



Freight Rail Customer Alliance

Rail Shipper Fairness Act

FRCA Position

FRCA continues to support legislation that would build upon the reforms to the Surface Transportation Board (STB or Board) made by the U.S. Congress when it reauthorized the STB in 2015.

Issue Background

The [STB Reauthorization Act of 2015](#) expired on September 30, 2020.

Actions

On June 16, 2021, Senator Tammy Baldwin (D-WI) offered, and then withdrew, her draft ***Rail Shipper Fairness Act of 2021*** as an amendment to the [Surface Transportation Investment Act \(STIA\)](#), S. 2016, during Senate Commerce, Science, and Transportation Committee consideration.

[While the [STIA](#) contains a Rail Title, as a part of the Committee's [FAST Act](#) reauthorization jurisdiction, the measure does not contain language that would reauthorize the STB. The [STIA](#) was later incorporated into the Senate-passed ***Infrastructure Investment and Jobs Act (IIJA)*** or the "***Bipartisan Infrastructure Bill***", H.R. 3468. This is the Senate's version of a [FAST Act](#) reauthorization.]

As with Senator Baldwin's similar legislation introduced in previous years, her draft ***Rail Shipper Fairness Act of 2021*** reflects many elements advocated by FRCA. This draft measure would:

- **Improve Rail Service** by strengthening the definition of "Common Carrier Obligations" and requiring the STB to promulgate rulemaking.
- **Improve Rail Competition** by requiring Class I carries to enter into competitive switching arrangements under certain conditions and to the satisfaction of the STB
- **Improve Rail Carrier Reasonable Rate Standards** by utilizing a "Benchmark-Based Rate Reasonableness Standard".
- **Protect Shippers from Unreasonable Practices** by not allowing rail carriers to use an index when calculating fuel surcharges and fuel surcharges shall be directly accounted for by changes to the rail carrier's actual fuel prices.

- **Replace the Current Rail Carrier Revenue Adequacy Test** by requiring the STB to calculate a rail carrier's cost of capital, by multiplying the value of the capital by the sum of a) the current annual yield on a 10-year United States Treasury Bond; and b) a prospective market risk premium, which may not exceed 5 percent per year.
- **Require Rail Carriers to Report Service Performance Data** by requiring the STB to issue a final rule requiring the Class I carriers to regularly report first mile/last mile data metrics to the Board in conjunction with any other service performance data that such rail carriers are otherwise required to report to the Board.

[This provision follows the issues raised with the Board in the On Aug 31, 2020, FRCA sent a *Letter of Concern* to the Surface Transportation Board seeking improved transparency concerning the level of first-mile/last-mile service that rail carriers actually provide. The National Coal Transportation, National Industrial Transportation League, and the Private Rail Car Food and Beverage Association joined FRCA in this effort. Read the *FRCA Letter of Concern* [here](#).]

Status

FRCA understands that Senator Baldwin is continuing to find other legislative avenues to advance her draft *Rail Shipper Fairness Act of 2021* especially considering the [STB Reauthorization Act of 2015](#) expired on September 30, 2020.

There are two pending pieces of legislation that would reauthorize the [FAST Act](#) (*Fixing America's Surface Transportation Act* providing the authorized funding levels and policy initiatives for Federal funding and policies for highway, transit, highway safety, motor carrier, research, hazardous materials, and rail programs): the Senate-passed [Invest in Infrastructure Jobs Act](#) (H.R. 3468) and the House-passed [INVEST in America Act](#) (H.R. 3468).

While both of these bills contain a Rail Title, they do not include a provision(s) that would reauthorize the STB.

On October 2, 2021, President Biden enacted [PL 117-44](#) which extended the *FAST Act* by one month, thru October 31, 2021.