

## AMENDMENT TO EXTEND INTERSTATE COMMERCE COMMISSION AUTHORITY OVER DISCONTINUANCE OF CERTAIN RAILROAD SERVICES

JUNE 2, 1952.—Ordered to be printed

Mr. JOHNSON of Colorado, from the Committee on Interstate and Foreign Commerce, submitted the following

### REPORT

[To accompany S. 2829]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 2829) to amend section 1 (17) (a), section 13 (3), and section 13 (4) of the Interstate Commerce Act in order to extend to the Interstate Commerce Commission power to prescribe the discontinuance of certain railroad services in intrastate commerce when found to be unreasonably discriminatory against interstate commerce, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

### AMENDMENTS

The amendments are as follows:

In the last line of the title of the bill, between the words "against" and "interstate" insert the words "or to constitute an undue burden on".

On page 2, line 8, in section 3 of the bill, insert after the semicolon the following: "also by inserting between the words 'against' and 'interstate', 'or undue burden on,'".

On page 2, line 10, in section 3 of the bill, delete the quotation mark and insert between the word "continued" and the semicolon the following: "'or discontinued'; also by striking out the period after the word 'discrimination' and inserting the following: 'or burden.'"

### PURPOSE AND NEED OF LEGISLATION

This bill would extend to the Interstate Commerce Commission the power to order the discontinuance of railroad passenger, freight, and station services in intrastate commerce when found to be unduly dis-

criminatory of or an undue burden on interstate commerce. Such authority would be comparable to that which the Commission now has over intrastate rates, fares, charges, classifications, regulations, or practices, imposed by authority of a State, when they are found after full hearing to impose an undue burden on interstate commerce. When such a burden is determined to exist, the Commission is empowered under section 13 (3) and (4) to prescribe the rate, regulation, practice, etc., to be observed thereafter.

The problem to which the bill is directed is the difficulty and delay encountered by railroads in securing the necessary authority from a State regulatory body to discontinue unprofitable freight, passenger, or station services for which there is no longer sufficient public need to justify heavy operating losses to the railroads. The committee believes that the maintenance of such outmoded services constitutes a heavy burden on interstate commerce as a result of the serious financial losses suffered by railroads when State authorities refuse to permit abandonment of service or when abandonment proceedings are drawn out over an unreasonably long period of time.

The difficulty which the railroads have encountered in bringing about the discontinuance of unprofitable passenger trains which are no longer needed to serve the public springs from three sources. First, as a general rule a railroad may not discontinue the operation of a passenger train without first obtaining permission to do so from the regulatory authority of the State in which the operation is conducted. The second source of difficulty arises from a lack of authority, at times, in the State regulatory body to permit the railroad to discontinue a train. Usually, because of the charter obligation of a railroad to perform passenger service, the abandonment of the last passenger train of a branch line is almost impossible. The third, related to the first and probably the most frequent obstacle, is the delay by State authorities in acting upon requests to discontinue service.

Without reciting individual cases, this committee is satisfied that State regulatory bodies have all too often been excessively conservative and unduly repressive in requiring the maintenance of uneconomic and unnecessary service and facilities. Even when allowing the discontinuance of service, these groups have frequently delayed decisions beyond a reasonable time limit. In many such cases, State regulatory commissions have shown a definite lack of appreciation for the serious impact on a railroad's financial position resulting from prolonged loss-producing operations. In such cases, this committee sees no apparent realization, on the part of these State commissions, the fact that every dollar drained from a carrier in intrastate operations is just as serious a loss as a dollar lost in interstate commerce. At this point it is well to recall an outstanding decision rendered by the late Supreme Court Justice Charles Evans Hughes in the *Shreveport case* (*Houston & Texas Ry. v. United States* (234 U. S. 342, 350)):

Congress is empowered to regulate—that is, to provide the law for the government of interstate commerce; to enact “all appropriate legislation” for its “protection and advancement” \* \* \*; to adopt measures “to promote its growth and insure its safety” \* \* \*; “to foster, protect, control, and restrain” \* \* \*. Its authority, extending to these interstate carriers as instruments of interstate commerce, necessarily embraces the right to control their operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the

efficiency of the interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance.

As it is competent for Congress to legislate to these ends, unquestionably it may seek their attainment by requiring that the agencies of interstate commerce shall not be used in such manner as to cripple, retard, or destroy it. The fact that carriers are instruments of intrastate commerce, as well as of interstate commerce, does not derogate from the complete and paramount authority of Congress over the latter or preclude the Federal power from being exerted to prevent the intrastate operations of such carriers from being made a means of injury to that which has been confided to Federal care. Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the State, and not the Nation, would be supreme within the national field.

This committee feels that a requirement which compels a railroad to operate a passenger train in intrastate commerce which carries, for example, an average number of passengers which is less than the operating train crew is "a means of injury to that which has been confided to Federal care." In other instances, railroads have been compelled to continue the operation of passenger trains which average less than two passengers per train per day. There can be no doubt, when such trains comprise a part of the total operation of an interstate railroad, that the operation of those trains has become a burden on interstate commerce.

The committee is concerned not only with the effect of unprofitable and relatively unused operations upon the general revenue and financial condition of the carriers and upon passenger and freight operations as a whole, but also with the total effect that this condition has upon the general shipping and traveling public. Losses from unprofitable services must be recouped at the expense of other patrons, localities, and traffic.

When all this has been said, however—when the need for the legislation has been established and when its legal justification has been demonstrated—there remains for this committee to add a few words of caution:

1. The committee is very much aware of the fact that this bill further extends the power of the Interstate Commerce Commission into the field of State authority as it affects interstate commerce. As Justice Frankfurter pointed out in *Palmer v. Commonwealth of Massachusetts* (308 U. S. 79, 84-85):

But such absorption of State authority is a delicate exercise of legislative policy in achieving a wise accommodation between the needs of central control and the lively maintenance of local institutions. \* \* \*

The dependence of local communities on local railroad services has for decades placed control over their curtailment within the regulatory authorities of the State. Even when the Transportation Act of 1920 \* \* \* gave the Interstate Commerce Commission power to permit abandonment of local lines when the overriding interests of interstate commerce required it, \* \* \* this was not deemed to confer upon the Commission jurisdiction over the curtailments of service and partial discontinuances.

However, for the overriding reasons discussed above, this committee believes that the time has come for this next step, which the bill authorizes the Commission to take.

2. The committee wishes to emphasize that there is nothing in its decision regarding this bill which should be construed as meaning that

all unprofitable operations should be discontinued. A railroad is a public utility, protected as well as regulated by public authority. Hence, it has a definite responsibility to the people to fulfill their legitimate transportation needs. In this respect, the committee feels strongly that in many cases railroads are inclined to rely upon (1) increased rates and fares, and (2) the discontinuance of service, as amelioratives to all their financial troubles. While these are often necessary, they are sound judgment, essentially serious, even desperate, measures. It would be a mark of leadership and an evidence of, as well as a benefit to, the railroads and the public, if many of these problems were solved in the early stages of financial difficulty, thus avoiding the necessity for more drastic changes at a later date. Modernization of equipment, full and economic utilization of personnel and equipment, better and more convenient scheduling of service, more capable salesmanship, and improved public relations—all these should attract increased patronage and thus offset or minimize the curtailment of service. This committee believes that railroads have the obligation to test thoroughly these and other remedies before resorting to applications for the discontinuance of service. It is further recommended to the Interstate Commerce Commission, that in administering this grant of authority, an attitude of "show me," together with a determined concern for the public's right to service be given careful consideration.

3. The problem of insufficient funds and personnel for the ICC is also recognized by this committee in reporting the present bill. As the Commission pointed out<sup>1</sup> on this and other transportation bills, "The additional duties which S. 2829 would impose on us could not be performed adequately with our present funds." If the Senate accepts the committee's recommendation, herein expressed, additional funds should be provided for the bill's implementation.

#### SCOPE OF THE LEGISLATION

The bill would permit the filing of a petition with the Interstate Commerce Commission to bring in issue whether the continuation of a particular service constituted an unjust discrimination against or an undue burden on interstate commerce. State regulatory bodies would be notified and the Interstate Commerce Commission and State authorities are encouraged to confer and to handle the situation cooperatively. The Interstate Commerce Commission order removing the discrimination or burden is authorized if and when unjust discrimination or undue burden may be found. The substance and procedure closely parallel those in cases that may now be brought under present law where State rates are alleged to discriminate unjustly against interstate commerce.

#### CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported, are shown as follows (new matter printed in italics, existing law in which no change is proposed is shown in roman):

<sup>1</sup> Committee hearings, p. 1706.



## INTERSTATE COMMERCE ACT

SEC. 1. (17) (a) The directions of the Commission as to car service and to the matters referred to in paragraphs (15) and (16) may be made through and by such agents or agencies as the Commission shall designate and appoint for that purpose. It shall be the duty of all carriers by railroad subject to this part, and of their officers, agents and employees, to obey strictly and conform promptly to such orders or directions of the Commission, and in case of failure or refusal on the part of any carrier, receiver, or operating trustee to comply with any such order or direction such carrier, receiver, or trustee shall be liable to a penalty of not less than \$100 nor more than \$500 for each such offense and \$50 for each and every day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil action brought by the United States: *Provided, however*, That nothing in this part shall impair or affect the right of a State, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except insofar as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this part, *including any order entered under section 13 (4) thereof*.

SEC. 13. (3) Whenever in any investigation under the provisions of this part, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, *or any freight, passenger or station service*, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this part or part III with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this part or part III.

SEC. 13. (4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice *or the continuance of any freight, passenger or station service* causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against, *or undue burden on*, interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, *and the freight, passenger or station service to be continued or discontinued*, in such manner as, in its judgment will remove such advantage, preference, prejudice, or discrimination *or burden*. Such rates, fares, charges, classifications, regulations, and practices, *and such freight, passenger or station service* shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

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