone is predicting.

For example, the U.S. DOT expects freight rail demand to rise 88 percent by 2035. Studies show that railroads will have to increase spending by billions of dollars each year to meet this demand. By drastically reducing rail earnings, CURE’s bills would make this impossible.

Myth: Railroads are *“exempt from the nation’s antitrust laws.”*

Fact: Railroads are subject to most antitrust laws, including those that prohibit railroads from getting together to set rates, allocate markets, or unreasonably restrain trade. The few narrow antitrust exemptions available to railroads cover areas subject to the jurisdiction of the Surface Transportation Board (STB). In other words, there is comprehensive government oversight of railroad competition issues: the oversight is simply divided among different government agencies. CURE’s implication — that railroads can operate as they wish, subject to neither antitrust scrutiny nor any other government oversight — is flat-out wrong.

Myth: *“The Government Accountability Office, in an October 2006 report, found both a lack of competition in the rail industry and a lack of focus on this issue by the STB.”*

Fact: The GAO summed up its report in this way: “Without a doubt, rates have decreased for most shippers, and most shippers are better off in the post-Staggers environment than they were previously. This outcome suggests that widespread and fundamental changes to the relationship between the railroads and their customers are not needed.”

Myth: *“High rail coal transportation costs are passed through directly to electricity customers.”*

Fact: Railroads help keep electricity prices low. From 1981 to 2006 (the most recent year available), inflation-adjusted average rail coal rates fell 61 percent. That means that the average electric utility today can move two railcars of coal for less than the price it paid to move just one 25 years ago!

It makes no sense to destroy the best freight rail system the world has ever seen in order to move toward a system that failed in the past and would fail again in the future.