

112TH CONGRESS
1ST SESSION

S. 158

To reauthorize the Surface Transportation Board, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 25 (legislative day, JANUARY 5), 2011

Mr. ROCKEFELLER (for himself and Mrs. HUTCHISON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To reauthorize the Surface Transportation Board, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Surface Transpor-
5 tation Board Reauthorization Act of 2011”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

Sec. 3. Amendment of title 49, United States Code.

TITLE I—ADMINISTRATIVE PROVISIONS

Sec. 101. Authorization of appropriations.

- Sec. 102. Board members.
- Sec. 103. Establishment of Board as independent agency.
- Sec. 104. Filing fees for certain cases.
- Sec. 105. Repeal of expired and obsolete provisions.
- Sec. 106. Department of Transportation Inspector General authority.
- Sec. 107. Railroad-Shipper Transportation Advisory Council.

TITLE II—AUTHORITY IMPROVEMENTS

- Sec. 201. Rail transportation policy update.
- Sec. 202. Office of Public Assistance, Governmental Affairs, and Compliance.
- Sec. 203. Investigative authority.
- Sec. 204. Compilation of complaints.
- Sec. 205. Exempt traffic.
- Sec. 206. Railroad service metrics and performance data.
- Sec. 207. Uniform railroad costing system.
- Sec. 208. Replacement cost study.
- Sec. 209. Rail practices study.
- Sec. 210. Rail car interchange study.
- Sec. 211. Offers of financial assistance.
- Sec. 212. Adverse abandonments.
- Sec. 213. Emergency service orders.
- Sec. 214. Rate agreements.
- Sec. 215. Miscellaneous provisions.

TITLE III—REGULATORY REFORM

- Sec. 301. Paper barriers.
- Sec. 302. Bottleneck and terminal switching rates.
- Sec. 303. Terminal access.
- Sec. 304. Service.
- Sec. 305. Arbitration of certain rail rate, practice, and common carrier service expectation disputes.
- Sec. 306. Maximum relief in certain rate cases.
- Sec. 307. Advance rate challenge.
- Sec. 308. Rate review timelines.
- Sec. 309. Revenue adequacy study.
- Sec. 310. Public usage of abandoned rail properties.
- Sec. 311. Transactions.
- Sec. 312. Considerations in consolidations, mergers, and acquisitions.
- Sec. 313. Railroad development.
- Sec. 314. Regulatory reform review.

TITLE IV—TECHNICAL CORRECTIONS

- Sec. 401. Technical corrections to Public Law 110–432.

TITLE V—MISCELLANEOUS

- Sec. 501. Effective dates.

1 **SEC. 3. AMENDMENT OF TITLE 49, UNITED STATES CODE.**

- 2 Except as otherwise expressly provided, whenever in
- 3 this Act an amendment or repeal is expressed in terms

1 of an amendment to, or a repeal of, a section or other
2 provision, the reference shall be considered to be made to
3 a section or other provision of title 49, United States
4 Code.

5 **TITLE I—ADMINISTRATIVE**
6 **PROVISIONS**

7 **SEC. 101. AUTHORIZATION OF APPROPRIATIONS.**

8 Section 705 is amended by striking paragraphs (1)
9 through (3) and inserting the following:

10 “(1) \$40,370,000 for fiscal year 2011;

11 “(2) \$47,518,000 for fiscal year 2012;

12 “(3) \$40,834,000 for fiscal year 2013;

13 “(4) \$44,315,000 for fiscal year 2014; and

14 “(5) \$47,971,000 for fiscal year 2015.”.

15 **SEC. 102. BOARD MEMBERS.**

16 (a) MEMBERSHIP.—Section 701(b) is amended—

17 (1) by striking “3 members,” in paragraph (1)
18 and inserting “5 members,”;

19 (2) by striking “2 members” in paragraph (1)
20 and inserting “3 members”; and

21 (3) by striking paragraph (2) and inserting the
22 following:

23 “(2) At any given time, at least 3 members of the
24 Board shall be individuals with professional standing and
25 demonstrated knowledge in the fields of transportation,

1 transportation regulation, or economic regulation, and at
2 least 2 members shall be individuals with professional or
3 business experience (including agriculture or other rail
4 customers) in the private sector.”.

5 (b) REPEAL OF HOLDOVER LIMITATION.—Section
6 701(b) is amended by striking “qualified, but for a period
7 not to exceed one year.” in paragraph (3) and inserting
8 “qualified.”.

9 (c) REPEAL OF OBSOLETE PROVISION.—Section
10 701(b) is amended—

11 (1) by striking paragraph (4) and redesignating
12 paragraphs (5), (6), and (7) as paragraphs (4), (5),
13 and (6), respectively; and

14 (2) by striking “In the case of an individual
15 who becomes a member of the Board pursuant to
16 paragraph (4), or an individual” in paragraph (4),
17 as redesignated, and inserting “An individual”.

18 **SEC. 103. ESTABLISHMENT OF BOARD AS INDEPENDENT**
19 **AGENCY.**

20 (a) IN GENERAL.—Section 701(a) is amended to
21 read as follows:

22 “(a) ESTABLISHMENT OF BOARD.—The Surface
23 Transportation Board is an independent establishment of
24 the United States Government.”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) ADMINISTRATIVE PROVISIONS.—Section 703
2 is amended—

3 (A) by striking subsections (a), (c), (f),
4 and (g);

5 (B) by redesignating subsections (b), (d),
6 and (e) as subsections (a), (b), and (c), respec-
7 tively; and

8 (C) by adding at the end thereof the following:

9 “(d) SUBMISSIONS AND TRANSMITTALS.—Whenever
10 the Board submits or transmits any budget estimate,
11 budget request, supplemental budget estimate, or other
12 budget information, legislative recommendation, prepared
13 testimony for congressional hearings, or comment on legis-
14 lation to the President or to the Office of Management
15 and Budget, it shall concurrently transmit a copy thereof
16 to the Senate Committee on Commerce, Science, and
17 Transportation and the House of Representatives Com-
18 mittee on Transportation and Infrastructure. No officer
19 or agency of the United States shall have any authority
20 to require the Board to submit its budget requests or esti-
21 mates, legislative recommendations, prepared testimony
22 for congressional hearings, or comments on legislation to
23 any officer or agency of the United States for approval,
24 comments, or review, prior to the submission of such rec-
25 ommendations, testimony, or comments to the Congress.”.

1 (2) ADMINISTRATIVE SUPPORT.—

2 (A) Subchapter II of chapter 7 is amended
3 by striking section 725.

4 (B) The table of contents for chapter 7 is
5 amended by striking the item relating to section
6 725.

7 **SEC. 104. FILING FEES FOR CERTAIN CASES.**

8 (a) IN GENERAL.—Subchapter II of chapter 7, as
9 amended by section 103(b)(2)(A) of this Act, is amended
10 by inserting after section 724 the following:

11 **“§ 725. Filing fees**

12 “The Board may not require a party to pay a filing
13 fee to bring a formal complaint before the Board that is
14 greater than the fee provided by section 1914 of title 28
15 for bringing a civil action in a district court of the United
16 States.”.

17 (b) CONFORMING AMENDMENT.—The table of con-
18 tents for chapter 7 is amended by inserting after the item
19 relating to section 724 the following:

“725. Filing fees”.

20 **SEC. 105. REPEAL OF EXPIRED AND OBSOLETE PROVI-**
21 **SIONS.**

22 (a) CONTRACT LIMITATION.—Section 10709 is
23 amended by striking subsection (h).

24 (b) AGENT IN D.C.—

25 (1) Section 723 is amended—

1 (A) by striking “in the District of Colum-
2 bia,” in subsection (a); and

3 (B) by striking “in the District of Colum-
4 bia” in subsection (c).

5 (2) Section 724(a) is amended by striking “in
6 the District of Columbia” each place it appears.

7 **SEC. 106. DEPARTMENT OF TRANSPORTATION INSPECTOR**

8 **GENERAL AUTHORITY.**

9 (a) IN GENERAL.—Subchapter II of chapter 7 is
10 amended—

11 (1) by redesignating section 727 as section 728;

12 and

13 (2) by inserting after section 726 the following:

14 **“§ 727. Authority of the Inspector General**

15 “(a) IN GENERAL.—The Inspector General of the
16 Department of Transportation, in accordance with the
17 mission of the Inspector General to prevent and detect
18 fraud and abuse, shall have authority to review only the
19 financial management, property management, and busi-
20 ness operations of the Surface Transportation Board, in-
21 cluding internal accounting and administrative control
22 systems, to determine compliance with applicable Federal
23 laws, rules, and regulations.

24 “(b) DUTIES.—In carrying out this section, the In-
25 spector General shall—

1 “(1) keep the Chairman of the Board and the
2 Senate Committee on Commerce, Science, and
3 Transportation and the House of Representatives
4 Committee on Transportation and Infrastructure
5 fully and currently informed about problems relating
6 to administration of the internal accounting and ad-
7 ministrative control systems of the Board;

8 “(2) issue findings and recommendations for
9 actions to address such problems; and

10 “(3) report periodically to the Senate Com-
11 mittee on Commerce, Science, and Transportation
12 and the House of Representatives Committee on
13 Transportation and Infrastructure on any progress
14 made in implementing actions to address such prob-
15 lems.

16 “(c) ACCESS TO INFORMATION.—In carrying out this
17 section, the Inspector General may exercise authorities
18 granted to the Inspector General under subsections (a)
19 and (b) of section 6 of the Inspector General Act of 1978
20 (5 U.S.C. App.).

21 “(d) AUTHORIZATIONS OF APPROPRIATIONS.—

22 “(1) FUNDING.—There are authorized to be ap-
23 propriated to the Secretary of Transportation for
24 use by the Inspector General of the Department of
25 Transportation such sums as may be necessary to

1 cover expenses associated with activities pursuant to
2 the authority exercised under this section.

3 “(2) REIMBURSABLE AGREEMENT.—In the ab-
4 sence of an appropriation under this subsection for
5 an expense referred to in paragraph (1), the Inspec-
6 tor General and the Board shall have a reimbursable
7 agreement to cover such expense.”.

8 (b) CONFORMING AMENDMENT.—The table of con-
9 tents for chapter 7 is amended by striking the item relat-
10 ing to section 701 and inserting the following:

“727. Authority of the Inspector General
“728. Definitions”.

11 **SEC. 107. RAILROAD-SHIPPER TRANSPORTATION ADVISORY**
12 **COUNCIL.**

13 Section 726 is amended—

14 (1) by striking “and” after the semicolon in
15 subsection (a)(2)(A);

16 (2) by striking “railroads.” in subsection
17 (a)(2)(B) and inserting “railroads; and”;

18 (3) by adding at the end of subsection (a)(2)
19 the following:

20 “(C) the ninth voting member shall be a
21 member-at-large, and may be a representative
22 of rail labor, a State or local transportation
23 agency, an academic institution, or other rel-
24 evant entity selected by the Chairman.”;

1 (4) by striking the second sentence of sub-
2 section (a)(4); and

3 (5) by striking the first sentence of subsection
4 (f)(4) and inserting “The Council shall prepare an
5 annual report concerning its activities and the re-
6 sults of Council efforts to resolve railroad and ship-
7 per issues and shall include in the report at least
8 one recommendation to the Board stemming from
9 the Council’s activities and any proposal regarding
10 regulations or legislation it considers appropriate.”.

11 **TITLE II—AUTHORITY** 12 **IMPROVEMENTS**

13 **SEC. 201. RAIL TRANSPORTATION POLICY UPDATE.**

14 Section 10101 is amended to read as follows:

15 **“§ 10101. Rail transportation policy**

16 “In regulating the railroad industry, it is the policy
17 of the United States Government to balance the following
18 objectives:

19 “(1) To promote a safe and efficient rail trans-
20 portation system.

21 “(2) To allow, to the maximum extent possible,
22 competition and the demand for services to establish
23 reasonable rates for transportation by rail.

24 “(3) To protect rail shippers and to maintain
25 reasonable rates where there is an absence of effec-

1 tive competition and where rail rates provide reve-
2 nues that exceed the amount necessary to maintain
3 and expand the rail system and to attract capital.

4 “(4) To foster the continuation and expansion
5 of a sound rail transportation system while also pre-
6 serving effective competition among rail carriers and
7 with other modes to meet the needs of the public
8 and National defense.

9 “(5) To ensure that rail carriers can earn ade-
10 quate revenues to provide and sustain consistent, ef-
11 ficient, and reliable transportation services and to
12 maintain and expand rail infrastructure, equipment,
13 and technology.

14 “(6) To prohibit predatory pricing and prac-
15 tices, avoid undue concentrations of market power,
16 and to prohibit unlawful discrimination.

17 “(7) To provide fair and expeditious regulatory
18 decisions and ensure that the regulatory process is
19 accessible and cost-effective for all affected parties.

20 “(8) To advance the environmental and energy
21 efficiency advantages of rail transportation and en-
22 courage energy conservation and environmentally-re-
23 sponsible practices among rail carriers.

24 “(9) To foster intercity and commuter rail pas-
25 senger service.

1 “(10) To encourage fair wages and safe and
2 suitable working conditions in the railroad indus-
3 try.”.

4 **SEC. 202. OFFICE OF PUBLIC ASSISTANCE, GOVERNMENTAL**
5 **AFFAIRS, AND COMPLIANCE.**

6 (a) IN GENERAL.—Subchapter II of chapter 7, as
7 amended by section 106 of this Act, is further amended—

8 (1) redesignating section 728 (as redesignated
9 by section 106 of this Act) as section 729; and

10 (2) by inserting after section 727 the following:

11 **“§ 728. Office of Public Assistance, Governmental Af-**
12 **fairs, and Compliance**

13 “(a) IN GENERAL.—The Board shall maintain an Of-
14 fice of Public Assistance, Governmental Affairs, and Com-
15 pliance with authority over public assistance and outreach,
16 governmental affairs, and compliance. The Office shall—

17 “(1) mediate disputes between affected parties;

18 “(2) monitor rail carrier operations subject to
19 the Board’s jurisdiction to ensure that such oper-
20 ations are in compliance with each rail carrier’s stat-
21 utory and regulatory responsibilities;

22 “(3) act as the Board’s point of contact with
23 government, public and private parties;

24 “(4) facilitate communication among stake-
25 holders subject to the Board’s jurisdiction; and

1 “(5) carry out other duties and powers pre-
2 scribed by the Board.

3 “(b) CUSTOMER ADVOCATE.—The Board shall ap-
4 point a rail customer advocate who shall report directly
5 to the Board. The rail customer advocate—

6 “(1) shall review or investigate rail customer in-
7 quiries and complaints;

8 “(2) shall serve as a technical advisor to a rail
9 customer in any appropriate proceeding of the
10 Board;

11 “(3) shall advise the Board in certain matters,
12 as appropriate;

13 “(4) shall review information regarding the cost
14 and efficiency of rail transportation;

15 “(5) shall carry out other duties and powers
16 prescribed by the Board; and

17 “(6) may participate as a party in a proceeding
18 of the Board, as appropriate.

19 “(c) OMBUDSMAN.—The Board may designate an
20 employee of the Board to serve as an ombudsman of the
21 Board in regional or local matters of Board interest, in-
22 cluding matters related to railroad service, mergers and
23 acquisitions, or any other matter designated by the
24 Board.”.

1 (b) CONFORMING AMENDMENT.—The table of con-
 2 tents for chapter 7, as amended by section 106 of this
 3 Act, is amended by striking the item relating to section
 4 728 and inserting the following:

“728. Office of Public Assistance, Governmental Affairs, and Compliance
 “729. Definitions”.

5 **SEC. 203. INVESTIGATIVE AUTHORITY.**

6 (a) AUTHORITY TO INITIATE INVESTIGATION.—Sec-
 7 tion 11701(a) is amended by striking “only on complaint.”
 8 and inserting “on the Board’s own initiative or on com-
 9 plaint.”.

10 (b) RATE PROCEEDINGS.—Section 10704(b) is
 11 amended by striking the first sentence and inserting “The
 12 Board may begin a proceeding under subsection (a)(1) on
 13 its own initiative or upon complaint, except that a pro-
 14 ceeding to determine the reasonableness of the level of a
 15 rate charged by a carrier may only be initiated upon com-
 16 plaint.”.

17 **SEC. 204. COMPILATION OF COMPLAINTS.**

18 (a) IN GENERAL.—Section 704 is amended—

19 (1) by striking the section heading and insert-
 20 ing the following:

21 “§704. **Reports** ”;

22 (2) by inserting “(a) ANNUAL REPORT.—” be-
 23 fore “The Board”; and

24 (3) by adding at the end the following:

1 “(b) COMPLAINTS.—

2 “(1) The Board shall establish and maintain a
3 database of complaints received by the Board.

4 “(2) The Board shall post a quarterly report of
5 formal and informal service complaints received by
6 the Board during the previous quarter that shall in-
7 clude—

8 “(A) a list of the type of each complaint;

9 “(B) the geographic region of the com-
10 plaint; and

11 “(C) the resolution of the complaint, if ap-
12 propriate.

13 “(3) The quarterly report may identify a com-
14 plainant that submitted an informal complaint only
15 upon the written consent of the complainant.

16 “(4) The report shall be posted on the Board’s
17 public website.”.

18 (b) CONFORMING AMENDMENT.—The table of con-
19 tents for chapter 7 is amended by striking the item relat-
20 ing to section 704 and inserting the following:

“704. Reports”.

21 **SEC. 205. EXEMPT TRAFFIC.**

22 (a) IN GENERAL.—Section 10502 is amended—

23 (1) by striking “the Board, to the maximum ex-
24 tent consistent with this part, shall” in subsection

25 (a) and inserting “the Board shall”; and

1 (2) by striking “title.” in subsection (d) and in-
2 serting “title or to protect shippers from the abuse
3 of market power.”.

4 (b) **CURRENT CLASS EXEMPTIONS.**—Within 2 years
5 after the date of enactment of this Act, the Surface Trans-
6 portation Board shall conclude a study of class exemptions
7 in effect on the date of enactment of this Act to determine
8 whether any exemptions should be revoked pursuant to
9 section 10502(d) of title 49, United States Code. In con-
10 ducting the study, the Board shall provide public notice
11 and opportunity for comment and conduct 1 or more pub-
12 lic hearings. Upon completion of the study, the Board
13 shall—

14 (1) revise any such exemptions as necessary on
15 the basis of the Board’s findings and conclusions
16 from the study; and

17 (2) establish a process for the periodic review,
18 and revision as necessary, of class exemptions.

19 **SEC. 206. RAILROAD SERVICE METRICS AND PERFORM-**
20 **ANCE DATA.**

21 (a) **REPORTING REQUIREMENTS.**—Within 2 years
22 after the date of enactment of this Act, the Surface Trans-
23 portation Board shall require Class I railroad carriers and
24 other railroad carriers, as appropriate, to regularly report
25 railroad service metrics and other performance data as

1 prescribed by the Board. The metrics and data may in-
2 clude transportation cycle times and transit times and
3 variations in such times, average train speed, and terminal
4 dwell time by type of traffic and by geographic area and
5 other metrics, as determined by the Board.

6 (b) CONFIDENTIALITY.—The Board shall ensure that
7 metrics and other performance data submitted pursuant
8 to this section and deemed confidential by the Board are
9 appropriately protected.

10 **SEC. 207. UNIFORM RAILROAD COSTING SYSTEM.**

11 (a) STUDY.—Within 180 days after the date of enact-
12 ment of this Act, the Surface Transportation Board shall
13 initiate a proceeding to examine the Uniform Railroad
14 Costing System. The examination shall consider matters
15 deemed appropriate by the Board.

16 (b) UPDATE.—Within 3 years after the date of enact-
17 ment of this Act, the Board shall update, revise, or replace
18 the System and any related reporting of financial and op-
19 erating information by rail carriers as deemed appropriate
20 by the Board based on the examination required by sub-
21 section (a).

22 (c) INTERIM REPORT.—Within 18 months after the
23 date of enactment of this Act, the Board shall submit an
24 interim report on its progress on the proceeding to the
25 Senate Committee on Commerce, Science, and Transpor-

1 tation and the House of Representatives Committee on
2 Transportation and Infrastructure.

3 (d) MOVEMENT-SPECIFIC ADJUSTMENTS.—Until the
4 Board updates, revises, or replaces the system pursuant
5 to subsection (b), or thereafter at the discretion of the
6 Board, parties may make reasonable movement-specific
7 adjustments to the variable costs calculated by the System
8 in full stand-alone cost rate challenges.

9 (e) MATERIAL CHANGE ADJUSTMENTS.—If the Sys-
10 tem is materially changed pursuant to subsection (b), the
11 Board shall develop a one-time adjustment factor to be
12 used to adjust the variable costs in rate prescriptions de-
13 termined under the changed procedures to equal those
14 that would have been obtained under the prior procedures,
15 and will apply this adjustment factor, upon request, in
16 rate prescriptions that are in effect as of the date of enact-
17 ment of this Act.

18 **SEC. 208. REPLACEMENT COST STUDY.**

19 (a) STUDY.—Within 180 days after the date of enact-
20 ment of this Act, the Surface Transportation Board shall
21 initiate a study to review the use of a replacement cost
22 approach to value the assets of rail facilities. The review
23 shall include matters deemed appropriate by the Board,
24 but shall include, at a minimum, consideration of the fea-
25 sibility, effectiveness, and appropriateness of using a re-

1 placement cost approach in Board proceedings where re-
2 placement costs may be relevant. In conducting the study,
3 the Board shall provide public notice and opportunity for
4 comment and conduct 1 or more public hearings. The
5 Board shall complete the study within 2 years after its
6 initiation.

7 (b) REPORT TO CONGRESS.—Within 180 days after
8 completion of the study, the Board shall provide a report
9 to the Senate Committee on Commerce, Science, and
10 Transportation and the House of Representatives Com-
11 mittee on Transportation and Infrastructure on its find-
12 ings.

13 **SEC. 209. RAIL PRACTICES STUDY.**

14 (a) STUDY.—Within 180 days after the date of enact-
15 ment of this Act, the Surface Transportation Board shall
16 initiate a study of rail practices, including switching, sur-
17 charges, penalties, demurrage, and accessorial charges. In
18 conducting the study, the Board shall provide public notice
19 and opportunity for comment and conduct 1 or more pub-
20 lic hearings.

21 (b) REPORT TO CONGRESS.—Within 180 days after
22 completion of the study, the Board shall provide a report
23 to the Senate Committee on Commerce, Science, and
24 Transportation and the House of Representatives Com-

1 mittee on Transportation and Infrastructure on its find-
2 ings.

3 **SEC. 210. RAIL CAR INTERCHANGE STUDY.**

4 (a) STUDY.—Within 180 days after the date of enact-
5 ment of this Act, the Surface Transportation Board shall
6 initiate a study of rail interchange rules, including car
7 service, interchange, and other operating rules adopted
8 and administered by the Association of American Rail-
9 roads and the effect of those rules on the national rail
10 system. In conducting the study, the Board shall provide
11 public notice and opportunity for comment and conduct
12 one or more public hearings.

13 (b) REPORT TO CONGRESS.—Within 180 days after
14 completion of the study, the Board shall provide a report
15 to the Senate Committee on Commerce, Science, and
16 Transportation and the House of Representatives Com-
17 mittee on Transportation and Infrastructure on its find-
18 ings.

19 **SEC. 211. OFFERS OF FINANCIAL ASSISTANCE.**

20 Section 10904 is amended—

21 (1) by striking so much of subsection (d) as
22 precedes paragraph (2) and inserting the following:

23 “(d)(1) Unless the Board, within 15 days after the
24 expiration of the 4-month period described in subsection
25 (c), finds that one or more financially responsible persons

1 (including a governmental authority) have offered finan-
2 cial assistance and established a reasonable likelihood of
3 freight rail service, public transportation, or intercity rail
4 passenger transportation over that part of the railroad line
5 to be abandoned or over which all rail transportation is
6 to be discontinued, abandonment or discontinuance may
7 be carried out in accordance with section 10903.”; and

8 (2) by striking “30 days” in subsection
9 (f)(1)(A) and inserting “60 days”.

10 **SEC. 212. ADVERSE ABANDONMENTS.**

11 Section 10903 is amended—

12 (1) by striking so much of subsection (a) as
13 precedes paragraph (2) and inserting the following:

14 “(a)(1) An application relating to the abandonment
15 of or discontinuance of operation of all rail transportation
16 over any part of a railroad line shall be filed with the
17 Board. An abandonment or discontinuance may be carried
18 out only as authorized under this chapter.”;

19 (2) by striking “When a rail carrier providing
20 transportation subject to the jurisdiction of the
21 Board under this part files an application, the appli-
22 cation” in subsection (a)(2) and inserting “An appli-
23 cation filed under this section”;

24 (3) by striking “rail carrier’s” in subsection
25 (a)(2)(A);

1 (4) by striking “(C)(i)” in subsection (a)(2)(C)
 2 and inserting “(C) if filed by a rail carrier, (i)”; and
 3 (5) by striking “The rail carrier shall—” in
 4 subsection (a)(3) and inserting “The applicant
 5 shall—”.

6 **SEC. 213. EMERGENCY SERVICE ORDERS.**

7 Section 11123(c)(1) is amended by striking the sec-
 8 ond sentence and inserting “Action by the Board under
 9 subsection (a) of this section may be extended in 90-day
 10 increments until the Board finds that the emergency has
 11 ended.”.

12 **SEC. 214. RATE AGREEMENTS.**

13 (a) IN GENERAL.—Section 10706 is amended to read
 14 as follows:

15 **“§ 10706. Rate agreements**

16 “(a) IN GENERAL.—In any proceeding in which it is
 17 alleged that a carrier was a party to an agreement, con-
 18 spiracy, or combination in violation of the Sherman Act
 19 (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12 et
 20 seq.), sections 73 and 74 of the Wilson Tariff Act (15
 21 U.S.C. 8 and 9), or the Act of June 19, 1936 (15 U.S.C.
 22 13, 13a, 13b, 21a) or of any similar State law, proof of
 23 an agreement, conspiracy, or combination may not be in-
 24 ferred from evidence that two or more rail carriers acted
 25 together with respect to an interline rate or related matter

1 and that a party to such action took similar action with
 2 respect to a rate or related matter on another route or
 3 traffic.

4 “(b) INADMISSIBLE EVIDENCE.—In any proceeding
 5 in which such a violation is alleged, evidence of a discus-
 6 sion or agreement between or among such rail carrier and
 7 one or more other rail carriers, or of any rate or other
 8 action resulting from such discussion or agreement, shall
 9 not be admissible if the discussion or agreement concerned
 10 an interline movement of the rail carrier, and the discus-
 11 sion or agreement would not, considered by itself, violate
 12 the laws referred to in subsection (a).

13 “(c) DETERMINATION BY COURT.—In any such pro-
 14 ceeding before a jury, the court shall determine whether
 15 the requirements of subsection (b) are satisfied before al-
 16 lowing the introduction of any such evidence.”.

17 (b) CONFORMING AMENDMENT.—The table of con-
 18 tents for chapter 107 is amended by striking the item re-
 19 lating to section 10706 and inserting the following:

“10706. Rate agreements”.

20 **SEC. 215. MISCELLANEOUS PROVISIONS.**

21 (a) SIMPLIFIED PROCEDURE.—Section 10701(d)(3)
 22 is amended to read as follows:

23 “(3) The Board shall maintain a simplified and expe-
 24 dited method for determining the reasonableness of chal-

1 lenged rates in those cases in which a full stand-alone cost
2 presentation is too costly, given the value of the case.”.

3 (b) EXPEDITIOUS HANDLING.—Section 10704(d) is
4 amended by striking the first sentence and inserting “The
5 Board shall maintain procedures to ensure expeditious
6 handling of challenges to the reasonableness of railroad
7 rates.”.

8 **TITLE III—REGULATORY** 9 **REFORM**

10 **SEC. 301. PAPER BARRIERS.**

11 (a) INTERCHANGE COMMITMENT DEFINED.—Section
12 10102 is amended—

13 (1) by redesignating paragraphs (4) through
14 (10) as paragraphs (5) through (11), respectively;
15 and

16 (2) by inserting after paragraph (3) the fol-
17 lowing:

18 “(4) ‘interchange commitment’ means a con-
19 tractual agreement between two or more rail carriers
20 subject to the jurisdiction of the Board reached as
21 part of a sale or lease of a rail line for which the
22 approval of the Board is required under chapter 109
23 or 113 of this part, which limits the incentive or the
24 ability of the purchaser or tenant rail carrier to

1 interchange traffic with a rail carrier other than the
2 seller or lessor rail carrier;”.

3 (b) AUTHORIZING AN ACQUISITION OR OPERATION
4 TRANSACTION.—

5 (1) Section 10901(c) is amended by adding at
6 the end thereof “The Board may not issue a certifi-
7 cate authorizing an acquisition or operation trans-
8 action under subsection (a)(4) that includes inter-
9 change commitments or other mechanisms restrict-
10 ing the purchaser’s or tenant’s ability to interchange
11 with any other carrier unless such commitments or
12 mechanisms are reasonable and in the public inter-
13 est.”.

14 (2) Section 10902(c) is amended by adding at
15 the end thereof “The Board may not issue a certifi-
16 cate authorizing an acquisition or operation trans-
17 action under this section that includes interchange
18 commitments or other mechanisms restricting the
19 purchaser’s or tenant’s ability to interchange with
20 any other carrier unless such commitments or mech-
21 anisms are reasonable and in the public interest.”.

22 (3) Section 11323 is amended by adding at the
23 end thereof the following:

24 “(d) The Board may not authorize an acquisition or
25 operation transaction under this section that includes

1 interchange commitments or other mechanisms restricting
 2 the purchaser's or tenant's ability to interchange with any
 3 other carrier unless such commitments or mechanisms are
 4 reasonable and in the public interest.”.

5 (c) RIGHTS AND REMEDIES FOR INTERCHANGE COM-
 6 MITMENTS.—Chapter 117 is amended by adding at end
 7 thereof the following:

8 **“§ 11708. Interchange commitments: rights and rem-
 9 edies**

10 “(a) IN GENERAL.—The Board shall maintain a
 11 process to allow affected persons to challenge existing
 12 interchange commitments as contrary to other provisions
 13 of this part. The Attorney General and the Secretary of
 14 Transportation may participate in such proceedings.

15 “(b) ACCESS TO INTERCHANGE COMMITMENTS.—
 16 After the filing of a complaint or petition, the Board shall
 17 provide affected persons access, upon request, to existing
 18 and proposed interchange commitments, subject to condi-
 19 tions protecting the confidentiality of those agreements.

20 “(c) REDRESS AUTHORITY.—The Board shall take
 21 appropriate action to address any conflict between an
 22 interchange commitment and the provisions of this part.

23 “(d) PURCHASE AUTHORITY.—

24 “(1) IN GENERAL.—Except as provided in para-
 25 graph (5), if the Board finds that—

1 “(A) an interchange commitment is found
2 to be in violation of this part, and

3 “(B) the purchaser or tenant rail carrier
4 and the seller or lessor rail carrier cannot bring
5 the interchange commitment into compliance
6 with this part within a reasonable period of
7 time,

8 the Board may require, upon application by the pur-
9 chaser or tenant rail carrier, the elimination of the
10 interchange commitment at a price paid by the pur-
11 chaser or tenant rail carrier not less than the terms
12 established under paragraph (2).

13 “(2) TERMS.—In the case of an interchange
14 commitment subject to elimination under paragraph
15 (1), the Board shall determine the fair market value
16 of an interchange commitment by considering—

17 “(A) any credits, payments, expenses, or
18 other income paid and due from the inter-
19 change commitment to the seller or lessor rail
20 carrier;

21 “(B) reasonable financial hardships of the
22 purchaser or tenant rail carrier due to unrea-
23 sonable terms, if any, of the interchange agree-
24 ment; and

1 “(C) other relevant factors as determined
2 by the Board.

3 “(3) EMPLOYEE PROTECTION.—The Board
4 shall require protections consistent with the require-
5 ments of section 11326(a) for rail labor employees
6 who are affected by an action under this subsection.

7 “(4) PURCHASER PRECONDITIONS.—Any pur-
8 chaser or tenant rail carrier that buys out an inter-
9 change commitment under this subsection may de-
10 termine preconditions, such as payment of a subsidy,
11 which must be met by shippers in order to obtain
12 service over such lines, but such rail carrier must
13 notify the shippers on the line of its intention to im-
14 pose such preconditions.

15 “(5) EXCEPTION.—If the Board requires the
16 elimination of an interchange commitment under
17 paragraph (1), and the purchaser or tenant rail car-
18 rier or the seller or lessor rail carrier demonstrates
19 that the sale or lease agreement containing the
20 interchange commitment contains a provision gov-
21 erning the manner in which the agreement may be
22 terminated, the Board shall permit the agreement to
23 be terminated in accordance with that provision.

24 “(6) DEFINITIONS.—In this subsection:

1 “(A) PURCHASER OR TENANT RAIL CAR-
 2 RIER.—The term ‘purchaser or tenant rail car-
 3 rier’ means a Class II or Class III rail carrier
 4 that purchases or leases a rail line that is sub-
 5 ject to terms of an interchange commitment.

6 “(B) SELLER OR LESSOR RAIL CARRIER.—
 7 The term ‘seller or lessor rail carrier’ means a
 8 Class I rail carrier that leased or sold a rail line
 9 subject to terms of an interchange commitment.

10 “(e) DEADLINE FOR COMPLETION OF PRO-
 11 CEEDING.—The Board shall complete any proceeding
 12 under this section within 180 days after the close of the
 13 administrative record.”.

14 (d) RAILROAD REHABILITATION AND IMPROVEMENT
 15 FINANCING.—

16 (1) Section 502(b)(1) of the Railroad Revital-
 17 ization and Regulatory Reform Act of 1976 (45
 18 U.S.C. 822(b)(1)) is amended—

19 (A) by striking “or” after the semicolon in
 20 subparagraph (B);

21 (B) by striking “facilities.” in subpara-
 22 graph (C) and inserting “facilities; or”; and

23 (C) by inserting after subparagraph (C)
 24 the following:

1 “(D) provide financial assistance to pur-
2 chase or lease a rail line subject to terms estab-
3 lished by the Surface Transportation Board
4 under section 11708(d) of title 49, United
5 States Code.”.

6 (2) Section 502 of that Act (45 U.S.C. 822) is
7 amended—

8 (A) by adding at the end of subsection (e)
9 the following:

10 “(3) INTEREST RATE REDUCTION.—Subject to
11 the availability of funds authorized by subsection
12 (k), the Secretary may reduce the interest to be paid
13 on direct loans provided to a Class II or Class III
14 rail carrier for the purpose of subsection
15 (b)(1)(D).”;

16 (B) in subsection (f)(1)—

17 (i) by inserting “or private insurance,
18 including bond insurance,” after “in part
19 credit risk”; and

20 (ii) by inserting “or insurance, includ-
21 ing bond insurance,” after “authority and
22 credit risk”;

23 (C) by striking “amounts.” in subsection
24 (f)(3) and inserting “amounts or, at the discre-
25 tion of the Secretary, in a series of payments

1 over the term of the loan. If insurance, includ-
 2 ing bond insurance, is used, the policy premium
 3 shall be paid before the loan is disbursed.”; and

4 (D) by adding at the end the following:

5 “(k) AUTHORIZATION OF APPROPRIATIONS.—There
 6 are authorized to be appropriated to the Secretary for pur-
 7 poses of carrying out subsection (e)(3) such funds as may
 8 be necessary for fiscal years 2011 through 2015.”.

9 (e) INTERCHANGE COMMITMENT RELIEF GRANTS.—
 10 Chapter 201 is amended by adding at end thereof the fol-
 11 lowing:

12 “§ 20168. **Interchange commitment relief grants**

13 “(a) IN GENERAL.—Upon application, the Secretary
 14 of Transportation, in consultation with the Surface Trans-
 15 portation Board, may make grants available to assist any
 16 Class III rail carrier providing transportation subject to
 17 the jurisdiction of the Surface Transportation Board with
 18 the credit risk premium of a direct loan or loan guarantee
 19 made for the purposes of section 502(b)(1)(D) of the Rail-
 20 road Revitalization and Regulatory Reform Act of 1976
 21 (45 U.S.C. 822(b)(1)(D)).

22 “(b) LIMITATIONS.—The Secretary of Transpor-
 23 tation—

24 “(1) shall award grants only to applicants with
 25 financial need; and

1 “(2) may approve a grant under this section
2 only as part of an application for a Railroad Reha-
3 bilitation and Improvement Financing loan or loan
4 guarantee.

5 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated to the Secretary of
7 Transportation for grants under this section \$7,500,000
8 for fiscal years 2011 through 2015.”.

9 (f) CONFORMING AMENDMENTS.—

10 (1) The table of contents for chapter 117 is
11 amended by inserting after the item relating to sec-
12 tion 11707 the following:

“11708. Interchange commitments: rights and remedies”.

13 (2) The table of contents for chapter 201 is
14 amended by inserting after the item relating to sec-
15 tion 20167 the following:

“20168. Interchange commitment relief grants”.

16 **SEC. 302. BOTTLENECK AND TERMINAL SWITCHING RATES.**

17 (a) IN GENERAL.—Subchapter I of chapter 107 is
18 amended by adding at the end thereof the following:

19 **“§ 10710. Bottleneck and terminal switching rates**

20 “(a) A Class I rail carrier, or other rail carrier as
21 deemed appropriate by the Board, that provides a rate for
22 transportation between an origin and destination either as
23 a single line movement or as part of an interline movement
24 and over which the carrier has market dominance pursu-

1 ant to section 10707 shall, upon the reasonable request
2 of a rail customer, establish a bottleneck rate for the pur-
3 pose of providing transportation over a bottleneck segment
4 located between such an origin and destination pursuant
5 to this section. If the rail carrier contends that the trans-
6 portation is not subject to market dominance under that
7 section, the rail carrier shall seek an expedited determina-
8 tion of that issue from the Board.

9 “(b) Such a carrier shall establish such a rate and
10 provide service upon such request without regard to
11 whether the shipper has made arrangements for transpor-
12 tation for any other part of that movement.

13 “(c)(1) If the Board determines, under section 10707
14 of this title, that such a rail carrier has market dominance
15 between the origin and destination, the bottleneck rate es-
16 tablished for transportation pursuant to this section must
17 be reasonable.

18 “(2)(A) Not later than one year after the date of en-
19 actment of the Surface Transportation Board Reauthor-
20 ization Act of 2011, the Board shall establish and main-
21 tain standards for determining whether a bottleneck rate
22 established by a rail carrier is reasonable for purposes of
23 this section and establish a simplified and expedited meth-
24 od for determining the reasonableness of challenged bottle-
25 neck rates. In developing those standards the Board shall

1 consider rail carriers' need to earn adequate revenues to
2 provide and sustain consistent, efficient, and reliable
3 transportation services and to maintain the national rail
4 system.

5 “(B) In developing the standards, the Board shall in-
6 clude, as part of a reasonable rate—

7 “(i) operating costs, including any additional
8 labor costs, of providing the requested transpor-
9 tation service over the bottleneck segment;

10 “(ii) maintenance costs associated with pro-
11 viding the requested transportation service;

12 “(iii) additional capital and investment costs re-
13 quired to perform the requested transportation serv-
14 ice over the bottleneck segment;

15 “(iv) a reasonable return on embedded capital
16 used for the requested transportation service over
17 the bottleneck segment sufficient to meet the rail
18 carrier's cost of capital or, if such cost is not avail-
19 able, the rail industry cost of capital;

20 “(v) a reasonable contribution, to the extent ap-
21 propriate, to that carrier's network infrastructure
22 costs of the non-bottleneck segment of the route of-
23 fered by the incumbent rail carrier that is sufficient,
24 along with other traffic on the segment, to maintain
25 the non-bottleneck segment; and

1 “(vi) any other contributing factors appropriate
2 to meet the consideration in subparagraph (A).

3 “(d) In any proceeding in which a rail customer chal-
4 lenges a bottleneck rate established under this section as
5 unreasonable, the burden of proof that the rate is reason-
6 able shall be on the rail carrier.

7 “(e) In this section:

8 “(1) The term ‘bottleneck rate’ means a rate
9 for transportation over a bottleneck segment.

10 “(2) The term ‘bottleneck segment’ means the
11 rail facilities, including rail facilities located entirely
12 in terminal areas, between an origin on the carrier’s
13 system and an interchange or between a destination
14 on the carrier’s system and an interchange.

15 “(3) The term ‘interchange’ means an inter-
16 change on such a rail carrier’s system that exists on
17 the date of the shipper’s request for a rate covered
18 by this section that—

19 “(A) is practicable and would not signifi-
20 cantly adversely affect such rail carrier’s net-
21 work efficiency; and

22 “(B) would not significantly impair service
23 to other customers of such rail carrier.”.

24 (b) CONFORMING AMENDMENTS.—

1 (1) The table of contents for chapter 107 is
 2 amended by inserting after the item relating to sec-
 3 tion 10709 the following:

“10710. Bottleneck and terminal switching rates”.

4 (2) Section 10705(a)(2)(A) is amended by in-
 5 serting “10710,” after “under section”.

6 **SEC. 303. TERMINAL ACCESS.**

7 Section 11102 is amended to read as follows:

8 **“§ 11102. Use of terminal facilities**

9 “(a) For a Class I rail carrier, or other rail carrier
 10 as deemed appropriate by the Board, providing transpor-
 11 tation over which the rail carrier has market dominance
 12 pursuant to section 10707 in a terminal area, the Board
 13 may require the rail carrier to make its terminal facilities,
 14 including mainline tracks for a reasonable distance outside
 15 of that terminal, available for use by another rail carrier
 16 for such transportation.

17 “(b) The Board may only require that a rail carrier
 18 take such action under subsection (a) if the Board finds
 19 that such action—

20 “(1) would be practicable and would not signifi-
 21 cantly adversely affect the operations of the terminal
 22 or facility owned by such rail carrier or rail carriers
 23 otherwise entitled to use the terminal or facilities;

1 “(2) would not significantly adversely affect the
2 network efficiency of such rail carrier or rail carriers
3 otherwise entitled to use the terminal or facilities;

4 “(3) would not significantly impair service to
5 other customers of such rail carrier or other rail car-
6 riers entitled to use the terminal or facilities;

7 “(4) is necessary to promote the efficient oper-
8 ation of the railroad system and improve rail service;
9 and

10 “(5) is in the public interest.

11 “(c) The rail carriers required to make facilities avail-
12 able or provide service pursuant to subsection (a) are re-
13 sponsible for establishing reasonable conditions and com-
14 pensation for the use of the facilities. The compensation
15 shall be paid or adequately secured before a rail carrier
16 may begin to use the facilities of another rail carrier.

17 “(d)(1) Not later than one year after the date of en-
18 actment of the Surface Transportation Board Reauthor-
19 ization Act of 2011, the Board shall establish and main-
20 tain standards for determining whether compensation is
21 reasonable for purposes of this section and establish a sim-
22 plified and expedited method for determining the reason-
23 ableness of challenged compensation rates.

24 “(2) In developing such standards, the Board shall
25 consider rail carriers’ need to earn adequate revenues to

1 provide and sustain consistent, efficient, and reliable
2 transportation services and to maintain the national rail
3 system.

4 “(e) In developing the standards required by sub-
5 section (d), the Board shall include, as part of a reason-
6 able compensation—

7 “(1) operating costs, including any additional
8 labor costs, of providing the requested usage;

9 “(2) maintenance costs associated with pro-
10 viding the requested usage;

11 “(3) additional capital and investment costs re-
12 quired to perform the requested usage;

13 “(4) a reasonable return on embedded capital
14 employed for the requested usage of terminal facili-
15 ties sufficient to meet the rail carrier’s cost of cap-
16 ital or, if such cost is not available, the rail industry
17 cost of capital;

18 “(5) a reasonable contribution, to the extent ap-
19 propriate, to that carrier’s network infrastructure
20 costs of the route beyond the terminal facilities and
21 main line tracks made available for the requested
22 usage, that is sufficient, along with other traffic on
23 the route and mainline track, to maintain the route
24 beyond the terminal facilities and mainline tracks
25 made available for the requested usage; and

1 “(6) any other contributing factors appropriate
2 to meet the considerations in subsection (d)(2).

3 “(g) A rail carrier whose terminal facilities are re-
4 quired to be used by another rail carrier under this section
5 is entitled to recover compensation from the other rail car-
6 rier for damages sustained as the result of compliance
7 with the requirement in a civil action.

8 “(h) In any proceeding in which a rail carrier chal-
9 lenges a compensation rate established under this section
10 as unreasonable, the burden of proof that the rate is rea-
11 sonable shall be on the rail carrier whose terminal facilities
12 are required to be used by the other rail carrier.

13 “(i) If the Board requires that a rail carrier take such
14 an action under subsection (a), the Board shall provide
15 for the protection of the interests of employees affected
16 thereby, consistent with the level of protection under sec-
17 tion 10902 of this title.

18 “(j) The Board shall complete any proceeding under
19 this section within 180 days after the closing of the evi-
20 dentiary record. The Board may extend the deadline in
21 incremental 30-day periods if it issues a decision dem-
22 onstrating why such an extension is necessary.”.

23 **SEC. 304. SERVICE.**

24 Section 11101 is amended—

1 (1) by redesignating subsection (f) as sub-
2 section (g); and

3 (2) by inserting after subsection (e) the fol-
4 lowing:

5 “(f) The Board shall, by regulation, require rail car-
6 riers to publish reasonable common carrier service expect-
7 tation ranges. These may include ranges for normal car
8 cycle times, transit times, switching frequency, and other
9 service components as determined by the Board to be ap-
10 propriate.”.

11 **SEC. 305. ARBITRATION OF CERTAIN RAIL RATE, PRACTICE,**
12 **AND COMMON CARRIER SERVICE EXPECTA-**
13 **TION DISPUTES.**

14 (a) IN GENERAL.—Chapter 117, as amended by sec-
15 tion 301, is further amended by adding at the end the
16 following:

17 **“§ 11709. Arbitration of certain rail rate, practice,**
18 **and common carrier service disputes**

19 “(a) IN GENERAL.—Not later than one year after en-
20 actment of the Surface Transportation Board Reauthor-
21 ization Act of 2011, the Board shall promulgate regula-
22 tions to establish a binding arbitration process to resolve
23 rail rate, practice, and common carrier service expectation
24 complaints subject to the jurisdiction of the Board.

1 “(b) COVERED DISPUTES.—The binding arbitration
2 process—

3 “(1) shall apply to disputes involving rates,
4 practices, and common carrier service expectations
5 subject to the jurisdiction of the Board;

6 “(2) shall not apply to disputes to obtain the
7 grant, denial, stay or revocation of any license, au-
8 thorization or exemption, to prescribe for the future
9 any conduct, rules, or results of general, industry-
10 wide applicability, or to enforce labor protective con-
11 ditions; and

12 “(3) shall not apply to disputes solely between
13 2 or more rail carriers.

14 “(c) ARBITRATION PROCEDURES.—

15 “(1) The Board—

16 “(A) may make the binding arbitration
17 process available only to the relevant parties—

18 “(i) after the filing of a formal com-
19 plaint; or

20 “(ii) upon petition by a party at the
21 conclusion of any informal dispute resolu-
22 tion process provided by the Board for a
23 complaint subject to this section;

24 “(B) with respect to rate disputes, may
25 make the binding arbitration process available

1 only to the relevant parties if the rail carrier
2 has market dominance, as determined under
3 section 10707 of this title; and

4 “(C) shall determine whether to pursue the
5 binding arbitration process no later than 30
6 days after the filing of a petition or formal
7 complaint.

8 “(2) Initiation of the binding arbitration pro-
9 cess shall preclude the Board from separately review-
10 ing a complaint or dispute related to the same rate,
11 practice, or common carrier service expectation in a
12 covered dispute involving the same parties.

13 “(3) In resolving disputes involving the reason-
14 ableness of a rail carrier’s rates, the arbitrator shall
15 consider the Board’s methodologies for setting max-
16 imum lawful rates, giving due consideration to the
17 need for differential pricing to permit a rail carrier
18 to collect adequate revenues within the meaning of
19 section 10704(a)(2) of this title.

20 “(4) In resolving disputes involving common
21 carrier service expectations, the arbitrator shall con-
22 sider service expectations as published pursuant to
23 section 11101(f).

1 “(d) ARBITRATION DECISIONS.—Any decision
2 reached in an arbitration process under this section
3 shall—

4 “(1) be consistent with subtitle IV of this title;

5 “(2) be in writing and shall contain findings of
6 fact and conclusions;

7 “(3) have no precedential effect in any other or
8 subsequent arbitration dispute; and

9 “(4) be binding upon the parties.

10 “(e) TIMELINES.—

11 “(1) The arbitrator shall be selected within 14
12 days after the Board’s decision to initiate arbitra-
13 tion.

14 “(2) The evidentiary process of the arbitration
15 process shall be completed within 90 days after the
16 date of initiation of the arbitration process, unless a
17 party requests an extension and the arbitrator
18 grants it.

19 “(3) The arbitrator shall issue a decision within
20 30 days after the close of the evidentiary record.

21 “(4) The Board may extend any of the
22 timelines in this subsection upon the agreement of
23 all parties in the dispute.

24 “(f) ARBITRATORS.—Arbitration under this section
25 shall be conducted by an arbitrator selected from a roster,

1 maintained by the Board, of persons with transportation,
2 economic regulation, professional or business experience,
3 including agriculture, in the private sector. If the parties
4 cannot mutually agree on an arbitrator, the parties shall
5 select an arbitrator from the roster by alternately striking
6 names from the roster until only 1 name remains. The
7 parties shall share the costs of the arbitration equally.

8 “(g) RELIEF.—

9 “(1) LIMITATION.—A decision under this sec-
10 tion may award the payment of damages or rate pre-
11 scriptive relief, but the value of the award may not
12 exceed \$250,000 per year and the award may not
13 cover a total time period of more than 2 years.

14 “(2) REVIEW.—The board shall periodically re-
15 view the amount in paragraph (1) and adjust it as
16 necessary to reflect inflation.

17 “(h) BOARD REVIEW.—If a party appeals an arbitra-
18 tor’s decision to the Board, the Board may review the deci-
19 sion under this section to determine if—

20 “(1) the decision is consistent with subtitle IV
21 of this title as applied by the Board; or

22 “(2) the award exceeds the limitation in sub-
23 section (g).”.

1 (b) CONFORMING AMENDMENT.—The table of con-
 2 tents for chapter 117 is amended by adding at the end
 3 following:

“11709. Arbitration of certain rail rate, practice, and common carrier service
 disputes”.

4 **SEC. 306. MAXIMUM RELIEF IN CERTAIN RATE CASES.**

5 (a) IN GENERAL.—The Board shall revise the max-
 6 imum amount of rate relief available to railroad shippers
 7 in cases brought pursuant to the methods developed under
 8 section 10701(d)(3) of title 49, United States Code, as
 9 that section existed as of the date of enactment of this
 10 Act, to be as follows—

11 (1) \$1,500,000 in a rate case brought using the
 12 Board’s “three-benchmark” procedure; and

13 (2) \$10,000,000 in a rate case brought using
 14 the Board’s “simplified stand-alone cost” procedure.

15 (b) PERIODIC REVIEW.—The Board shall periodically
 16 review the amounts established by subsection (a) and re-
 17 vise them as appropriate.

18 **SEC. 307. ADVANCE RATE CHALLENGE.**

19 The Surface Transportation Board may consider the
 20 reasonableness of a rate quoted by a rail carrier up to
 21 1 year before the date on which the rate is to take effect.

22 **SEC. 308. RATE REVIEW TIMELINES.**

23 In stand-alone cost rate challenges, the Surface
 24 Transportation Board shall comply with the following

1 timelines unless it extends them, after a request from any
2 party or in the interest of due process:

3 (1) For discovery, 150 days after the date on
4 which the challenge is initiated.

5 (2) For development of the evidentiary record,
6 155 days after that date.

7 (3) For submission of parties' closing briefs, 60
8 days after that date.

9 (4) For a final Board decision, 180 days after
10 the date on which the parties submit closing briefs.

11 **SEC. 309. REVENUE ADEQUACY STUDY.**

12 Within 180 days after the date of enactment of this
13 Act, the Surface Transportation Board shall initiate a
14 study to provide further guidance on how it will apply its
15 revenue adequacy constraint. In conducting the study the
16 Board shall provide public notice and opportunity for com-
17 ment and conduct 1 or more public hearings.

18 **SEC. 310. PUBLIC USAGE OF ABANDONED RAIL PROP-**
19 **ERTIES.**

20 Section 10905 is amended—

21 (1) by striking “other forms of mass transpor-
22 tation,” and inserting “public transportation,”;

23 (2) by striking “the properties may be sold,”
24 and inserting “the Board may require that the prop-
25 erties be sold,”;

1 (3) by striking “only under conditions” and in-
2 serting “pursuant to conditions, including the
3 amount of compensation,”; and

4 (4) by striking “The conditions may include a
5 prohibition on any such disposal” and inserting “At
6 a minimum, the Board shall prohibit any disposal of
7 such properties”.

8 **SEC. 311. TRANSACTIONS.**

9 Section 11325 is amended—

10 (1) by inserting “(1)” after “(a)” in subsection
11 (a) and redesignating paragraphs (1) through (3) as
12 subparagraphs (A) through (C);

13 (2) by adding at the end of subsection (a) the
14 following:

15 “(2) The Board may extend the time limits specified
16 in subsections (b), (c), and (d) of this section when more
17 time is necessary to complete the environmental review
18 process.”; and

19 (3) by striking “a transaction other than the
20 merger or control of at least two Class I railroads,
21 as defined by the Board, which the Board has deter-
22 mined to be of regional or national transportation
23 significance,” in subsection (c) and inserting “the
24 merger or control of one Class I railroad and at
25 least one Class II railroad, as defined by the Board,

1 or if it involves a merger or control transaction,
2 other than a transaction subject to subsection (b),
3 which the Board has determined to be of regional or
4 national transportation significance.”.

5 **SEC. 312. CONSIDERATIONS IN CONSOLIDATIONS, MERG-**
6 **ERS, AND ACQUISITIONS.**

7 Section 11324 is amended—

8 (1) by striking paragraph (5) of subsection (b)
9 and inserting the following:

10 “(5) the effect of the proposed transaction on
11 competition among rail carriers in the affected re-
12 gion or in the national rail system.”;

13 (2) by redesignating subsections (e) and (f) as
14 subsections (f) and (g), respectively;

15 (3) by striking “Board,” in subsection (d) and
16 inserting “Board, subject to subsection (e)”;

17 (4) by inserting after subsection (d) the fol-
18 lowing:

19 “(e) In considering whether to approve, deny, or ap-
20 prove with conditions a transaction covered under sub-
21 sections (b) or (d) of this section, the Board may take
22 into account any potentially significant effects of the
23 transaction on—

24 “(1) public health, safety, and the environment;
25 and

1 “(2) intercity rail passenger transportation and
2 commuter rail passenger transportation, as defined
3 by section 24102 of this title.”.

4 **SEC. 313. RAILROAD DEVELOPMENT.**

5 Section 10907(h) is amended to read as follows:

6 “(h) If a purchasing carrier under this section pro-
7 poses to sell or abandon all or any portion of a purchased
8 railroad line within 5 years after the date of sale under
9 this section, such purchasing carrier shall offer the right
10 of first refusal with respect to such line or portion thereof
11 to the carrier which sold such line under this section. The
12 offer shall be made at a price equal to the sum of the
13 price paid by such purchasing carrier to such selling car-
14 rier for such line or portion thereof and the fair market
15 value (less deterioration) of any improvements made, as
16 adjusted to reflect inflation.”.

17 **SEC. 314. REGULATORY REFORM REVIEW.**

18 (a) REVIEW.—The Comptroller General of the United
19 States shall undertake a review of the regulatory changes
20 made by this Act. The review shall include—

21 (1) a review of the Surface Transportation
22 Board’s progress in implementing the provisions of
23 this Act;

1 (2) an assessment of the impact on the rail
2 transportation system of the regulatory changes
3 made by this Act; and

4 (3) a specific analysis of the impact on railroad
5 operations, rates, competition, service, revenues,
6 maintenance, and investment resulting from the im-
7 plementation of sections 11102 and 10710 of title
8 49, United States Code, as amended and added, re-
9 spectively, by this Act.

10 (b) CONSULTATION.—In conducting this review, the
11 Comptroller General shall solicit input from the railroads,
12 railroad shippers, railroad non-profit employee labor orga-
13 nizations, the Federal Railroad Administration, and other
14 entities, as appropriate.

15 (c) REPORT TO CONGRESS.—Not later than Decem-
16 ber 31, 2013, the Comptroller General shall transmit a
17 report to the Senate Committee on Commerce, Science,
18 and Transportation and the House of Representatives
19 Committee on Transportation and Infrastructure con-
20 taining the results of the review required by this section
21 and any appropriate recommendations.

1 **TITLE IV—TECHNICAL**
2 **CORRECTIONS**

3 **SEC. 401. TECHNICAL CORRECTIONS TO PUBLIC LAW 110-**
4 **432.**

5 (a) The title of Public Law 110–432 is amended by
6 striking “Federal Railroad Safety Administration” and in-
7 serting “Federal Railroad Administration”.

8 (b) The table of contents in section 1(b) of the Rail
9 Safety Improvement Act of 2008 is amended—

10 (1) in the item relating to section 201 by strik-
11 ing “Pedestrian crossing safety” and inserting “Pe-
12 destrian safety at or near railroad passenger sta-
13 tions”; and

14 (2) in the item relating to section 403 by strik-
15 ing “Track inspection time study” and inserting
16 “Study and rulemaking on track inspection time;
17 rulemaking on concrete crossties”.

18 (c) Section 2(a)(1) of the Rail Safety Improvement
19 Act of 2008 is amended by inserting a comma after “rail-
20 road tracks at grade”.

21 (d) Section 102(a)(6) of the Rail Safety Improvement
22 Act of 2008 is amended to read as follows:

23 “(6) Improving the safety of railroad bridges,
24 tunnels, and related infrastructure to prevent acci-
25 dents, incidents, injuries, and fatalities caused by

1 catastrophic and other failures of such infrastruc-
2 ture.”.

3 (e) Section 108(f)(1) of the Rail Safety Improvement
4 Act of 2008 is amended by striking “requirements for rec-
5 ordkeeping and reporting for Hours of Service of Railroad
6 Employees” and inserting “requirements for record keep-
7 ing and reporting for hours of service of railroad employ-
8 ees”.

9 (f) Section 201 of the Rail Safety Improvement Act
10 of 2008 is amended—

11 (1) in the section heading by striking “**PE-**
12 **DESTRIAN CROSSING SAFETY.**” and in-
13 sserting “**PEDESTRIAN SAFETY AT OR**
14 **NEAR RAILROAD PASSENGER STA-**
15 **TIONS.**”;

16 (2) by striking “strategies and methods to pre-
17 vent pedestrian accidents, incidents, injuries, and fa-
18 talities at or near passenger stations, including—”
19 and inserting “strategies and methods to prevent
20 train-related accidents, incidents, injuries, and fa-
21 talities that involve a pedestrian at or near a rail-
22 road passenger station, including—”; and

23 (3) in paragraph (1) by striking “at railroad
24 passenger stations”.

1 (g) Section 206(a) of the Rail Safety Improvement
2 Act of 2008 is amended by striking “Public Service An-
3 nouncements” and inserting “public service announce-
4 ments”.

5 (h) Section 403 of the Rail Safety Improvement Act
6 of 2008 is amended—

7 (1) in the section heading by striking
8 **“TRACK INSPECTION TIME STUDY.”** and
9 inserting **“STUDY AND RULEMAKING ON**
10 **TRACK INSPECTION TIME; RULE-**
11 **MAKING ON CONCRETE CROSSTIES.”**;
12 and

13 (2) in subsection (d)—

14 (A) by striking “CROSS TIES” in the sub-
15 section heading and inserting “CROSSTIES”;

16 (B) by striking “cross ties” and inserting
17 “crossties”; and

18 (C) in paragraph (2) by striking “cross
19 tie” and inserting “crosstie”.

20 (i) Section 405 of the Rail Safety Improvement Act
21 of 2008 is amended—

22 (1) in subsection (a) by striking “cell phones,”
23 and inserting “cellular telephones,”; and

24 (2) in subsection (d) by striking “of Transpor-
25 tation”.

1 (j) Section 411(a) of the Rail Safety Improvement
2 Act of 2008 is amended—

3 (1) by striking “5101(a)” and inserting
4 “5105(a)”;

5 (2) by striking “5101(b)” and inserting
6 “5105(b)”.

7 (k) Section 412 of the Rail Safety Improvement Act
8 of 2008 is amended by striking “of Transportation”.

9 (l) Section 414 of the Rail Safety Improvement Act
10 of 2008 is amended—

11 (1) in paragraph (2) by striking “parts” and
12 inserting “sections”;

13 (2) by striking “part 1520.5” and inserting
14 “section 1520.5”.

15 (m) Section 416 of the Rail Safety Improvement Act
16 of 2008 is amended—

17 (1) by striking “of Transportation”;

18 (2) in paragraphs (3) and (4), by striking
19 “Federal Railroad Administration” and inserting
20 “Secretary”;

21 (3) in paragraph (4) by striking “subsection”
22 and inserting “section”.

23 (n) Section 417(c) of the Rail Safety Improvement
24 Act of 2008 is amended by striking “each railroad” and
25 inserting “each railroad carrier”.

1 (o) Section 503 of the Rail Safety Improvement Act
2 of 2008 is amended—

3 (1) in subsection (a) by striking “rail acci-
4 dents,” and inserting “rail passenger accidents,”;
5 and

6 (2) by adding at the end the following:

7 “(d) DEFINITIONS.—In this section, the terms ‘pas-
8 senger’, ‘rail passenger accident’, and ‘rail passenger car-
9 rier’ have the meaning given those terms by section 1139
10 of title 49, United States Code.

11 “(e) FUNDING.—Out of funds appropriated pursuant
12 to section 20117(a)(1)(A) of title 49, United States Code,
13 there shall be made available to the Secretary of Transpor-
14 tation \$500,000 for fiscal year 2009 to carry out this sec-
15 tion. Amounts made available pursuant to this subsection
16 shall remain available until expended.”.

17 (p) Section 206(a) of the Passenger Rail Investment
18 and Improvement Act of 2008 is amended by inserting
19 “of this division” after “302”.

20 (q) Section 211 of the Passenger Rail Investment and
21 Improvement Act of 2008 is amended—

22 (1) by inserting “of this division” after
23 “101(e)” in subsection (d); and

24 (2) by inserting “of this division” after
25 “101(d)” in subsection (e).

1 (r) Section 1139 is amended—

2 (1) in subsection (a)(1) by striking “phone
3 number” and inserting “telephone number”;

4 (2) in subsection (a)(2) by striking “post trau-
5 ma” and inserting “post-trauma”;

6 (3) in subsections (h)(1)(A) and (h)(2)(A) by
7 striking “interstate”;

8 (4) in subsections (h)(1)(B) and (h)(2)(B)—

9 (A) by striking “interstate or intrastate”;

10 and

11 (B) by striking “26105” and inserting
12 “26106(b)(4)”;

13 (5) in subsection (j)(1) by striking “(other than
14 subsection (g))” and inserting “(other than sub-
15 sections (g) and (k))”; and

16 (6) in paragraphs (1) and (2) of subsection (j)
17 by striking “railroad passenger accident” and insert-
18 ing “rail passenger accident”.

19 (s) Section 10909(b) is amended by striking “Rail-
20 road” and inserting “Railroads”.

21 (t) Section 20109 is amended—

22 (1) by striking “the railroad shall promptly ar-
23 range” in subsection (c)(1) and inserting “the rail-
24 road carrier shall promptly arrange”;

1 (2) by inserting “subsection” after “under” in
2 subsection (d)(2)(A)(i); and

3 (3) by inserting “section” after “set forth in”
4 in subsection (d)(2)(A)(iii).

5 (u) Section 20120(a) is amended—

6 (1) in paragraph (2)(G), by inserting “and” at
7 the end; and

8 (2) in paragraph (5)(B) by striking “Adminis-
9 trative Hearing Officer or Administrative Law
10 Judge” and inserting “administrative hearing officer
11 or administrative law judge”.

12 (v) Section 20151(d)(1) is amended by striking “to
13 drive around a grade crossing gate” and inserting “to
14 drive through, around, or under a grade crossing gate”.

15 (w) Section 20152(b) is amended by striking “rail
16 carriers” and inserting “railroad carriers”.

17 (x) Section 20156 is amended—

18 (1) in subsection (c) by inserting a comma after
19 “In developing its railroad safety risk reduction pro-
20 gram”; and

21 (2) in subsection (g)(1) by striking “non-profit”
22 and inserting “nonprofit”.

23 (y) Section 20157(a)(1) is amended—

24 (1) by striking “Class I railroad carrier” and
25 inserting “Class I railroad”; and

1 (2) by striking “parts” and inserting “sec-
2 tions”.

3 (z) Section 20158(b)(3) is amended by striking
4 “20156(e)(2)” and inserting “20156(e)”.

5 (aa) Section 20159 is amended by inserting “of
6 Transportation” after “the Secretary”.

7 (bb) Section 20160 is amended—

8 (1) in subsection (a)(1) by striking “or with re-
9 spect to” and inserting “with respect to”; and

10 (2) in subsection (b)(1)(A) by striking “or with
11 respect to” and inserting “with respect to”.

12 (cc) Section 20162(a)(3) is amended by striking
13 “railroad compliance with Federal standards” and insert-
14 ing “railroad carrier compliance with Federal standards”.

15 (dd) Section 20164(a) is amended by striking “Rail-
16 road Safety Enhancement Act of 2008,” and inserting
17 “Rail Safety Improvement Act of 2008,”.

18 (ee) Section 21102(c)(4) is amended by re-desig-
19 nating subparagraphs (C) and (D) as subparagraphs (B)
20 and (C), respectively.

21 (ff) Section 22106(b) is amended by striking “inter-
22 est thereof” and inserting “interest thereon”.

23 (gg) Section 24105(e) of title 49, United States Code,
24 is amended by striking “section 301 of the Passenger Rail

1 Investment and Improvement Act of 2008” and inserting
2 “section 24406”.

3 (hh) Section 24302(a)(3) is amended by striking “5
4 individuals” and inserting “4 individuals”.

5 (ii) Section 24316 is amended by striking subsection
6 (g).

7 (jj) The item relating to section 24316 in the table
8 of contents for chapter 243 is amended by striking “to
9 assist families of passengers” and inserting “to address
10 needs of families of passengers”.

11 (kk) Section 24402 is amended—

12 (1) by striking “22506” in subsection (d) and
13 inserting “22706”; and

14 (2) by striking subsection (e) and inserting the
15 following:

16 “(e) AMTRAK ELIGIBILITY.—Amtrak may be the re-
17 cipient of a grant under this section if Amtrak has entered
18 into a cooperative agreement with 1 or more applicants
19 to carry out 1 or more projects on a State rail plan’s list
20 of rail capital projects developed under section
21 22705(a)(5) of this title. For such a grant, Amtrak may
22 not use Federal funds authorized under section 101(a) or
23 (c) of the Passenger Rail Investment and Improvement
24 Act of 2008 to fulfill the non-Federal share requirements
25 under subsection (g) of this section.”;

1 (4) by striking “AND EARLY SYSTEMS WORK
2 AGREEMENTS” in the heading of subsection (f);

3 (5) by striking “A metropolitan planning orga-
4 nization, State transportation department, or other
5 project sponsor” in subsection (i)(1) and inserting
6 “An applicant”; and

7 (6) by striking subsection (k) and inserting the
8 following:

9 “(k) SMALL CAPITAL PROJECTS.—The Secretary
10 shall make not less than 5 percent annually available from
11 the amounts appropriated under section 24406 beginning
12 in fiscal year 2009 for grants for capital projects eligible
13 under this section not exceeding \$2,000,000, including
14 costs eligible under section 209(d) of the Passenger Rail
15 Investment and Improvement Act of 2008. For grants
16 awarded under this subsection, the Secretary may waive
17 requirements of this section, including State rail plan re-
18 quirements, as appropriate.”.

19 (l) Section 24403(b)(1) is amended by striking
20 “oversee the construction of such projects.” and inserting
21 “for activities to award and oversee the implementation
22 of such projects.”.

23 (mm) Section 24702(a) is amended by striking “not
24 included in the national rail passenger transportation sys-
25 tem”.

1 (nn) Section 24706 is amended—

2 (1) by striking “a discontinuance under section
3 24704 or or” in subsection (a)(1);

4 (2) by striking “section 24704 or” in subsection
5 (a)(2); and

6 (3) by striking “section 24704 or” in subsection
7 (b).

8 (oo) Section 24709 is amended by striking “The Sec-
9 retary of the Treasury and the Attorney General,” and
10 inserting “The Secretary of Homeland Security,”.

11 (pp) Section 24905(f)(1) is amended—

12 (1) in subparagraph (C) by striking “freight
13 carriers” and inserting “freight railroad carriers”;
14 and

15 (2) in subparagraph (F) by striking “rail
16 labor;” and inserting “representatives of nonprofit
17 employee labor organizations representing railroad
18 employees;”.

19 (rr) Section 26106(e)(4) is amended by striking
20 “22506” and inserting “22706”.

21 **TITLE V—MISCELLANEOUS**

22 **SEC. 501. EFFECTIVE DATES.**

23 (a) IN GENERAL.—Except as provided in subsection
24 (b), this Act shall take effect on the date of enactment.

1 (b) SECTION 214.—The amendments made by sec-
2 tion 214 shall take effect 2 years after the date of enact-
3 ment of this Act.

○