



## June 2009

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### Cosponsor Update

#### H.R. 233

**Rep. Lloyd Doggett (D-TX)**

[Thank Rep. Doggett](#) for supporting H.R. 233 to restore fairness to the freight rail industry.

**Rep. Gabrielle Giffords (D-AZ)**

[Thank Rep. Giffords](#) for supporting H.R. 233 to restore fairness to the freight rail industry.

### Noted and Quoted

"You can go back over a 25-year history and look at the number of cases that shippers have won, and you can count them on one hand. And then you look at the relief they got and you discover that the hand was just slapping them in the face. We've had a 25-year history of the rampant exercise of market power under a lack of regulation, a lack of competition, and a lack of antitrust oversight. "

- Dr. Mark Cooper, Director of Research, Consumer Federation of America, in testimony to the House Judiciary Subcommittee on Courts and Competition Policy,

## Senate May Vote on Antitrust Bill As Soon as June 2

For the first time since the passage of the Staggers Rail Act in 1980, legislation to end the railroads' exemption from antitrust law may be debated by the full Senate when the chamber returns from the Memorial Day recess next week. S.146, authored by Sen. Herb Kohl (D-WI), passed the Senate Judiciary Committee earlier this year by a bipartisan vote of 14 to 0. This legislation is slated for consideration on June 1 with a potential vote on June 2.

"This progress marks a tremendous opportunity for our cause," said Don Kimball, President of CURE and CEO of Arizona's G&T Cooperatives. "We should all be proud that our efforts helped bring the legislation this far, despite a multi-million dollar lobbying campaign by the railroads."

In the House, a successful hearing in the House Judiciary Subcommittee on Courts and Competition Policy has paved the way for a vote on H.R. 233, the Railroad Antitrust Enforcement Act of 2009, on June 4. A live video feed of the markup will be available during the proceedings on the [House Judiciary Committee website](#). CURE members are encouraged to contact the [members of the subcommittee](#) to ask them to vote "yes" on H.R. 233 and put an end to special railroad exemptions from antitrust law.

Call Senators **Today** to Ask for Support of S. 146

The Senate may debate the Railroad Antitrust Enforcement Act ([S.146](#)) as early as Monday, June 1, and vote on the legislation Tuesday, June 2nd. This marks the first time in the history of the rail reform movement that antitrust legislation may be considered by the full Senate. It is critically important that all supporters of rail reform urge their Senators to vote for cloture (a parliamentary procedure to complete debate and move to a final vote) and vote for final passage of S. 146. For the phone numbers to call your Senators, click [here](#).

## Consumer Group Calculates \$3 Billion Annual Impact of Rail Overcharges

In the first tally of the nationwide impact of the freight railroads' monopoly pricing power, the Consumer Federation of America (CFA) has found that overcharges cost American consumers \$3 billion every year. The study, entitled "Bulk Commodities and the Rails: Still Crazy After All These Years," describes the need to address rail monopoly power as "urgent" and calls on Congress to enact a legislative solution.

"The rail industry is a textbook case of market power run amok," said Dr. Mark Cooper, Director of Research at CFA. "If this Congress and this administration cannot quickly restore the commitment to vibrant competition as the cornerstone of American economic policy, we will be doomed as a nation to economic mediocrity."

The study found that lax federal oversight has led to excessive industry consolidation since freight rail was partially deregulated by the Staggers Rail Act of 1980. Forty railroads have merged down to seven, with four major carriers hauling 90 percent of the nation's freight today. This handful of companies wields immense market power, which leads to higher consumer prices for goods shipped by rail, such as agricultural commodities, raw materials and coal used to generate electricity.

"This study provides a sobering reminder that the railroads' monopoly

power costs consumers money," noted Glenn English, chairman of Consumers United for Rail Equity (CURE). "Congress needs to tackle this problem before another \$3 billion is swindled from consumers."

The study calls for a legislative fix to properly implement the provisions of the Staggers Rail Act, eliminate the railroads' exemption from federal antitrust laws, and enhance Surface Transportation Board (STB) oversight of the industry. CFA urges the STB to change its procedures for calculating railroad costs and the reasonableness of rail rates so that they more fairly estimate costs to shippers.

"The STB clings to a rate threshold that allows the railroads to charge exactly what a monopolist would charge ... up to what it would cost the shipper to build his own stand-alone railroad at current costs," charged Cooper in testimony before the House Judiciary Subcommittee on Courts and Competition Policy on May 19. He also noted that the failure of the railroads to operate their businesses in an efficient manner encourages abusive pricing practices.

[Dr. Cooper's study](#) and his [congressional testimony](#) on behalf of CFA can be accessed from the CFA website.

## House Judiciary Subcommittee Hears Testimony on Freight Rail Abuses

During a hearing of the House Judiciary Subcommittee on Courts and Competition Policy on May 19, lawmakers heard testimony concerning the Railroad Antitrust Enforcement Act of 2009 (H.R.233), and the urgent need for freight rail reform.

"This bipartisan legislation is crucial to leveling the playing field by providing competition to the rail industry," said Rep. Rodney Alexander (R-LA). "It simply places the rail industry under the same antitrust laws that every other industry such as energy, telecommunications, or even other forms of freight transportation, including trucking and aviation, faces."

Speaking on behalf of captive shippers, Terry Huval, Director of Lafayette Utilities System (LUS), noted, "It is in the nation's interest to have a sound railroad system built on reasonable, not predatory, pricing and service. LUS customers must ultimately pay, in the form of higher electric rates, the \$65 million in extra captivity payments LUS has been required to pay."

The American Bar Association's Section of Antitrust Law reiterated its support for eliminating the freight rail antitrust exemption during the hearing. Speaking on behalf of the Section, attorney M. Howard Morse noted, "It is consumers that suffer the most from higher prices, lower output, reduced quality and reduced innovation." He added that the Section "encourages Congress to move forward quickly to dismantle the antitrust exemption for the railroad industry."

The Subcommittee is scheduled to advance the bill during a markup scheduled for June 4.

## News Reports Keep Rail Reform in the Public Eye

Captive shippers continue to receive attention from newspapers and radio programs nationwide. A [recent article in The Journal of Commerce](#) and an [interview on WGFA Radio's daily agribusiness update](#) both highlight pending legislation that will end railroad monopoly pricing power and bring needed reforms to the Surface Transportation Board.

In an article that recently appeared in The Journal of Commerce, Sen. Herb Kohl (D-WI) said that his Railroad Antitrust Enforcement Act should reach the Senate floor "shortly after the [Memorial Day] holiday." A regulatory reform bill is also making progress. Robert Szabo, Executive Director and counsel of CURE, noted that the Senator continues to work on consensus legislation and that there may be action on the bill in June.

In an broadcast interview with "Colleen's Ag Connection," Szabo said that a solid freight rail system is essential to support a thriving economy, but that consolidations in the railroad industry have resulted in rail monopoly power over rural areas. The interview, which was broadcast on radio stations in East Central Illinois and West Central Indiana, highlighted the need to put the railroads back under the nation's antitrust laws and to reform the federal agency oversight of the railroads.

Szabo noted that for rural communities, freight rail problems are both a price issue and a service issue. Unless the system is opened up to more competition and regulators start taking action to support shippers, these problems will continue.

Links to these reports and others can be found on CURE's Web site, at [www.railcure.org](http://www.railcure.org).