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Judiciary Committee approves Sen. Kohl's bill in new effort to limit curb rail rates

John D. Boyd

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The Senate Judiciary Committee voted 14-1 to approve the Railroad Antitrust Enforcement Act, the latest effort by Sen. Herb Kohl, D-Wis., to strip rail firms of a limited exemption they now have from regular antitrust oversight.

Kohl said getting the bill enacted into law would "ensure that railroads play by the same rules as all other businesses in our economy and give those injured by anti-competitive conduct strong remedies under anti-trust law." He said rail freight rates for vital commodities have spiked in recent years and "rail shippers are forced to pass these price increases into the price of their products."

His office listed as an example a 93 percent rate hike by the Dairyland Power utility in La Crosse, Wis., for coal shipments to produce electricity.

Kohl had won unanimous committee backing for his measure in March 2009, and it was scheduled to reach the Senate floor for debate and a vote that May. But Sen. Jay Rockefeller, D-W.Va., and others on the Commerce, Science and Transportation Committee he chairs won agreement for Kohl to delay his bill while they tried to craft a broader rail regulatory reform law.

Currently, supervision of railroad-shipper economic disputes by the Surface Transportation Board puts many types of challenges outside the normal range of antitrust law, and Rockefeller's bill would have redirected STB policies to be more shipper-friendly. His committee passed a rail reform bill in December 2009 but without removing the antitrust exemption.

Both bills died in the last Congress without ever reaching the Senate floor, and both have been reintroduced this year.

With his new rail antitrust bill having passed Judiciary with cosponsors from both parties and broad bipartisan support, Kohl could now try to get it onto the floor separate from any new legislation from Rockefeller.

Railroads strongly oppose the Kohl measure, saying it could open them to numerous lawsuits and other challenges both within states and at federal district courts, and layer new oversight on the industry from the Department of Justice and Federal Trade Commission in addition to regulation by the STB.

But Glenn English, chairman of the activist shipper group Consumers United for Rail Equity, called the Judiciary action "an important step in righting a wrong that is stalling job creation and threatening the economic recovery." He said existing protections of railroads allow them to set higher rates than otherwise, and have "hurt shoppers, exporters, farmers and manufacturers through higher costs for products from electricity to grocery bills."

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