

STAGGERS at 40:

Musings on a far- reaching mandate

The Staggers Rail Act of 1980 — which saved a failing rail industry and spawned hundreds of short lines — stands the test of time as a transformative law

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There have been a number of seminal moments in North American railroading history since the first charter was granted in 1815. Steam locomotives emerged in 1829, the first rail bridge over the Mississippi River was built in 1856, the first transcontinental railroad was completed in 1869, diesel locomotives were introduced in 1939 and Amtrak was created in 1971.



GoRail

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But perhaps the rail industry's most far-reaching and transformative milestone was reached on Oct. 14, 1980, when the Staggers Act was signed into law by President Jimmy Carter. Named for the late Rep. Harley Staggers of West Virginia, the Staggers Rail Act of 1980 ushered in a new railroading era of deregulation and saved

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Prior to the law — which marked its 40th anniversary late last year — regulations limited railroads' pricing flexibility to remain competitive with other modes or keep up with inflation. Certain laws also handcuffed railroads as to how they could restructure their



“Deregulation worked as intended and didn’t impact safety. Short lines delivered services to customers they hadn’t delivered before,” says Rick Webb, executive chairman, Watco Cos. LLC.

networks, making it extremely difficult to shed redundant or light-density lines to better control costs.

As a result, nine railroads — which controlled more than 21% of the nation’s rail mileage — went bankrupt in the 1970s, while other railroads earned a low return on investments, were unable to raise capital and faced a steady market share decline. During the ’70s, the rail industry’s return on investment

averaged 2% after averaging 4.1% in the 1940s, 3.7% in the 1950s and 2.8% in the 1960s. By 1978, railroads’ share of intercity freight had fallen to 35% from a high of 75% in the 1920s.

Many railroads also deferred infrastructure upgrades and maintenance, which led to crumbling infrastructure and a soaring number of derailments throughout the ’70s.

Federal rail regulations at the time — which rail industry constituents considered to be heavy-handed — didn’t take into account how railroads’ competitive landscape was changing dramatically because of the emergence of trucks as a major competitor.

Suffice it to say the rail industry was facing an enormous crisis and a crucial tipping point. Legislators recognized that, and the Staggers Act became their form of rescue.

Specifically, the law:

- allowed railroads to charge any rate unless the Interstate Commerce Commission (ICC) — the predecessor to the Surface Transportation Board — determined there was no competition for their services;

- phased out industry-wide rate adjustments;
- dictated that one railroad must provide another railroad access to its track if a single railroad had bottleneck control of traffic in a particular area;
- allowed railroads to establish contracts free of ICC review unless the commission determined a contract would interfere with the railroad's ability to provide common service; and
- streamlined procedures for the abandonment and sale of rail lines.

Ultimately, the Staggers Act ended collective ratemaking and legalized contracts between railroads and their customers. It helped railroads achieve revenue adequacy to cover expenses and investments, and allowed them to abandon or sell unprofitable lines and rationalize their systems. In short, the law helped improve and ensure the rail industry's financial health, transforming the once-failing industry into one that's more efficient, safe, tech-savvy and sustainable.

Now, a train can move one ton of freight more than 470 miles consuming one gallon of fuel, and shippers pay rail rates that are 43% lower on average than they were in 1981, according to Association of American Railroads (AAR) data. In addition, the train accident rate has dropped about 30% since 2000.

Deregulatory effort delivered

By unwinding what had been a strangling web of burdensome regulations and replacing them with a market-based system, railroads were able to operate like most other businesses in terms of managing their assets and pricing their services, AAR officials say. Railroads also could assume a more customer-focused approach while government intervention was preserved only for situations involving shipper disputes or conflicts.

The balanced regulatory system instituted by Staggers has been broadly hailed as one of the most successful federal deregulatory efforts by both Republicans and Democrats, according to the AAR.



Montana Rail Link

Montana Rail Link launched operations in October 1987. Owned by The Washington Cos., MRL operates more than 900 miles of track mostly in Montana, with some lines crossing into Idaho and Washington. The regional employs nearly 1,200 people and serves 150 “local Montana businesses,” according to MRL’s website.

Now, today’s nimble and resilient rail network is built upon the rock-solid foundation laid by that law, said AAR President and Chief Executive Officer Ian Jefferies in a statement issued on Oct. 14. Staggers has stood the test of time, and continues to be relevant and essential, he believes.

“In the face of a dynamic competitive landscape, the smart regulatory framework — which predominantly relies on market forces to govern rail rates — still empowers railroads to invest, innovate and deliver for customers and communities every day,” said Jefferies.

In many respects, the Staggers Act also is the parent of the short-line industry. The economic freedoms and regulatory flexibility embodied in the law allowed Class Is to sell light-density branch lines to local entrepreneurs rather than abandon them, leading to the formation of hundreds of short lines, American Short Line and Regional Railroad Association (ASLRRA) officials say.

The number of miles of track controlled by short lines has grown from 8,000 miles in 1980 to 50,000 miles in 2020. There now are more than 600 short lines and regionals operating in 49 states — in

30 of them small railroads operate a quarter or more of that state's total freight-rail network.

“It has become hundreds of stories of local entrepreneurs who saved lines, and had to hustle and scrape to retain and build their business,” says ASLRRA President Chuck Baker. “Staggers helped make railroads popular again after the troubling '60s and '70s.”

A savior for small towns

The law ensured that rail remained an asset to large rural areas and small towns. Short lines represent a diverse, dynamic and entrepreneurial collection of small businesses that are creative and agile, and try to make wise use of their often-limited resources, says Baker. They are aggressive marketers that fight just as hard for single carloads as they do for unit trains, he adds.

“Staggers did well to prompt partial deregulation, unlock innovation, and help railroads respond to markets and reinvest,” says Baker. “But nothing's

perfect. Short lines have to re-earn their business every day. Any chance of more regulation is not good for the world we live in. Shippers have other options.”

While reflecting on the Staggers Act, Baker cited one of his favorite examples of the short-line entrepreneurial spirit that the law helped spawn. In 1983, Dick Webb was a car repairman for the Kansas City Southern. Sensing the promising changes brought about by Staggers, he took out a \$25,000 bank loan to launch a rail switching operation in DeRidder, Louisiana. That was the start of the Watco Cos. LLC, which today owns more than 50 short lines and operates more than 5,000 miles of track that largely was headed for abandonment, says Baker.

If Staggers never happened, Watco wouldn't exist today, says Rick Webb, the company's executive chairman and son of the late Dick Webb. Watco established the first industrial switching operation west of the Mississippi River after Staggers, says Webb, who joined the company in 1984 and served as its chief executive officer from 1998 to 2018.

“If you get government out of the way and let free



“We need to be vigilant to keep Staggers in place,” says Peter Gilbertson, president and COO of Anacostia Rail Holdings Co. **“It would help to shed more publicity on the success of that bill than just in the rail industry.”**

market forces reign, then everybody wins,” he says. “Deregulation worked as intended and didn’t impact safety. Short lines delivered services to customers they hadn’t delivered before.”

When it comes to regulation, the federal government either does too much or does nothing, Webb says.

“We’d rather they do nothing,” he adds.

After Staggers, the Class Is informed customers that

they needed to do their own switching, and those shippers then hired short lines to handle that service. That all plays to the strengths of both

large and small railroads, Webb believes.

“No one does better than Class Is with moving high volumes across long distances, and nobody does better than short lines with loading a car or switching a car in plant,” he says.

Line acquisitions and the formation of new short lines likely will continue. The ongoing trends are a function of both economics and obtaining better economies of scale, says Webb.

Not many short-line holding companies exemplify that more than Watco. The company in October 2020 kept its acquisition bent in tow by forming the Elwood, Joliet & Southern Railroad near Joliet, Illinois, after purchasing a line from CN. Watco plans to develop a storage and transit yard and provide switching service to adjacent customers.

M&A a constant

Mike Ogborn agrees that acquisitions will keep happening, especially large ones. There will



By creating the modern day short-line industry, Staggers ensured that huge areas of rural and small town America would stay connected to that national network, that critical infrastructure would be preserved and improved, and that tens of thousands of rail workers would be gainfully employed, says Chuck Baker, president of the American Short Line and Regional Railroad Association.

“It got off to a slow start since Class Is weren’t poised to go through the changes brought about by Staggers, but once the wheels began to turn on growth opportunities, it has been rapid development since,” says Ogborn.

continue to be a market for small short lines in local communities, which won’t be acquired by big holding companies, says Ogborn, who’s been active in the rail and short-line industries since 1991 and served several rail shippers prior to that.

Even Class Is are showing interest now in acquiring major short-line players, such as CSX’s recent agreement to purchase Pan Am Railways Inc., he adds.

The former OmniTRAX Inc. managing director and executive VP, who now is the proprietor of Ogborn Consulting Group LLC, marvels that acquisition activity has remained fairly constant since Staggers.

There has been nothing short of tectonic change in the short-line industry since Staggers, he believes.

“All of the activity of Class I mergers freed up properties and lines for short lines to acquire or lease,” says Ogborn.

Staggers’ hallmarks include the explosive growth in the number of short lines and small railroads’ ability to attract business.

“There would not be 600 to 650 of them without Staggers,” Ogborn says. “And I think it will be a

boon for the entire rail industry with a person in the White House who is knowledgeable about railroads.”

Keith Hartwell concurs about Staggers’ impact on short lines. The owner of short-line industry lobbying firm Chambers, Conlon & Hartwell LLC, who joined the industry in 1982, stresses that the law led to three key developments: changes in the abandonment legal standard made the process easier and cheaper to acquire lines; rate changes, or pricing to the market, made it possible to profit from short lines; and a labor protection exemption helped workers retain their jobs with new line operators.

If rate changes hadn’t been instituted, people from outside the rail industry would not have bought lines, as has occurred since Staggers, Hartwell says.

“More people found they had the money to buy lines, which came with valuable real estate that was used to build yards or sell to get money to fix the lines,” he says.

In abandonment cases, Staggers enabled railroads

to arrange a deal with a shipper to receive money to fix lines or obtain volume guarantees.

“It changed the dynamic between a railroad and shipper,” Hartwell says.

Overall, very few of the short lines formed since 1980 have failed, but there has been a lot of consolidation. Yet, failures could be in store if certain regulation is enacted, Hartwell believes.

“If there is competitive access at some point, that would be bad for short lines,” he says.

“Eighty percent of a short line’s business typically comes from just a few customers.”

‘Kinda like the Constitution’

Fortunately, Staggers is somewhat analogous to the U.S. Constitution — it could be revised, reconstituted or reinterpreted to modern-day circumstances, says George Betke, chairman of Farmrail System Inc. A transportation industry analyst during the ‘60s, Betke joined the rail industry in 1980 as part



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secondary line with CN, which would open up connections with the rest of Canada for the affiliate,” says Betke.

His greatest concern? How short lines can grow without being acquired or consolidated. The ongoing wave of short-line industry consolidation means there are fewer “soloists” such as Farmrail, says Betke.

of an ownership group involved in the Chicago, Rock Island and Pacific Railroad bankruptcy.

Since short lines are clustering up in one way or another, “we need to adjust for things pertaining to Class Is, like short line connections,” he says.

For example, southwestern Oklahoma is served by five railroads, and not all of them can do business with each other because they’re disconnected. How can traffic flow more efficiently or effectively in the area if they don’t have good connectivity? Betke posits.

“Our Finger Lakes affiliate in upstate New York has asked to be able to interchange traffic on a Montreal

“We are more and more serving a caretaker role, to keep what we have and with fewer ‘pretty girls’ to go after [in terms of additional carloads],” he says.

The freedom to price on a market basis because of Staggers was huge since it influenced the costing side of the industry.

“But it also puts the spotlight on our inability to grow now,” says Betke.

However, the short-line industry’s growth prospects are good, says Carl Belke, the former president and



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chief operating officer of the Western New York & Pennsylvania Railroad, and EVP and COO of the Livonia, Avon & Lakeville Railroad and B&H Corp.

During his 48 years in the rail industry and 25 years in the short-line industry before retiring in July 2018, Belke had not witnessed Class Is stopping a dedicated train to pick up freight like they do now.

“That opens opportunities for short lines, which hadn’t

been a big part of intermodal before,” he says.

“There is an opportunity for a short line to set up an intermodal terminal and work with a Class I on it.”

Staggers prompted one of the most amazing turnarounds in railroading history. It was a grand slam that helped short lines take off, says Belke.

But the change in the White House is of concern as it pertains to moving liquified natural gas by rail — President Trump only allows it to be transported by tank cars — and fracking, he says.

“Biden has suggested the end of fracking. It won’t happen in a week, but will it happen?” Belke wonders. “That would be bad for railroads in Pennsylvania and by shales.”

Productivity rose, rates dropped

While concerns continue to shroud the rail industry due to the pandemic, presidential election and other factors, the dramatic success from Staggers should be celebrated and continued on a grand scale, says Peter Gilbertson, the president and COO of Anacostia Rail Holdings Co. He entered the rail industry when the law was enacted in 1980 by

joining a D.C. law firm that represented rail clients.

“Look at a cause-and-effect chart, which is very telling. Productivity went up and rates went down because of Staggers,” he says. “We need to be vigilant to keep Staggers in place. It would help to shed more publicity on the success of that bill than just in the rail industry.”

The law created a rail appetite for customers on lines that were leased or bought, and third parties could subsidize lines or buy them at discounts. Now, private equity firms are trying to get into the short-line business, says Gilbertson.

“No one thought about a short line as a business at the time. The industry became professionalized over time,” he says.

The exemption authority was huge because at the time, it was a convoluted process to abandon or buy a line through the ICC/STB, says Gilbertson. Short line deals, and box car and intermodal business also were exempted from heavy federal review and regulation.

“Now it only costs \$1,000 to do a short line deal instead of \$100,000 to hire lawyers,” says Gilbertson.

Staggers has led to constant change and continual improvements in the rail industry, says B. Allen Brown, a former Pioneer Railcorp. COO who has served in the rail industry for more than 30 years.

Now president and CEO of Railmark Holdings Inc., Brown graduated from the University of Kentucky with a bachelor of business administration degree in finance and economics in 1981, the year Staggers was implemented.

Staggers ranks high among other historical laws in terms of impact, he says.

“It was monumental in harnessing ingenuity from 1980 to today,” he says. “While the number of short lines probably doubled, the percentage of originated and transferred traffic more than doubled.”

The feeder line concept was refined by Staggers.

“It’s all about providing service commensurate



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with a shipper’s needs,” says Brown. “That’s an important mindset.”

Be more like partners, less like competitors

Despite the progress made in the short line industry since Staggers, the relationship between small railroads and Class Is needs to be “light years better” so traffic-growth opportunities are exploited by both parties, says Paul Denton, who retired several years ago as the longtime president and CEO of the Maryland Midland Railway.

“Ultimately this will kill Class Is unless they realize

it’s not a competition with small railroads,” he says. “Lots of Class I carloads are generated by short lines, so they shouldn’t strangle short lines.”

Denton spent more than 20 years in the short-line industry

and 44 years in the rail industry.

He is troubled by some of the Class Is’ current actions, such as focusing on low-cost intermodal business, cashing out assets and buying back their shares.

“I see nationalization down the road in the industry,” Denton says. “We will have a future if the Class Is decide they are making money in the transportation business instead of taking money out of it.”

Despite their lingering partnership issues, Class Is, regionals and short lines have a brighter future after what’s been a robust 40 years because of Staggers, many rail industry constituents believe. By saving



The Rapid City, Pierre & Eastern Railroad was “born” on June 1, 2014, when operations began after its owner Genesee & Wyoming Inc. acquired the former west-end trackage of the Dakota, Minnesota & Eastern Railroad from Canadian Pacific at the end of May 2014. CP had acquired the DM&E and its subsidiaries in 2008.

Genesee & Wyoming Inc.

be preserved and improved, and that tens of thousands of rail workers would be gainfully employed, he says.

“Staggers jump-started today’s short-line industry, and I am proud to say that [small] railroaders grabbed that opportunity and made the most of it,” Baker says. “Together,

Class Is, the act preserved America’s privately owned national rail network, says the ASLRRRA’s Baker.

And by creating the modern day short-line industry, Staggers ensured that huge areas of rural and small town America would stay connected to that national network, that critical infrastructure would

they represent a diverse and dynamic collection of small businesses that have moved well beyond the traditional short lines of America’s railroad lore.” ■