

House of Representatives

Chamber Action

Federal Railroad Safety Improvement Act of 2007: The House passed H.R. 2095, to amend title 49, United States Code, to prevent railroad fatalities, injuries, and hazardous materials releases and to authorize the Federal Railroad Safety Administration, by a yeas-and-nays vote of 377 yeas to 38 nays, Roll No. 980.

Accepted:

Pallone amendment (No. 3 printed in H. Rept. 110-371) that allows state and local authorities to regulate solid waste management facilities and states that the Surface Transportation Board does not have exclusive authority to preempt state and local regulation of solid waste management facilities, as defined in the amendment

FEDERAL RAILROAD SAFETY IMPROVEMENT ACT OF 2007 -- (House of Representatives - October 17, 2007)

AMENDMENT NO. 3 OFFERED BY MR. PALLONE

The CHAIRMAN. It is now in order to consider amendment No. 3 printed in House Report 110-371.

Mr. PALLONE. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Mr. Pallone:

Page 80, after line 7, insert the following new section (and amend the table of contents accordingly):

SEC. 617. SURFACE TRANSPORTATION BOARD JURISDICTION OVER SOLID WASTE FACILITIES.

Section 10501 of title 49, United States Code, is amended--

(1) by striking "facilities," in subsection (b)(2) and inserting "facilities (except solid waste rail transfer facilities as defined in subsection (c)(3)(C));"; and

(2) by adding at the end of subsection (c)(3) the following new subparagraph:

“(C) Nothing in this section preempts a State or local governmental authority from regulating solid waste rail transfer facilities. For purposes of this subparagraph, the term ‘solid waste rail transfer facility’ means the portion of any facility owned or operated by or on behalf of a rail carrier, at which occurs the--

“(i) collection, storage, or transfer, outside of original shipping containers;

“(ii) separation; or

“(iii) processing (including baling, crushing, compacting, and shredding),

of solid waste, as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903).”.

The CHAIRMAN. Pursuant to House Resolution 724, the gentleman from New Jersey (Mr. Pallone) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from New Jersey.

Mr. PALLONE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment will exclude solid waste rail transfer facilities from the exclusive jurisdiction of the Surface Transportation Board and provide that laws outlining the STB's jurisdiction would not preempt the authority of State and local governments to regulate such facilities.

In New Jersey, and all over the country, certain waste handlers and railroad companies have tried to exploit a supposed loophole in Federal law in order to set up unregulated waste transfer facilities.

Under the Interstate Commerce Commission Termination Act of 1995, the STB has exclusive jurisdiction over transportation by rail carriers and the ability to grant Federal preemption over other laws at any level, local, State or Federal, that might impede such transportation.

But Congress intended such authority to extend only transportation by rail, not to the operation of facilities that are merely sited next to rail operations or have a business connection to a rail company.

Unfortunately, certain companies have exploited this loophole to build or plan waste transfer stations next to rail lines and avoid any regulation from the State or local authorities.

It's my hope that this amendment will take the STB out of the waste management business by ensuring that State and local governments have the right to regulate solid waste transfer stations.

We must ensure that solid waste facilities follow the rules and do not pollute pristine open space, and do all that we can to protect our environment from unregulated facilities.

Mr. Chairman, I reserve the balance of my time.

Mr. SHUSTER. Mr. Chairman, I rise to claim the time in opposition.

The CHAIRMAN. The gentleman from Pennsylvania is recognized for 5 minutes.

Mr. SHUSTER. Mr. Chairman, this amendment deals with STB preemption of laws regarding railroad waste transportation facilities. The Rail Subcommittee has held several hearings on this issue, one last year and another just yesterday.

I've a great interest in this issue, as my home State of Pennsylvania is the number one recipient of imported waste from other States, most of it coming from New Jersey and New York City. So, as I said, I've great concern.

At yesterday's hearing, we heard many complaints from local communities about illegal railroad, or not

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even railroads, but people who claim the railroads, that are waste facilities. We also heard from the STB that most local laws are not currently preempted by Federal law. In fact, many entities claiming Federal preemption do not have legitimate claims.

I think it's clear that this law has to be clarified to make it easier to stop unscrupulous operators that Mr. Pallone mentioned in his State of New Jersey, but regarding Mr. Pallone's amendment, the STB has told our rail staff that this amendment needs improvement to accomplish that, to accomplish the stated goal of regulating railroad waste facilities.

In fact, I quote from a letter from the chairman of STB that says his "general concern with the Pallone amendment is that it is overbroad and could result in local land use and zoning agencies exerting jurisdiction over legitimate rail transportation projects and impeding interstate commerce."

In addition, the STB is already in the process of addressing many of these issues, which they need to do. If people were out there operating waste facilities in an illegal or unscrupulous manner, that needs to be addressed.

I would like to work with Mr. Pallone on this issue, but I'm going to oppose this amendment on those grounds. We need to encourage States to deal with their trash problem, all of us across this country. We all produce waste. We've got to make sure in our neighborhoods that we're taking care of our own waste and not shipping it to other States, and I'm just concerned that that's what will occur if this amendment is passed. And so I urge my colleagues to oppose this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. PALLONE. Mr. Chairman, may I inquire how much time remains?

The CHAIRMAN. The gentleman from New Jersey (Mr. Pallone) has 3 1/2 minutes remaining. The gentleman from Pennsylvania (Mr. Shuster) has 3 minutes remaining.

Mr. PALLONE. Mr. Chairman, I yield 1 minute to the gentlewoman from Florida (Ms. Corrine Brown), the subcommittee Chair.

Ms. CORRINE BROWN of Florida. Mr. Chairman, I want to compliment Congressman Pallone for his hard work on this issue of rail-owned waste transfer facilities.

Yesterday, the Railroad Subcommittee held a hearing on rail-owned municipal waste transfer facilities. We learned that there is a growing concern in the Northeast that some railroads are using Federal preemptions standards to shield themselves from important State and local environmental laws which are leading to a lack of environmental and health-related oversight of these facilities.

This language may need to be refined to ensure that States and localities don't overregulate the industry, but this is the right first step in ensuring that railroad operated waste transfer stations are not posing a health or environmental risk to the communities where they're operating.

I encourage my colleagues to support this amendment, and I think we will work as we go toward conference to improve it and refine the language.

Mr. SHUSTER. Mr. Chairman, I have no further speakers, and I reserve my time.

Mr. PALLONE. Mr. Chairman, I yield 1 minute to the gentleman from Minnesota (Mr. Oberstar), the chairman of the committee.

Mr. OBERSTAR. Mr. Chairman, the essential issue here is not whether the noxious fumes, whether the groundwater pollution caused by solid

waste deposited on rail property should be regulated. The question here is whether the language and the manner in which the gentleman proposes to prevent those effects upon nearby communities is in interference with the authority and the preemption authority of the Federal Railroad Administration.

Mr. Mulvey, one of the commissioners of the Surface Transportation Board, said, "I believe that an amendment such as this is necessary to redress the growing misuse of Federal railroad preemption law with respect to solid waste transload facilities." But he, too, expresses concerns that it could be interpreted too broadly to frustrate the zoning of legitimate solid waste transfer facilities.

This is an issue, he says, that can be worked out. It can be worked out, and we are committed to doing so, with participation of the gentleman from Pennsylvania.

The CHAIRMAN. The time remaining is the gentleman from Pennsylvania (Mr. Shuster) has 3 minutes remaining. The gentleman from New Jersey (Mr. Pallone) has 1 1/2 minutes remaining. The gentleman from Pennsylvania has the right to close.

Mr. SHUSTER. Mr. Chairman, I agree with what the chairman said. Again, I don't disagree with the situation that is occurring that appears significant in New Jersey.

I am concerned, as I stated, that this language is going to allow communities to stop legitimate and law-abiding rail entities and operations, to stop them when they don't like it. I have great concern in that.

I believe the trash issue, as I said, is significant. Pennsylvania is the biggest importer of trash in the Nation with 10 million tons every year coming across the border into Pennsylvania.

My concern is that this problem will get pushed out of New Jersey and out of other States into States that are more willing to handle it, and as I said, we all produce trash. I'm sure today I've got half a waste can or more in my office. My community produces trash. Communities have to deal with that problem.

Again, nobody wants a landfill in their backyard, but the reality is we've got to have landfills. We've got to have these waste transfer stations. We've got to make sure, though, that people that are operating them are operating them properly so that we're not damaging the environment, that we aren't doing negative things to our communities because, as we heard yesterday, outside of Philadelphia and Bensalem, Mr. Murphy's district, they were trying to redevelop their town, and right across the street, somebody wants to come in and put in a waste treatment facility or waste transfer station that's not going to be positive for that community.

So, again, local communities have to have some say, but we've got

to make sure they're not overstepping and stopping legitimate operations.

Mr. OBERSTAR. Mr. Chairman, will the gentleman yield?

Mr. SHUSTER. I yield to the gentleman from Minnesota.

Mr. OBERSTAR. I think it's clear the amendment does not apply to containerized facilities. They still are subject to the Federal preemption. The only question is whether there's infringement on preemption with open facilities, open solid waste storage facilities. That is a matter on which I think with further discussion we can reach an amicable resolution.

Mr. SHUSTER. I appreciate and look forward to having those discussions. I, again, oppose the amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. PALLONE. Mr. Chairman, I yield 1 minute to the gentleman from Pennsylvania (Mr. Patrick J. Murphy).

Mr. PATRICK J. MURPHY of Pennsylvania. Mr. Chairman, I thank the gentleman from New Jersey.

Mr. Chairman, I rise today to urge my colleagues to support this critical amendment that we are offering with my good friend Mr. Pallone of New Jersey.

Right now in districts across America companies are trying to skirt the law and put our communities at risk.

[Time: 17:15]

In my district in Bensalem of Bucks County, Pennsylvania, a company is trying to construct a waste transfer facility despite widespread public opposition. A few months ago I stood with the leaders of Bensalem, Mayor Joseph DiGirolamo and State Representative Gene DiGirolamo, as we urged Congress to close this loophole that allows this end-run around local and State laws.

This is not a partisan issue, as these two Republican leaders of Bensalem will attest to. After all, ensuring that our neighborhoods are kept clean and safe isn't about politics; it is about doing what is right. With this amendment, we have an opportunity to protect our neighborhoods. I urge swift passage of this important amendment.

The CHAIRMAN. The gentleman from New Jersey is recognized for the

30 seconds remaining.

Mr. PALLONE. Thank you, Mr. Chairman. Let me just thank Mr. Murphy, who I should say is a cosponsor with me of this amendment.

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I include for the Record the letter from the Commissioner of the Surface Transportation Board, Mr. Francis Mulvey, to Chairwoman Brown where he indicates his support of the amendment. He does, as the chairman of the full committee says, believe that there may be some issues that will have to be worked out as we move to conference or whatever on this. I would assure my colleague from Pennsylvania that we would try to do that. I urge support of the amendment.

SURFACE TRANSPORTATION BOARD,

Washington, DC, October 17, 2007.
Hon. CORRINE BROWN,
Chairwoman, Subcommittee on Railroads, Pipelines and Hazardous
Materials, House of Representatives, Washington, DC.

DEAR CHAIRWOMAN BROWN: I am writing in support of the pending Pallone-Murphy Amendment to be offered to H.R. 2095, the Federal Railroad Safety Improvement Act of 2007. In accordance with my testimony before the Subcommittee at yesterday's hearing, I believe that an amendment such as this is necessary to redress the growing misuse of federal railroad preemption law, 49 U.S.C. 10501(b), with respect to solid waste transload facilities.

I am concerned that the Amendment could possibly be interpreted too broadly to enable State and local governments to frustrate the zoning of legitimate solid waste transload facilities, but I believe this is an issue that can be worked out as the Amendment and Bill move forward.

I also want to echo my testimony yesterday by making it clear that determining where the boundaries of federal preemption lie is a delicate process, as shown by the Board's and courts' thoughtful interpretations over the past 12 years since the passage of the ICC Termination Act of 1995. I do not believe that the scope of preemption should be narrowed any more than is necessary to prevent its misuse. Under no circumstances should State and local police powers be circumscribed.

Thank you for your consideration of my views. I remain available to answer any further questions you or other Members may have about this issue.

Sincerely,

Francis P. Mulvey,
Commissioner.

[Begin Insert]

Mr. HOLT. Mr. Chairman, I rise today to support the amendment from my colleague from New Jersey, Mr. Pallone and my colleague from Pennsylvania, Mr. Murphy to the Federal Railway Safety and Safety Improvement Act.

Mr. Pallone and Mr. Murphy's amendment would exclude from the jurisdiction of the Surface Transportation Board the regulation and approval of solid waste transfer and processing facilities near railway stations. This amendment addresses a serious environmental concern in allowing companies to skirt solid waste regulations and I fully support this amendment.

The Interstate Commerce Commission Termination Act of 1995 gave the STB jurisdiction over transportation by rail carriers and authorized the STB to pre-empt Federal, State or local laws in conflict with Commerce Clause. This law was intended to extend the STB's authority only to railroad operations, not to the operation of facilities located by rail services or to businesses which have a connection to a rail company. Unfortunately, confusion about Congressional intent behind the ICCTA has been exploited by some companies to override State and Federal environmental regulations for the sake of profit and have put both the environment and the public health at risk.

It is through a gross misinterpretation of ICCTA that the STB allows companies to seek Federal preemption of a host of environmental and public health laws by simply locating their facilities on railroad property. One of the more egregious examples of this abuse is the building of solid waste facilities along rail lines. In the State of New Jersey, the STB has allowed nine railroad transfer facilities to operate under the supposed Federal preemption supposedly authorized through the ICCTA--at least one of which handles toxic waste.

Many of these facilities are little more than trash heaps which do not have to comply with either State or Federal solid waste regulations. This is unacceptable. We have spent the last decade working to clean up the damage that has been caused by improper waste disposal, and continuing to allow companies to exploit the ICCTA is a step backwards in the progress we have made in regulating this industry. Mr. Pallone and Mr. Murphy's amendment would take a crucial step towards correcting this problem and I urge my colleagues to support it.

Mr. RAHALL. Mr. Chairman, it has been over a decade since Congress passed the Interstate Commerce Clause Termination Act.

While I have the deepest respect for my colleague from New Jersey who sponsored this amendment, I feel his amendment is overly broad and violates the letter and spirit of the ICCTA.

According to the Gentleman from New Jersey's amendment, any State and local agency can regulate railroad-owned, solid waste rail transfer facilities.

Father, forgive them; for they know not what they do.

Adoption of this amendment would mean that if a railroad were to try and establish a solid waste transload facility, local government authorities would have very few checks on their ability to regulate this industry.

There are no jurisdictional requirements in this amendment, no limit to the number of authorities which could mount challenges. It would begin to dismantle, piece by piece, the federal preemption that is integral to our national rail system.

Many of the individuals supporting this amendment today will tell you how states are unable to protect their citizens under the current guidelines set forth by the Surface Transportation Board.

What you may not hear, is that a State can protect the health and safety of their citizens.

Should companies violate the laws and regulations governing health and safety problems, a state can use its police power, take the offending railroad to court, or petition the Surface Transportation Board to halt the railroads operations.

New Jersey was able to shut down three waste transload facilities earlier this year, because the facility violated the fire safety laws.

These transportation facilities were not created through judicial fiat, they are defined in the very legislation we crafted a decade ago. They were addressed wholesale because we knew that to grant certain commodities preemption, and deny it to others, would create a daunting patchwork of regulation.

This amendment, as well intentioned as it may be, begins the path down that slippery slope. What's next? Will a state's department of environmental protection decide that it doesn't like the transportation of coal, or liquid natural gas, because of the pollution it may cause?

Mr. Chairman, I urge the defeat of this poorly crafted amendment,
[End Insert]

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Jersey (Mr. Pallone).

The amendment was agreed to.