



*A bold voice for transportation workers*

July 15, 2015

## **VOTE AGAINST PARTISAN COMMERCE BILL**

Dear Senator:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I write to express our opposition to S. 1732, the Comprehensive Transportation and Consumer Protection Act of 2015 and urge you to vote against it during markup.

This is not a position that we arrive at lightly. For America's workers, a long-term surface transportation authorization is one of the most important pieces of legislation under congressional consideration. A serious proposal that focuses on our long-overdue investment and safety needs would help reboot the economy, vastly improve our transportation network, and create and sustain millions good-paying jobs. Unfortunately, rather than following the bipartisan spirit that has guided congressional deliberation over transportation authorizations, the Commerce Committee Republicans have decided to use their portion of the surface bill as a vehicle for a partisan agenda that harms workers. This ideologically-driven legislation serves to distract policymakers from the important safety and investment priorities that should be the focus of this title, and will only further imperil the likelihood of passing a multi-year bill.

The legislation seeks to use the guise of standardized port metrics to significantly reorient the collective bargaining process for port workers. Specifically, the bill would require the Department of Transportation (DOT) to intervene in labor-management relations by issuing reports prior to and during port labor negotiations in order to assign blame to workers and their unions for all productivity related problems facing our seaports. The reports mandated under this bill are part of a broad and concerted effort to trigger regular and more frequent federal interventions in port labor-management disputes and thus circumvent the collective bargaining process. We also know that the port data expected to be collected will be used to justify state injunctions and the decertification of longshore unions provided for in other pieces of legislation outside the jurisdiction of the Commerce Committee. These labor attacks have no place in what should be a bill focused on surface transportation investment and safety.

In addition, the bill inserts Congress into transportation workplace-based decisions over the introduction of automated technology at US seaports. Specifically, the freight section of the bill includes language that would define intelligent transportation systems (ITS) to include automated port technologies. Issues surrounding the automation and modernization of the port sector have traditionally been handled in the collective bargaining process. To the extent new technologies have been introduced, the decisions on whether to pursue them have been handled through negotiations, not through the heavy-handed involvement of the federal government. By

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Edward Wytkind, President / Larry I. Willis, Secretary-Treasurer



redefining ITS – a term traditionally reserved for the application of advanced information and communications technology to transportation – to include functions performed by workers changes the term’s meaning and threatens good jobs.

The committee markup also seeks to empower Congress to overrule the judgment of the Surface Transportation Board (STB) and a federal appellate court concerning the employment status of train dispatching employees. In July of 2014, the D.C. Circuit upheld an STB determination that dispatching employees working for the Rail-Term Corporation are railroad employees and entitled to standard railroad benefits. Section 3106 seeks to overturn this decision as a favor to the rail services company, denying dispatching employees’ access to the same pension (Railroad Retirement), unemployment, sickness and disability coverage programs that dispatchers have been a part of for decades. In addition, the provision would significantly curtail the STB’s and the Railroad Retirement Board’s long-held authority to determine whether an entity is a rail carrier. We are strongly opposed to this company-specific carve-out for Rail-Term Corporation.

This bill also puts communities, passengers and workers in needless danger by not providing our nation’s first responders sufficient information to respond to rail accidents. The Hazardous Materials by Rail Safety section fails to require rail carriers to provide emergency responders with information on the amount and type of hazardous materials moving through their localities. Access to this information before accidents occur is critical to first responders’ efforts to prepare contingency plans and dramatically aids in their response when emergencies occur.

Lastly, ensuring that emergency responders are trained properly is crucial to their own safety and the communities in which they serve. Currently, a highly specialized grant program exists that is dedicated to training first responders on how best to respond to hazmat emergencies. This program has been immensely successful in preparing emergency responders. We are opposed to any effort in the base bill or by amendment to combine this program with other grant programs.

Collectively, these controversial provisions undermine collective bargaining rights, retirement, and safety of a broad cross section of transportation workers. In isolation this is quite troubling. However, the decision to include these provisions is even more dispiriting given that another path forward exists. The Environment and Public Works (EPW) Committee, led by Senator’s Inhofe and Boxer, set a strong, bipartisan tone for the authorization process. Rather than following their lead, however, the Commerce Committee has decided to turn an important authorization of safety, rail and related programs into an anti-worker markup.

Accordingly, as the Senate markups up this bill, we urge you to support transportation workers by taking the following votes to improve this legislation:

- **Vote YES on Nelson 1.** This amendment would replace this partisan legislation with a non-controversial bill focused on safety, freight transportation investments and other non-labor issues germane to the committee’s jurisdiction.

- **Vote YES on Cantwell 2**, which would ensure the TIGER discretionary grant program remains a multi-modal investment tool that bolsters other streams of federal investment in transportation.
- **Vote YES on Manchin 1**, which removes the language mandating the DOT to issue reports prior to and during longshore labor-management negotiations that seek to undermine the collective bargaining process.
- **Vote YES on Markey 5**, which excludes automated port technology from the definition of intelligent transportation systems and ensures decisions over workplace technology are made by labor and management, not our government.
- **Vote YES on Booker 7**, which strikes the section on port performance measures and monthly reporting requirements related to port labor contracts.
- **Vote YES on Markey 3**, which would prevent bus and truck companies from seeking permanent hours of service exemptions that would jeopardize roadway safety.
- **Vote YES on Booker 5**, which would remove a hurdle to FMCSA issuing a rulemaking to increase minimum insurance requirements for bus and truck companies.
- **Vote YES on Booker 6**, which would remove an unnecessary hurdle hindering FMCSA's ability to promulgate a proposed rule on increasing minimum insurance requirements for bus and truck companies.
- **Vote YES on Markey 4**, which ensures that all railroad dispatching employees are eligible for the same pension, unemployment, sickness and disability coverage that dispatchers are currently eligible for and have been for decades. It also maintains the longstanding authority of the Surface Transportation Board to determine whether an entity is a rail carrier.
- **Vote YES on Markey 7**, which directs GAO to study rules governing school bus transportation and whether a correlation exists between public and private operations whose vehicles are involved in major accidents or violations of OSHA or labor laws.
- **Vote YES on Blumenthal 14**, which places a one year deadline on DOT to issue a rule requiring the installation of alerters in the locomotives of intercity and commuter rail passenger trains. This equipment is important to rail safety and the promulgation of such a rule should be issued in a timely manner.
- **Vote YES on Blumenthal 15**, which ensures that all freight trains operate with at least two crewmembers. Having an additional crewmember onboard can help prevent accidents and assist during times of emergencies.

- **Vote NO on Manchin 3**, which incorporates the Drug Free Commercial Driver Act. This circumvents longstanding procedures for establishing DOT drug testing policies in order to prematurely allow the use of hair specimen for drug testing. HHS, the experts in drug testing, have not determined that hair specimen is suitable for drug testing, and Congress should not permit its use until HHS has made such a determination.
- **Vote NO on Blunt 1**, which restricts DOT's ability to issue future modification to FMCSA hours of service regulations by packing the process with exhaustive studies.
- **Vote YES on Booker 4**, which permits authorities to inspect motorcoaches at locations with adequate food, shelter, and sanitation facilities for passengers during inspection and needed repairs.
- **Vote YES on Wicker 4**, which would permit DOT to require a truck size and weight study to determine whether increasing the minimum length of trucks would negatively impact safety.
- **Vote YES on Blumenthal 13**, which would allow FRA to continue operating the Confidential Close Call Reporting System with important confidential protection for the information collected.
- **Vote YES on Blumenthal 8**, which would eliminate the language in the underlying bill that would permit permanent exemptions from FMCSA's important hours of service regulations.
- **Vote YES on Blumenthal 9**, which would eliminate language from the bill aimed at slowing the process of FMCSA issuing regulations that improve the safety of the motorcoach and trucking industries.

We urge you to reconsider this partisan path. However, absent significant changes, we urge you to vote no on final passage of this ideological bill that harms workers and undermines the path to a robust, long-term surface transportation bill.

Sincerely,



Edward Wytkind  
President