8-10-09

Parliament Written Comments for the Senate Subcommittee Field Hearing

"Addressing Surface Transportation Needs in Rural America"

SHORT LINE RAILROAD CHALLENGES:

What are our "Hot Buttons?"

- INFRASTRUCTURE FUNDING
- HOURS OF SERVICE

Infrastructure funding for Short Line Railroads remains a top priority for American Short Line and Regional Railroads. Many shortlines sprung from meager beginnings; when tracks were either abandoned or maintenance was deferred to the point that service was no longer feasible on some of these lines. In the case of the D & I Railroad, we were fortunate that the State of South Dakota stepped up and purchased some of the rail lines that were being abandoned when the Milwaukee Road went bankrupt in the early 1980s. Since then, the State and the shippers on the D & I have joined forces and invested millions of dollars to preserve and improve our vital link to the nation's Class I railroads. On the D & I, improvements costing roughly 16.5 million dollars (over the past five years) have been invested to upgrade bridges and to relay century old rail with new continuously welded rail with funding provided by South Dakota's Rail Trust Fund and administered by South Dakota's Department of Transportation.

Over the years, millions of dollars have been invested to preserve service and to enhance the infrastructure on our nation's short line railroads. There is still a lot of work to be done on the nation's rail feeder system, which is of course, the Short Line railroad. In rural America, the short lines provide the "first mile" or "last mile" service to our nation's producers of corn, ethanol and dried distillers grains, and building products. We need to continue improving the infrastructure to be able to continue to provide service over a safe and efficient network. Today with newer cars having the ability to handle 115 tons per car, as opposed to the prior standard of 100 tons per car, the weight limits of many of the bridges would be exceeded, without a funding mechanism to maintain and/or rebuild the infrastructure.

One of the major funding mechanisms available for this purpose has been the short line railroad tax credit which provides an incentive for short lines to invest in track rehabilitation projects by providing a tax credit of 50 cents for every dollar spent on track improvements. In South Dakota and Iowa, those tax credits have amassed to about $750,000 in actual tax savings, which is allowing the D & I to continue the investment in our track infrastructure. This year we are relaying an additional thirteen miles of rail and constructing an 8000 foot siding. Continued investment in the short line railroads' track infrastructure benefits the shippers firsthand and creates jobs. When shortlines upgrade their track, shippers receive more dependable, safer and even profitable service. When a track is able to handle today's heavy axle loads, the shippers can ship more tons per car which is an overall savings in freight costs. Most short lines do not have the equipment and manpower to handle major rehabilitation projects, therefore contractors are hired to perform the work, thus creating jobs.

H.R 1132 and S. 461 extends Section 45G for three years to cover tax years 2010, 2011 and 2012. In addition, the legislation in these two bills allows new short lines railroads created after January 1st, 2005 to participate and qualify for the credit. The proposed legislation also increases the limitation from $3500 to $4500 per track mile to account for increased costs since the credit was originally passed in 2004.

Over the past couple of years, revenues have decreased on many short lines as industries like cement, lumber and other sectors of our manufacturing base have struggled, but they are poised to make a comeback. The railroads must be ready when that happens. Private and government studies estimate that it will cost $13 billion to bring the national short line system up to the necessary level of efficiency. Please support H.R 1132 and S.461. You can do so by signing on as a cosponsor. Your short line railroads will thank you and your shippers will thank you.

<u>Hot Button Number Two:</u>

On July 16th, 2009 a new **HOURS OF SERVICE** law went into effect for the nation's railroads. The intention of Congress when the Rail Safety and Improvement Act (RSIA) of 2008 was passed was to battle crew fatigue in the industry. Unfortunately, that is not what is happening. There are provisions in the RSIA that do meet the intentions of Congress. Positive Train Control (PTC), conductor certification, the hiring of 200 additional safety inspectors, medical attention of injured workers protection, bridge safety and grade crossing improvements are amongst the many good components of the legislation. However, the new hours of service provisions of the RSIA are not having the impact on crew fatigue that Congress had hoped for. In fact, what is happening is that freight is being delayed as the railroads' ability to move the freight is being limited by the new rules. In addition, train service employees are earning less due to the number of days per week and hours per month they can legally work.

The new Hours of Service Law now states that if an employee works six consecutive days, the <u>must</u> have 48 hours of uninterrupted rest. If they work seven days straight, 72 hours rest is required. The legislation created a new 276 hour cap per month on the number of hours a train service employee may work This legislation was put into effect primarily for the Class I railroads that operate 24 hours a day, seven days a week. These crews often work on an "on-call" basis and they typically do not have specified rest days. Their schedules are unpredictable and they are called for service at odd hours with only a couple hours of notice. Then they may work 12 hour shifts, layover at a hotel for an unpredictable amount of time and are subject to call at any time. Unexpected report to work calls and reporting to work after a minimal amount of rest is what causes crew fatigue. The Federal Railroad Administration (FRA) has now imposed these new rest laws as Congress dictated. Although the FRA has said they were sympathetic to the short lines' claim that fatigue is not a short line problem, but they have no recourse but to impose these new requirements.

The unintended result of these new restrictions is putting a real hardship on small operators such as the D & I and can potentially reduce service to shippers along their lines. Picture this; a crew goes to work on a regular schedule at 6:00 am Monday, works a full shift of 8 - 12 hours, takes his mandatory period of rest then goes back to work on Tuesday at 6:00 am and works another shift. This cycle repeats on Wednesday & Thursday, and Friday & Saturday, with Sunday as a day of rest. This is a typical operation for many freight crews which service industries on the railroad. Now, with the new law, the crew will need two days of rest. Is there really a fatigue issue here? No ~ it now has become a service issue. The railroad is now forced to make some hard decisions concerning service to these industries.

What are our options?

1. Eliminate the six day local freight service and reduce service to those industries. This is counter productive, especially in times of high volume, such as during harvest. On the D & I, our ethanol plants and every customer, for that matter, depend upon our reliable service. We do not want to be forced into eliminating service and not have the flexibility to work our crews an occasional weekend to provide our customers with cars or to pull their freight to market.
2. Hire more crews, but only allow them to work the two days a week that the other crew is now unable to work. Does this really benefit anyone? Surely not the railroad that now has increased cost, not the first crew who have just took a 33% cut in their pay. And surely not the second crew who only works part time, likely with no benefits.

The demand of operating a 24 / 7 railroad can create the potential for crew fatigue. However, this new law does nothing to address the problem. Longer rest periods and less work days do not eliminate unpredictable and unexpected report to work calls from the employing railroad.

The American Short Line and Regional Railroad Association (ASLRRA) has applied for a waiver to the Federal Railroad Administration (FRA) for small Class II and Class III railroads. One of the requirements from the FRA is that any railroad that requests inclusion in the waiver, must participate in a pilot program that analyzes crew schedules to determine potential fatigue issues. This waiver needs to be granted without further delay. The Brotherhood of Locomotive Engineers & Trainmen (BLET) and the United Steelworkers Union have expressed their support of the waiver. The BLET and the United Transportation Union have jointly filed comments asking the FRA to clarify its interim policies related to, and interpretations of, the new hours of service regulations. The requested clarifications and simplifications fall into three categories: the RSIA prohibition of communication with employees during statutory off-duty periods; the RSIA's provisions pertaining to mandatory off-duty time following the initiation of an on-duty period for a specific number of consecutive days; and the maximum number of hours that may be worked in a calendar month.

Congress needs to work with the railroads and the unions and come up with an alternative to these new requirements. There are ways to battle crew fatigue; let's create a law that does so. The new Hours of Service requirements in the RSIA have created more problems than it intended to fix. It is now up to Congress to come up with the remedy.