

## RAILROAD RETIREMENT TEMPORARY BENEFIT INCREASE EXTENSION AND INTERSTATE COMMERCE COMMISSION RATE INCREASE PROCEDURES REVISIONS

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JUNE 14, 1973.—Ordered to be printed

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Mr. MAGNUSON, from the Committee on Commerce,  
submitted the following

## REPORT

[To accompany H.R. 7200]

The Committee on Commerce, to which was referred the bill (H.R. 7200) to amend the Railroad Retirement Act of 1937 and the Railroad Retirement Tax Act to revise certain eligibility conditions for annuities; to change the railroad retirement tax rates; and to amend the Interstate Commerce Act in order to improve the procedures pertaining to certain rate adjustments for carriers subject to part I of the Act, and for other purposes, as jointly amended by the Committee on Labor and Public Welfare and the Committee on Finance, having considered the same, reports favorably thereon with an amendment, and recommends that the bill as amended do pass.

## PURPOSE AND BRIEF DESCRIPTION

Title I of H.R. 7200 would increase the tax which railroads are obligated to pay under the Railroad Retirement Tax Act and, therefore, would increase the railroads' expense of doing business. (For a complete explanation of Title I of H.R. 7200, as reported by the Committee on Labor and Public Welfare and the Committee on Finance, see Senate Report No. 93-202). Railroads presently have the authority to petition the Interstate Commerce Commission for rate increases to offset expense increases, but there is no requirement that the Commission act upon those petitions within any specified period of time. Title II of H.R. 7200 as reported by this Committee would require the Commission to act within sixty days on a petition for interstate rate increases based upon higher expenses resulting from the railroad retirement tax increases provided for in Title I. Petitions for intrastate rate increases occasioned by such tax increases would also have to be acted upon by an appropriate State agency within sixty days,

and any requested review of such action by the Commission would have to be completed in thirty days. Any rate increases granted could not exceed reasonable levels on particular traffic, commodities, or commodity groups and would have to maintain the existing relationships within and between major districts.

#### BACKGROUND

On March 7, 1973, representatives of railroad labor and management, complying with the Congressional directive expressed in section 6 of Public Law 92-460, entered into an agreement to support legislation that would provide, among other things, for certain temporary railroad retirement increases. To pay for such increases, railway labor and management agreed to support legislation which would either (1) "provide a tax on transportation charges effective October 1, 1973, to finance railroad retirement taxes in excess of social security taxes, as provided under existing law amended as proposed \* \* \*" or (2) "modify Interstate Commerce Commission procedures so as to permit prompt freight rate increases to cover increases in cost." By the terms of the agreement, the determination as to which "type of legislation" would be jointly supported was left to the discretion of the carriers. (See Appendix A.)

When the legislation was formulated, the carriers decided to support legislation that would "permit prompt freight rate increases to cover increases in cost." While on the face of the agreement "cost" referred to only those amounts necessary "to finance railroad retirement taxes in excess of social security taxes, as provided under existing law amended as proposed \* \* \*," the requested legislation provided for expedited procedures to consider rate increases for costs not only associated with railroad retirement increases, but also for costs resulting from any negotiated wage increases. The legislation provided that any requests for rate increases would be approved by the Commission within thirty days if the amount requested approximated "that needed to offset increases in expenses theretofore experienced or demonstrably certain to occur \* \* \*." Following such an increase, the Commission would commence hearings for the purpose of making the final rate determination and order refunds if interim rate increases exceeded those which were finally approved.

This railroad management and labor request legislation was introduced by House Interstate and Foreign Commerce Committee Chairman Harley O. Staggers as H.R. 7200. The House Interstate and Foreign Commerce Committee favorably reported, and the House passed, this bill after amending certain of its provisions. For example, Title II of the bill was amended to limit the thirty day rate increase procedure to petitions for rate increases based upon increases in taxes under the railroad retirement act, as amended, occurring before January 1, 1975, or as a result of the enactment of the Railroad Retirement Amendments of 1973. In other words, the House did not provide expedited procedures for "pass through" of negotiated wage increases; instead, the House limited such "pass throughs" to increases in expenses occasioned by increases in railroad retirement taxes occurring under the 1973 amendments or any other amendments occurring before July 1, 1975.

In the Senate, the railway labor and management legislation was introduced by Senator Ribicoff (S. 1805). Senator Hathaway introduced a bill (S. 1867) which revised both Title I and Title II of the legislation proposed by railway labor and management. Three Committees took jurisdiction over the legislation: Labor and Public Welfare and Finance (Titles I and III) and Commerce (Titles II and III). On June 11, 1973, the Labor and Public Welfare Committee and the Finance Committee jointly reported H.R. 7200. H.R. 7200 as amended was then referred to the Senate Commerce Committee. This bill is now being reported with an additional amendment.

### NEED

Title II of H.R. 7200 is needed for several reasons. In the first place, as the Association of American Railroads established in testimony before the Committee, petitions for rate increases are not always treated in a timely fashion by the Interstate Commerce Commission. As a result, the railroads contend that as much as 1.164 billion dollars may have been lost during the period 1967 through 1972. There is a need, therefore, to eliminate this regulatory lag at least as to petitions for rate increases based upon legislatively mandated cost increases so as to minimize these losses.

Secondly, there is a need to facilitate implementation of the agreement between railway labor and management in order to avoid disruption of needed transportation services or last minute action by Congress to avert such disruption. This is not to say that Congress should ignore its legislative responsibilities and "rubber stamp" legislation jointly agreed to in the collective bargaining process. But, where there is a demonstrated need, Congress should stand ready to assist the collective bargaining process by enacting facilitating legislation.

As developed in testimony on H.R. 7200 and related bills (S. 1867 and S. 1805), there is a need to carefully consider requests for rate increases based upon increases in railroad expenses occasioned by higher railroad retirement taxes. While the present financial conditions of some carriers may justify "pass through" of the expense increases, this may not be the case with all carriers. Prompt consideration of requests for rate increases is needed, but there is no demonstrated need that such increases must be automatically granted. With respect to intrastate rates, careful consideration can best be assured by permitting State agencies to receive the views of local shippers when railroads petition for increases in intrastate rates.

Finally, there is a need to preserve a fair rate structure when acting upon general freight rate increases. As the Commission has pointed out in Ex Parte No. 281, Increased Freight Rates and Charges, 1972, 341 I.C.C. 288, served October 4, 1972, its general freight rate increases are permissive in nature. Commission authorizations for rate increases "do not require that any respondent increase its rates by any particular amount . . . nor do they preclude variability of application, provided increases do not exceed those allowed." The Commission went on to conclude: "The public interest and the maintenance of a lawful rate structure must prevail over respondents revenue need, however pressing." Thus, in a situation where the expedited procedures are required, the Commission must carefully examine the way

in which any general freight rate increase would be implemented by particular carriers.

#### DESCRIPTION AND ANALYSIS OF COMMITTEE AMENDMENT

Section 201 of the proposed bill would amend the Interstate Commerce Act to provide for an expedited procedure for petitions requesting adjustments of interstate rates of common carriers (subject to part I of the Interstate Commerce Act) based upon increases in expenses of such carriers pursuant to section 102 of the bill—i.e. railroad retirement tax increases. On or before August 1, 1973 the Commission is required to establish in an informal rulemaking proceeding requirements for such rate increase petitions which would "facilitate fair and expeditious action on any such petition . . . by disclosing such information as the amount needed in rate increases to offset such increases in expenses and the availability of means other than a rate increase by which the carrier might absorb or offset such increases in expenses." In order to meet the August 1 deadline, the Commission could modify its rulemaking procedures to require comments sooner than 30 days after publication of the proposed requirements.

The Commission is required to act upon a petition for an adjustment in interstate rates within sixty days of the receipt of such petition. If the petition has been filed in accordance with the requirements established pursuant to rule as discussed above, the petition shall be deemed approved as filed if the Commission fails to act within the required sixty days. This provision was included to insure timely action by the Commission within the sixty-day period.

Increases for intrastate rate adjustments would first be considered by the State authority having jurisdiction over such intrastate rates. The State authority is required to act upon such petition within sixty days of its presentation by the carrier. If the State authority denies in whole or in part a petition or fails to take action, the Commission, upon petition to it by the carrier, is required to act upon such petition within thirty days. The Commission can overrule a denied petition if such denial unduly burdens interstate commerce.

The bill specifically requires that any increase freight rates authorized "shall not exceed a reasonable level by types of traffic, commodities, or commodities groups and shall preserve existing market patterns and relationships and present port relationships by uniform maximum increase limitations within and between the major districts." (For text of amendment see changes in existing law section *infra*.)

The bill as reported by the Committee is designed to meet the needs outlined above. By requiring the Commission by August 1 to promulgate rules for requirements of petitions for expedited rate increases and by requiring the Commission to take action on such petitions within sixty days, rate increases which are granted to offset increases in railroad retirement taxes could be available to the carrier no later than October 1st, 1973 when such increases would go into effect. (Intrastate rates could be delayed an additional thirty days if denied by a State authority). This procedure, then, satisfies the agreement between railroad labor and management to support legislation which would

“modify Interstate Commerce Commission procedures so as to permit prompt freight rate increases to cover increases in costs.”

The proposed legislation also insures careful scrutiny by the Commission or a State authority prior to the approval of rate increases. There would be no automatic “pass through” of expense increases occasioned by higher railroad retirement taxes. This “pass through” would only be available to the railroads if it is justified.

Finally, any rate increase authorized by the Commission or State authority could not exceed a reasonable level by types of traffic, commodities, or commodity groups. And, such authorized rates would have to preserve existing market patterns and relationships and present port relationships by providing for uniform maximum increase limitations within and between the major districts. This would assure that “the public interest and the maintenance of a lawful rate structure” would “prevail over revenue needs, however pressing.” (See 341 I.C.C. 332.)

In summary, the bill as reported would provide for prompt freight rate increases to cover increases in expenses occasioned by higher railroad retirement taxes to the extent that such increases are justified. The burden of justifying such rate increases would be on the petitioner. Local shippers would be assured an opportunity to participate in decisions with respect to intrastate rates because State authorities would consider such decisions. And, finally, any rate increases granted would have to be conditioned in such a way as to assure that rates did not exceed reasonable levels by types of traffic, commodities, commodity groups and to guarantee that existing marketing patterns and relationships and present port relationships would also be preserved.

#### COST

For cost increases occasioned by the bill as reported see pages 12 and 13 of Senate Report No. 93-202 filed jointly by the Committee on Labor and Public Welfare and the Committee on Finance June 11, 1973. The Committee does not anticipate any additional cost to the Interstate Commerce Commission as a result of the revised procedures provided for in the bill as reported.

#### VOTE IN COMMITTEE

Pursuant to section 133 (b) of the Legislative Reorganization Act of 1946, as amended, the bill was ordered reported by unanimous voice vote.

#### 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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

#### INTERSTATE COMMERCE ACT

\* . . . \* . . . \* . . . \* . . . \*

## RULE OF RATE MAKING

SEC. 15a. (1) When used in this section the term "rates" means rates, fares, and charges, and all classifications, regulations, and practices relating thereto.

(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service.

(3) In a proceeding involving competition between carriers of different modes of transportation subject to this Act, the Commission, in determining whether a rate is lower than a reasonable minimum rate, shall consider the facts and circumstances attending the movement of the traffic by the carrier or carriers to which the rate is applicable. Rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation, giving due consideration to the objectives of the national transportation policy declared in this Act.

(4) (a) *The Commission shall by rule establish on or before August 1, 1973 requirements for petitions for adjustment of interstate rates of common carrier subject to this part based upon increases in expenses of such carriers pursuant to section 102 of the Railroad Retirement Amendments of 1973. Such requirements, established pursuant to section 553 of title 5 of the United States Code (with time for comment limited so as to meet the required date for establishment), shall be designed to facilitate fair and expeditious action on any such petition as required in paragraph (b) of this subsection by disclosing such information as the amount needed in rate increases to offset such increases in expenses and the availability of means other than a rate increase by which the carrier might absorb or offset such increases in expenses.*

(b) (1) *The Commission shall, within sixty days of the filing of a verified petition by any carrier or group of carriers relating to interstate rates in accordance with rules promulgated under paragraph (a) of this subsection, act upon said petition or said petition shall be deemed approved.*

(2) *The Commission shall, within thirty days of the filing of a verified petition by any carrier or group of carriers relating to intrastate rates in substantial accord with rules promulgated under paragraph (a) of this subsection, act upon such petition when the Commission finds that the State authority having jurisdiction thereof shall have denied, in whole or in part, a petition filed with it by such carrier or group of carriers seeking relief regarding such intrastate rates or shall not have acted finally on such petition within sixty days from the presentation thereof.*

(3) *Any increased freight rates authorized shall not exceed a reasonable level by types of traffic, commodities, or commodity groups and shall preserve existing market patterns and relationships and present port relationships by uniform maximum increase limitations within and between the major districts.*

## AGENCY COMMENTS

The committee has received no agency comments as of the date of filing of the report.

## APPENDIX A

## AGREEMENT BETWEEN RAILWAY LABOR AND MANAGEMENT INITIALED MARCH 7, 1973

MARCH 7, 1973.

*To members of the union negotiating Committee on Railroad Retirement and Wages:*

GENTLEMEN: This will confirm our understanding that the railway labor unions will join with the carriers in supporting legislation which will either—

(a) provide a tax on transportation charges effective October 1, 1973 to finance Railroad Retirement taxes in excess of Social Security taxes, as provided under existing law amended as proposed in paragraph (c) of Part A of the Memorandum of Understanding of March 7, 1973, including the Supplemental Annuities excise tax, or

(b) modify Interstate Commerce Commission procedures so as to permit prompt freight rate increases to cover increases in costs.

Determination of which type of legislation to be jointly supported to be at the discretion of the carriers.

This is also to confirm our understanding that, if the temporary benefit increases referred to in Paragraph A(a) of our Memorandum of Understanding of -----, are extended through December 31, 1974, the carriers will not oppose making those increases permanent at that time.

Yours very truly,

WILLIAM H. DEMPSEY.

Initialed subject to necessary acceptance and ratification.

### MEMORANDUM OF UNDERSTANDING

#### *A. Railroad Retirement Legislation*

The carriers and the railway labor unions will jointly support legislation which will accomplish the following:

(a) The temporary benefit increases of 1970, 1971 and 1972 (P.L. 91-377, P.L. 92-46, and P.L. 92-460, respectively) scheduled to expire June 30, 1973, will be extended through December 31, 1974.

(b) A Joint Standing Committee consisting of members representing the railway labor unions and the carriers will be established to consider all of the matters relating to restructuring the Railroad Retirement System, including but not limited to such matters as financing the deficiencies, dual Railroad Retirement and Social Security benefits, adoption of a two tier system (i.e., a Social Security tier and a supplementary Railroad Retirement tier), restructuring of the benefit formulas, consideration of any matters considered by the Commission on Railroad Retirement, and any other subjects which the parties may propose. The joint Standing Committee will report to the Congress

by July 1, 1974. If the joint Committee can not agree on a joint report and recommendations, the railway labor unions and the carriers will submit *ex parte* reports to the Congress by July 1, 1974.

(c) The Railroad Retirement Tax Act to be amended to provide that commencing October 1, 1973, the employers will assume the 4.75% of the employee taxable compensation in excess of the 5.85% employee Social Security tax (a maximum of \$42.75 per employee per month in 1973, and a maximum of \$47.50 per employee per month in 1974.)

(d) The Railroad Retirement Act to be amended to provide that commencing July 1, 1974 employees with 30 years of service and attained age of 60 may retire without actuarial reduction in their annuities.

(e) If during the period July 1, 1973 through December 31, 1974 the Social Security Act is amended to provide for increased benefits, the dollar amount of such benefit increases will be "passed through" to the Railroad Retirement benefits structure effective on the same date or dates the Social Security benefits are increased.

(f) Except as specially provided in this Part A, neither the carriers nor the railway labor unions will propose or support legislation seeking changes in benefit levels or new types of benefits to become effective prior to January 1, 1975.

### B. Collective Bargaining Agreements

1. Separate but substantively uniform national collective bargaining agreements will be entered into on behalf of the carriers represented by the National Carriers' Conference Committee and the following named railway labor unions:

Date of 1971-72 agreement:	<i>Railway labor unions</i>
February 10, 1971-----	BMWV-H&RE.
February 25, 1971-----	BRAC.
March 24, 1971-----	UTSE.
April 20, 1971-----	ATDA.
April 23, 1971-----	RYA.
May 13, 1971-----	BLE.
October 7, 1971 <sup>1</sup> -----	4 Shop Unions.
February 11, 1972 <sup>1</sup> -----	IBF&O.
November 16, 1971-----	BRSA.
January 27, 1972-----	UTU.
May 12, 1972-----	SMWIA.

<sup>1</sup> 5 Shop Unions: IBB&B, BRCA, IBEW, IAM, IBF&O.

2. All national collective bargaining agreements will dispose of the current national notice and local notices covering the same subject matter, and will:

(a) Provide for a general wage increase of 4% effective January 1, 1974.

(b) Provide for cost-free dues checkoff provided that checkoff amounts may be changed not more often than every three months, authorizations to be received at least 30 days in advance of first checkoff, parties to make determination as to whether checkoff will be uniformly made on the first or second half payroll. The provision also will include suitable priorities, and a savings clause.

(c) Contain a moratorium provision which will permit notices to be served not earlier than July 1, 1974, but not to become effective prior to January 1, 1975. Each of the moratorium provisions contained in the agreements enumerated in paragraph 1 above.

(d) To the extent that either the affected unions or the National Carriers' Conference Committees desire, will provide for Standing Committee type procedures during the eighteen months' term of the moratorium.



3. A separate agreement involving the parties to the Agreement of February 24, 1972 will provide for an extension in the term of the National Hospital, Medical, Surgical and Group Insurance Agreement from its current expiration date of February 28, 1974 to December 31, 1974 and will establish a maximum lifetime major medical benefit of \$250,000 effective July 1, 1973. No other benefit changes will be made prior to January 1, 1974—the carriers to pick up any necessary increase in premium cost of existing benefits during the ten months' extension.

4. The carriers and the operating organizations to work out a provision to be included in their agreements providing for an extension of the Standing Committee procedures. Such provision will permit the carriers and each union to serve national (but not local) Section 6 notices on the matters now before the respective Standing Committees if either party decides that the Standing Committee procedure should no longer be continued.

5. The provisions of this Part B are contingent upon the enactment of legislation accomplishing the purposes specified in Part A hereof.

NOTE.—Further consideration to be given to Steel Roads and situations where a wage moratorium extends beyond June 30, 1973.

Initialed subject to necessary acceptance and ratification.

