CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

February 25, 2010

S. 2889
Surface Transportation Board Reauthorization Act of 2009

As ordered reported by the Senate Committee on Commerce, Science, and Transportation on December 17, 2009

SUMMARY

S. 2889 would authorize appropriations over the 2010-2015 period for operating the Surface Transportation Board (STB) and for the Railroad Rehabilitation and Improvement Financing (RRIF) program to help small railroads buy back certain lease agreements from larger railroads. The STB is responsible for overseeing economic competition in the railroad industry. Assuming appropriation of the necessary amounts, CBO estimates that implementing the bill would cost $292 million over the 2010-2015 period. Enacting S. 2889 would not affect direct spending or revenues; therefore, pay-as-you-go procedures would not apply.

S. 2889 contains intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Several of those mandates would impose requirements on both public and private rail carriers. CBO estimates that the aggregate cost of intergovernmental mandates in the bill would fall below the annual threshold established in UMRA ($70 million in 2010, adjusted annually for inflation). The cost of private-sector mandates in the bill is uncertain because many of them would depend, in part, on future regulations. Consequently, CBO cannot determine whether the aggregate cost of private-sector mandates would exceed the annual threshold established in UMRA ($141 million in 2010, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 2889 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By Fiscal Year, in Millions of Dollars						
	2010	2011	2012	2013	2014	2015	2010-2015
CHANGES IN SPENDING SUBJECT TO APPROPRIATION							
Surface Transportation Board							
Authorization Level	12	48	41	44	48	0	193
Estimated Outlays	6	48	42	44	47	5	192
Railroad Rehabilitation and Improvement Financing							
Estimated Authorization Level	*	*	*	20	60	20	100
Estimated Outlays	*	*	*	20	60	20	100
Total Changes							
Estimated Authorization Level	12	48	41	64	108	0	293
Estimated Outlays	6	48	42	64	107	25	292

Note: * = less than $500,000.

BASIS OF ESTIMATE

For this estimate, CBO assumes that S. 2889 will be enacted in 2010 and that the authorized and estimated amounts will be appropriated each year, including supplemental appropriations for 2010.

Surface Transportation Board Programs

S. 2889 would authorize the appropriation of $193 million for the operations of the STB over the 2010-2014 period. The board has already received an appropriation of $28 million for 2010. The STB is responsible for overseeing economic competition in the railroad industry. S. 2889 would increase the STB's responsibilities for overseeing and regulating the rail industry, including allowing it to conduct investigations on its own initiative and requiring the board to establish new regulations regarding the rates charged by rail carriers. The bill also would require the board to appoint both a Customer Advocate and an Ombudsman and to complete several studies about the rail industry. Based on information from the STB and historical spending patterns for similar programs, CBO estimates that implementing those provisions would cost $192 million over the 2010-2015 period.

Railroad Rehabilitation and Improvement Financing

Under the RRIF program, the Federal Railroad Administration (FRA) provides direct loans and loan guarantees to develop railroad infrastructure. Among other features of the RRIF program, borrowers pay a premium to cover the estimated subsidy cost of their loans. This payment is known as a credit-risk premium. Currently, the RRIF program charges loan recipients the same interest rate that would be paid on 30-year Treasury bonds. The RRIF loan term is 35 years.

The RRIF program is governed by the Federal Credit Reform Act of 1990, which requires an appropriation to cover the subsidy and administrative costs associated with direct loan guarantees and loan operations. The subsidy cost is the estimated long-term cost to the government of a loan or loan guarantee, calculated on a net-present-value basis, excluding administrative costs. Administrative costs, recorded on a cash basis, include activities related to making, servicing, and liquidating loans as well as overseeing the performance of lenders. In recent history, FRA has typically charged railroads between 2 percent and 8 percent of the loan level as a credit-risk premium because those loans are backed by significant collateral in the form of property and equipment.

Paper Barriers. S. 2889 would expand the activities eligible for RRIF loans to allow small railroads to buy back certain lease agreements from larger railroads. There are seven such larger “Class I” railroads in the United States. Smaller railroads—Class II and Class III—are often referred to as “shortlines” because they tend to cover a relatively small distance of track. A lease agreement with one large railroad is called a “paper barrier” and generally requires a shortline railroad to distribute its rail traffic exclusively to a single Class I railroad. By buying back a lease, a shortline would be able to distribute its traffic to more than one Class I railroad, potentially leading to lower shipping prices. The precise number of such paper barriers is unknown, but industry experts estimate that there are currently about 100 such contracts. The values of those paper barriers vary widely; each value depends on the unique circumstances of the agreement between a shortline and a Class I railroad.

Under the provisions of S. 2889, a shortline railroad or a customer of such a railroad could petition the STB to invalidate or alter a paper barrier. If the STB invalidated such an agreement by finding it not to be in the public interest, the shortline railroad, alone or in conjunction with customers, could then seek a RRIF loan to purchase the agreement from the larger carrier. The bill would authorize the appropriation of $37.5 million over the 2010-2015 period to pay for a portion of the subsidy cost of loans—the credit-risk premium—to shortline railroads that plan to buy back a paper barrier agreement.

Cost of Expanding the RRIF program. Because the loans authorized by S. 2889 would probably not be backed with the same level of collateral as existing loans, CBO estimates that the credit subsidy would be greater than the subsidy cost for loans the agency has historically made. In addition to the $37.5 million authorized for the credit risk, the bill would add to the subsidy cost for loans made under S. 2889 because it would cap the amount of interest charged on RRIF loans used to purchase paper barriers at 1 percent, subject to the appropriation of the necessary additional subsidy amounts. CBO estimates that the total subsidy rate for RRIF loans used to purchase paper barrier agreements would be about 50 percent. That rate is largely due to the difference between the government's borrowing rate and the 1 percent interest rate that would be charged to borrowers.

Based on information from industry sources, CBO estimates that only a handful of shortline railroads or their customers would ask to have their paper barriers invalidated. Under the bill, CBO estimates that shortline railroads would apply for around $200 million in loans to purchase such agreements over the next few years. Assuming appropriation of the necessary amounts consistent with the projected subsidy rate of 50 percent, CBO estimates that implementing those changes to the RRIF program would cost about $100 million over the 2010-2015 period.

PAY-AS-YOU-GO CONSIDERATIONS: None.

INTERGOVERNMENTAL AND PRIVATE SECTOR IMPACT

S. 2889 contains intergovernmental and private-sector mandates, as defined in UMRA. Several of those mandates would impose requirements on both public and private rail carriers. CBO estimates that the aggregate cost of intergovernmental mandates in the bill would fall below the annual threshold established in UMRA ($70 million in 2010, adjusted annually for inflation). The cost of private-sector mandates in the bill is uncertain because many of them and would depend, in part, on future regulations. Consequently, CBO cannot determine whether the aggregate cost of private-sector mandates would exceed the annual threshold established in UMRA ($141 million in 2010, adjusted annually for inflation).

Mandates That Apply to Both Public and Private Entities

Rate Regulation and Access to Facilities. The bill would require Class I rail carriers to offer reasonable rates for shipments on non-competitive segments of track. According to industry sources, about 40 percent of the shipments using Class I carriers involve such segments. The cost of the mandate to rail carriers would be the cost of setting up a new pricing system and any loss in net income as a result of the new standards. Depending on the number of shipping routes affected and the standards established by the STB for reasonable rates, the compliance cost to private entities could be substantial.

S. 2889 also would authorize the STB to require Class I rail carriers to make their terminal facilities available to competing carriers. The cost of the mandate would be any income loss resulting from the required transaction. Because the number of rail carriers and the sections of rail that would be subject to the mandate would be based on future regulations, CBO cannot estimate the cost of this mandate on private-sector entities.

The bill also would allow the STB to extend those requirements to shortline railroads, some of which are publicly owned. Depending on future rules and regulations, some public rail carriers could be required to comply with these mandates. Nevertheless, because of the relatively small number of public entities potentially affected by such requirements, CBO estimates the costs to state and local governments would be small.

Regulatory Exemptions. S. 2889 would require the STB to modify or discontinue existing regulatory exemptions for shortline railroads based upon the results of a study of the impact of those exemptions. Under current law, such rail carriers with exempt traffic do not have to comply with regulations that apply to Class I carriers. Because of the relatively limited number of public entities subject to such modifications, the costs to state and local governments would be small. Because CBO cannot determine what modifications to exempt traffic, if any, would be imposed by the legislation, CBO has no basis for estimating the cost of the mandate to private-sector carriers.

Paper Barriers. By allowing challenges to paper barrier agreements, the bill would impose a mandate as defined in UMRA. If the STB were to invalidate an agreement by finding that it goes against the public interest, the parties to the agreement would have to rewrite the agreement or terminate it. Based on information from industry sources, CBO estimates that around 100 such agreements exist. Because of the relatively small number of public entities with such contracts, CBO estimates the costs to state and local governments would be small. Because the number and value of such agreements that would be invalidated is uncertain, CBO cannot estimate the cost to the private sector of complying with this mandate.

Reporting Requirements. The bill would require Class I rail carriers to regularly submit information to the STB regarding service metrics such as transit times and other data the STB may require. In addition, rail carriers would have to publish figures that reflect expected ranges for reasonable service. Because of the relatively small number of public entities subject to the reporting requirements, the costs to state and local governments would be minimal. Based on information from industry sources and the STB, CBO estimates that the cost of the reporting requirements on private-sector entities could amount to tens of millions of dollars primarily to develop reporting systems.

Rate Quotes. By allowing the STB to challenge a rate, the bill could restrict the ability of rail carriers to set rates. Because of the relatively small number of public entities affected, CBO estimates that the cost of this provision to those entities would be small. Because CBO cannot determine when or how often the STB would use this authority, CBO cannot determine the cost of the mandate to private entities.

Other Mandates. The bill contains additional mandates that would affect both public and private entities. The bill would place a mandate on previous owners of rail lines by limiting their right of first refusal if the new owner proposes to sell or abandon the line. The bill also could expand existing mandates related to rail accidents. Those mandates include prohibitions on states and private entities relating to National Transportation Safety Board investigations and counseling services. CBO estimates that none of the costs of those mandates would be significant during the first five years the mandates would be in effect.

Mandates that Apply to Private Entities Only

The bill would require the STB to update its uniform costing system, which it uses to determine reasonable shipping rates. If the updated system would decrease the reasonable rate a rail carrier could charge, the new restriction would constitute a mandate on rail carriers. The cost would be any income loss from the reduction in reasonable rates charged. Since CBO does not know how the STB would modify the costing system, we cannot determine the potential cost of the mandate.

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