

# Short Lines Ready For Challenging Year Ahead

By Keith Hartwell

Washington, D.C., will be a challenging place for the short line railroad industry in 2011. We came to that conclusion at the very beginning of January when the new Congress decided to add more weeks of recess to the schedule, and one of those weeks coincided with our March 24 Railroad Day on Capitol Hill. With no Congressmen in town there can be no Railroad Day on the Hill.

These dates are scheduled a year in advance, and failure to hold the event in the same hotel would have resulted in a huge financial penalty. The first time the hotel could accommodate an event as large as ours is July 14. Hence, that is the new date for Railroad Day on the Hill. The good news is there is no possibility of snow.

## Railroad Day on the Hill

Railroad Day on the Hill is the most important railroad-lobbying event of the year. The always-impressive turnout provides Washington decision-makers with a very visible display of the size and geographic reach of our industry. The participation by all manner of rail suppliers and contractors demonstrates the diversity of business interests that depend on railroads for their livelihood. The focus on a limited number of issues allows us to effectively deliver a message to elected officials who are otherwise swamped with messages from hundreds of other interests.

The Railway Tie Association (RTA) has always made a significant contribution to the success of this event. Your members represent the very best in the entrepreneurial spirit that is at the heart of the railroad industry. You participate in large numbers, and you are one of the best when it comes to collecting and presenting data that demonstrates your role in the railroad industry and the economy at large. It is our hope that you will be full participants again this year.

## The Short Line Rehabilitation Tax Credit

Railroad Day on the Hill has been especially important to the short line railroad

industry in its continuing efforts to preserve the short line rehabilitation tax credit (45G tax credit). The credit was first enacted in 2004, and ever since that time short lines have been engaged in almost non-stop campaigning to preserve it through various short-term extensions. Most recently, the credit, which expired at the end of 2009, was extended through the end of 2012.

Extending the credit for 2011 and beyond is going to be a challenge for a number of reasons.

First, two of our chief tax committee sponsors, Rep. Earl Pomeroy (D-ND) and Sen. Blanche Lincoln (D-AR) were defeated, and with them we lose a good deal of energy and institutional knowledge. Second, a significant number of our co-sponsors lost or retired—65 of 259 in the House and 10 of 54 in the Senate. Replacing these with new freshman members who likely know little about our industry will be a huge undertaking. Third, we will need to convince a more conservative Congress that is deeply concerned about budget deficits that the 45G tax credit is an effective way to help private small businesses maximize infrastructure investment and create jobs in the private sector.

## Surface Transportation Board Hearings

The Surface Transportation Board (STB) is about to embark on a series of hearings that could result in major changes in the railroad industry, including the way railroads compete, price their service, and make capital investment decisions. The first hearings will be held in February and will review the long-standing exemptions for boxcars, commodities, and TOFC/COFC rate and commodity exemptions. The second hearings will be held in May and will explore the current state of competitiveness in the railroad industry and potential policy alternatives to facilitate more competition including competi-

tive access, bottleneck rates, terminal access, and reciprocal switching.

This announcement comes on the heels of an unsuccessful attempt by the Senate Commerce Committee to draft compromise legislation on these subjects in the last Congress. While we do not know what the end product of these hearings will be, we do know that they will be wide ranging and deal with issues that go to the heart of the railroad industry's ability to compete for business and to adequately invest in its infrastructure.

The short line railroad industry will be full participants in these hearings. We have put together an internal process for developing and presenting our position on each issue so as to do everything we can to protect the interests of all short line railroads. Most importantly, we

will make a substantial effort explaining to the STB how short line rate making and service practices work and how those things are weaved into the fabric of our relationship with the Class I industry.

## Truck Size & Weights

To freeze or not to freeze will be decided if and when Congress reauthorizes SAFETEA-LU. That authorization expired in September 2009 and has been extended through a series of so-called "continuing resolutions" that leave spending levels and issues such as truck size and weights as they were in the original legislation. The sticking point for SAFETEA-LU in the 111<sup>th</sup> Congress was the belief by its supporters that a gas tax increase was necessary to fund the program and opposition to such an increase by the Obama Administration. The new chairman of the House Transportation & Infrastructure Committee, John Mica (R-FL), has already indicated that a gas tax increase is "off the table." If that holds, it is conceivable the Congress could continue to kick the SAFETEA-LU can down the

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road with a series of continuing resolutions that would leave the truck freeze in place. That possibility notwithstanding, this is an issue of critical importance to the short line railroad industry, and we will continue to devote considerable attention and effort to this subject.

#### PTC Implementation

It is highly unlikely Congress will undo the Positive Train Control (PTC) mandate. However, in this Congress there will be more sympathy for the notion that the federal government has some responsibility for helping pay for what is a huge unfunded mandate. There may also be more support for moving the HazMat traffic baseline year from 2008 to 2015 for purposes of determining on which lines PTC must be deployed.

#### Regulations Galore

Space does not permit a detailed explanation of all the short line industry is facing on the regulatory front, but they are considerable: conductor certification, hours of service, employee training requirements, dark territory protection and medical standards, just to name a few. All of these regulatory matters require our constant attention and communication with the Federal Railroad Administration.

To end where I began, the short line railroad industry looks to RTA members to continue helping us meet these challenges. The new Congress has a near record number of new members, the majority of whom will know virtually nothing about the short line railroad industry. Our job is to educate them on the many benefits we bring to their local economy, to their local shippers and to employment in the areas they represent. Your businesses are an important part of that story, and you can make an enormous contribution to our success by helping us tell the story in your own words.



*Keith Hartwell is President of Chambers, Conlon & Hartwell and is the federal lobbyist for the American Short Line and Regional Railroad Association.*

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