

111TH CONGRESS
1ST SESSION

S. 2889

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

IN THE SENATE OF THE UNITED STATES

DECEMBER 16, 2009

Mr. ROCKEFELLER (for himself, Mrs. HUTCHISON, Mr. LAUTENBERG, Mr. THUNE, and Mr. DORGAN) 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 2009”.

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.

- 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. Pipeline investigative authority.
- Sec. 502. Carbon dioxide pipelines.
- Sec. 503. Effective dates; effect on existing rate prescriptions.

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

8 **TITLE I—ADMINISTRATIVE**
 9 **PROVISIONS**

10 **SEC. 101. AUTHORIZATION OF APPROPRIATIONS.**

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

13 “(1) \$37,670,000 for fiscal year 2010;

14 “(2) \$44,683,000 for fiscal year 2011;

15 “(3) \$37,857,000 for fiscal year 2012;

16 “(4) \$41,190,000 for fiscal year 2013; and

17 “(5) \$44,690,000 for fiscal year 2014.”.

18 **SEC. 102. BOARD MEMBERS.**

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

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

22 (2) by striking “2 members” in paragraph (1)
 23 and inserting “3 members”; and

24 (3) by striking paragraph (2) and inserting the
 25 following:

1 “(2) At any given time, at least 3 members of the
2 Board shall be individuals with professional standing and
3 demonstrated knowledge in the fields of transportation,
4 transportation regulation, or economic regulation, and at
5 least 2 members shall be individuals with professional or
6 business experience (including agriculture or other rail
7 customers) in the private sector.”.

8 (b) REPEAL OF HOLDOVER LIMITATION.—Section
9 701(b) is amended by striking “qualified, but for a period
10 not to exceed one year.” in paragraph (3) and inserting
11 “qualified.”.

12 (c) REPEAL OF OBSOLETE PROVISION.—Section
13 701(b) is amended—

14 (1) by striking paragraph (4) and redesignating
15 paragraphs (5), (6), and (7) as paragraphs (4), (5),
16 and (6), respectively; and

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

21 **SEC. 103. ESTABLISHMENT OF BOARD AS INDEPENDENT**
22 **AGENCY.**

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

1 “(a) ESTABLISHMENT OF BOARD.—The Surface
2 Transportation Board is an independent establishment of
3 the United States Government.”.

4 (b) CONFORMING AMENDMENTS.—

5 (1) ADMINISTRATIVE PROVISIONS.—Section 703
6 is amended—

7 (A) by striking subsections (a), (c), (f),
8 and (g);

9 (B) by redesignating subsections (b), (d),
10 and (e) as subsections (a), (b), and (c), respec-
11 tively; and

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

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

1 for congressional hearings, or comments on legislation to
2 any officer or agency of the United States for approval,
3 comments, or review, prior to the submission of such rec-
4 ommendations, testimony, or comments to the Congress.”.

5 (2) ADMINISTRATIVE SUPPORT.—

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

8 (B) The table of contents for chapter 7 is
9 amended by striking the item relating to section
10 725.

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

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

15 **“§ 725. Filing fees**

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

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

“725. Filing fees”.

1 **SEC. 105. REPEAL OF EXPIRED AND OBSOLETE PROVI-**
 2 **SIONS.**

3 (a) **CONTRACT LIMITATION.**—Section 10709 is
 4 amended by striking subsection (h).

5 (b) **AGENT IN D.C.**—

6 (1) Section 723 is amended—

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

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

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

13 **SEC. 106. DEPARTMENT OF TRANSPORTATION INSPECTOR**
 14 **GENERAL AUTHORITY.**

15 (a) **IN GENERAL.**—Subchapter II of chapter 7 is
 16 amended—

17 (1) by redesignating section 727 as section 728;
 18 and

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

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

21 “(a) **IN GENERAL.**—The Inspector General of the
 22 Department of Transportation, in accordance with the
 23 mission of the Inspector General to prevent and detect
 24 fraud and abuse, shall have authority to review only the
 25 financial management, property management, and busi-
 26 ness operations of the Surface Transportation Board, in-

1 cluding internal accounting and administrative control
2 systems, to determine compliance with applicable Federal
3 laws, rules, and regulations.

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

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

13 “(2) issue findings and recommendations for
14 actions to address such problems; and

15 “(3) report periodically to the Senate Com-
16 mittee on Commerce, Science, and Transportation
17 and the House of Representatives Committee on
18 Transportation and Infrastructure on any progress
19 made in implementing actions to address such prob-
20 lems.

21 “(c) ACCESS TO INFORMATION.—In carrying out this
22 section, the Inspector General may exercise authorities
23 granted to the Inspector General under subsections (a)
24 and (b) of section 6 of the Inspector General Act of 1978
25 (5 U.S.C. App.).

1 “(d) AUTHORIZATIONS OF APPROPRIATIONS.—

2 “(1) FUNDING.—There are authorized to be ap-
3 propriated to the Secretary of Transportation for
4 use by the Inspector General of the Department of
5 Transportation such sums as may be necessary to
6 cover expenses associated with activities pursuant to
7 the authority exercised under this section.

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

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

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

16 **SEC. 107. RAILROAD-SHIPPER TRANSPORTATION ADVISORY**

17 **COUNCIL.**

18 Section 726 is amended—

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

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

23 (3) by adding at the end of subsection (a)(2)
24 the following:

1 “(C) the ninth voting member shall be a
 2 member-at-large, and may be a representative
 3 of rail labor, a State or local transportation
 4 agency, an academic institution, or other rel-
 5 evant entity selected by the Chairman.”;

6 (4) by striking the second sentence of sub-
 7 section (a)(4); and

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

16 **TITLE II—AUTHORITY** 17 **IMPROVEMENTS**

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

19 Section 10101 is amended to read as follows:

20 **“§ 10101. Rail transportation policy**

21 “In regulating the railroad industry, it is the policy
 22 of the United States Government to balance the following
 23 objectives:

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

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

4 “(3) To protect rail shippers and to maintain
5 reasonable rates where there is an absence of effective
6 competition and where rail rates provide revenues
7 that exceed the amount necessary to maintain
8 and expand the rail system and to attract capital.

9 “(4) To foster the continuation and expansion
10 of a sound rail transportation system while also preserving
11 effective competition among rail carriers and
12 with other modes to meet the needs of the public
13 and National defense.

14 “(5) To ensure that rail carriers can earn adequate
15 revenues to provide and sustain consistent, efficient,
16 and reliable transportation services and to
17 maintain and expand rail infrastructure, equipment,
18 and technology.

19 “(6) To prohibit predatory pricing and practices,
20 avoid undue concentrations of market power,
21 and to prohibit unlawful discrimination.

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

1 “(8) To advance the environmental and energy
2 efficiency advantages of rail transportation and en-
3 courage energy conservation and environmentally-re-
4 sponsible practices among rail carriers.

5 “(9) To foster intercity and commuter rail pas-
6 senger service.

7 “(10) To encourage fair wages and safe and
8 suitable working conditions in the railroad indus-
9 try.”.

10 **SEC. 202. OFFICE OF PUBLIC ASSISTANCE, GOVERNMENTAL**
11 **AFFAIRS, AND COMPLIANCE.**

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

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

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

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

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

23 “(1) mediate disputes between affected parties;

24 “(2) monitor rail carrier operations subject to
25 the Board’s jurisdiction to ensure that such oper-

1 ations are in compliance with each rail carrier’s stat-
2 utory and regulatory responsibilities;

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

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

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

9 “(b) CUSTOMER ADVOCATE.—The Board shall ap-
10 point a rail customer advocate who shall report directly
11 to the Board. The rail customer advocate—

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

14 “(2) shall serve as a technical advisor to a rail
15 customer in any appropriate proceeding of the
16 Board;

17 “(3) shall advise the Board in certain matters,
18 as appropriate;

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

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

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

1 “(c) OMBUDSMAN.—The Board may designate an
 2 employee of the Board to serve as an ombudsman of the
 3 Board in regional or local matters of Board interest, in-
 4 cluding matters related to railroad service, mergers and
 5 acquisitions, or any other matter designated by the
 6 Board.”.

7 (b) CONFORMING AMENDMENT.—The table of con-
 8 tents for chapter 7, as amended by section 106 of this
 9 Act, is amended by striking the item relating to section
 10 728 and inserting the following:

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

11 **SEC. 203. INVESTIGATIVE AUTHORITY.**

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

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

23 **SEC. 204. COMPILATION OF COMPLAINTS.**

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

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

3 **“§704. Reports”;**

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

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

7 “(b) COMPLAINTS.—

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

10 “(2) The Board shall post a quarterly report of
11 formal and informal service complaints received by
12 the Board during the previous quarter that shall in-
13 clude—

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

15 “(B) the geographic region of the com-
16 plaint; and

17 “(C) the resolution of the complaint, if ap-
18 propriate.

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

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

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

“704. Reports”.

4 **SEC. 205. EXEMPT TRAFFIC.**

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

6 (1) by striking “the Board, to the maximum ex-
 7 tent consistent with this part, shall” in subsection
 8 (a) and inserting “the Board shall”; and

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

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

22 (1) revise any such exemptions as necessary on
 23 the basis of the Board’s findings and conclusions
 24 from the study; and

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

3 **SEC. 206. RAILROAD SERVICE METRICS AND PERFORM-**
4 **ANCE DATA.**

5 (a) REPORTING REQUIREMENTS.—Within 2 years
6 after the date of enactment of this Act, the Surface Trans-
7 portation Board shall require Class I railroad carriers and
8 other railroad carriers, as appropriate, to regularly report
9 railroad service metrics and other performance data as
10 prescribed by the Board. The metrics and data may in-
11 clude transportation cycle times and transit times and
12 variations in such times, average train speed, and terminal
13 dwell time by type of traffic and by geographic area and
14 other metrics, as determined by the Board.

15 (b) CONFIDENTIALITY.—The Board shall ensure that
16 metrics submitted pursuant to this section and data and
17 deemed confidential by the Board are appropriately pro-
18 tected.

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

20 (a) STUDY.—Within 180 days after the date of enact-
21 ment of this Act, the Surface Transportation Board shall
22 initiate a proceeding to examine the Uniform Railroad
23 Costing System. The examination shall consider matters
24 deemed appropriate by the Board.

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

7 (c) INTERIM REPORT.—Within 18 months after the
8 date of enactment of this Act, the Board shall submit an
9 interim report on its progress on the proceeding to the
10 Senate Committee on Commerce, Science, and Transpor-
11 tation and the House of Representatives Committee on
12 Transportation and Infrastructure.

13 (d) MOVEMENT-SPECIFIC ADJUSTMENTS.—Until the
14 Board updates, revises, or replaces the system pursuant
15 to subsection (b), or thereafter at the discretion of the
16 Board, parties may make reasonable movement-specific
17 adjustments to the variable costs calculated by the System
18 in full stand-alone cost rate challenges.

19 (e) MATERIAL CHANGE ADJUSTMENTS.—If the Sys-
20 tem is materially changed pursuant to subsection (b), the
21 Board shall develop a one-time adjustment factor to be
22 used to adjust the variable costs in rate prescriptions de-
23 termined under the changed procedures to equal those
24 that would have been obtained under the prior procedures,
25 and will apply this adjustment factor, upon request, in

1 rate prescriptions that are in effect as of the date of enact-
2 ment of this Act.

3 **SEC. 208. REPLACEMENT COST 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 to review the use of a replacement cost
7 approach to value the assets of rail facilities. The review
8 shall include matters deemed appropriate by the Board,
9 but shall include, at a minimum, consideration of the fea-
10 sibility, effectiveness, and appropriateness of using a re-
11 placement cost approach in Board proceedings where re-
12 placement costs may be relevant. In conducting the study,
13 the Board shall provide public notice and opportunity for
14 comment and conduct one or more public hearings. The
15 Board shall complete the study within 2 years after its
16 initiation.

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

23 **SEC. 209. RAIL PRACTICES STUDY.**

24 (a) STUDY.—Within 180 days after the date of enact-
25 ment of this Act, the Surface Transportation Board shall

1 initiate a study of rail practices, including switching, sur-
2 charges, penalties, demurrage, and accessorial charges. In
3 conducting the study, the Board shall provide public notice
4 and opportunity for comment and conduct one or more
5 public hearings.

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

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

13 (a) STUDY.—Within 180 days after the date of enact-
14 ment of this Act, the Surface Transportation Board shall
15 initiate a study of rail interchange rules, including car
16 service, interchange, and other operating rules adopted
17 and administered by the Association of American Rail-
18 roads and the effect of those rules on the national rail
19 system. In conducting the study, the Board shall provide
20 public notice and opportunity for comment and conduct
21 one or more public hearings.

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

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

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

4 Section 10904 is amended—

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

7 “(d)(1) Unless the Board, within 15 days after the
8 expiration of the 4-month period described in subsection
9 (c), finds that one or more financially responsible persons
10 (including a governmental authority) have offered finan-
11 cial assistance and established a reasonable likelihood of
12 freight rail service, public transportation, or intercity rail
13 passenger transportation over that part of the railroad line
14 to be abandoned or over which all rail transportation is
15 to be discontinued, abandonment or discontinuance may
16 be carried out in accordance with section 10903.”; and

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

19 **SEC. 212. ADVERSE ABANDONMENTS.**

20 Section 10903 is amended—

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

23 “(a)(1) An application relating to the abandonment
24 of or discontinuance of operation of all rail transportation
25 over any part of a railroad line shall be filed with the

1 Board. An abandonment or discontinuance may be carried
2 out only as authorized under this chapter.”;

3 (2) by striking “When a rail carrier providing
4 transportation subject to the jurisdiction of the
5 Board under this part files an application, the appli-
6 cation” in subsection (a)(2) and inserting “An appli-
7 cation filed under this section”;

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

10 (4) by striking “(C)(i)” in subsection (a)(2)(C)
11 and inserting “(C) if filed by a rail carrier, (i)”;

12 (5) by striking “The rail carrier shall—” in
13 subsection (a)(3) and inserting “The applicant
14 shall—”.

15 **SEC. 213. EMERGENCY SERVICE ORDERS.**

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

21 **SEC. 214. RATE AGREEMENTS.**

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

1 **“§ 10706. Rate agreements**

2 “(a) IN GENERAL.—In any proceeding in which it is
3 alleged that a carrier was a party to an agreement, con-
4 spiracy, or combination in violation of the Sherman Act
5 (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12 et
6 seq.), sections 73 and 74 of the Wilson Tariff Act (15
7 U.S.C. 8 and 9), or the Act of June 19, 1936 (15 U.S.C.
8 13, 13a, 13b, and 21a) or of any similar State law, proof
9 of an agreement, conspiracy, or combination may not be
10 inferred from evidence that two or more rail carriers acted
11 together with respect to an interline rate or related matter
12 and that a party to such action took similar action with
13 respect to a rate or related matter on another route or
14 traffic.

15 “(b) INADMISSIBLE EVIDENCE.—In any proceeding
16 in which such a violation is alleged, evidence of a discus-
17 sion or agreement between or among such rail carrier and
18 one or more other rail carriers, or of any rate or other
19 action resulting from such discussion or agreement, shall
20 not be admissible if the discussion or agreement concerned
21 an interline movement of the rail carrier, and the discus-
22 sion or agreement would not, considered by itself, violate
23 the laws referred to in subsection (a).

24 “(c) DETERMINATION BY COURT.—In any such pro-
25 ceeding before a jury, the court shall determine whether

1 the requirements of subsection (b) are satisfied before al-
 2 lowing the introduction of any such evidence.”.

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

“10706. Rate agreements”.

6 **SEC. 215. MISCELLANEOUS PROVISIONS.**

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

9 “(3) The Board shall maintain a simplified and expe-
 10 dited method for determining the reasonableness of chal-
 11 lenged rates in those cases in which a full stand-alone cost
 12 presentation is too costly, given the value of the case.”.

13 (b) EXPEDITIOUS HANDLING.—Section 10704(d) is
 14 amended by striking the first sentence and inserting “The
 15 Board shall maintain procedures to ensure expeditious
 16 handling of challenges to the reasonableness of railroad
 17 rates.”.

18 **TITLE III—REGULATORY**
 19 **REFORM**

20 **SEC. 301. PAPER BARRIERS.**

21 (a) INTERCHANGE COMMITMENT DEFINED.—Section
 22 10102 is amended—

23 (1) by redesignating paragraphs (4) through
 24 (10) as paragraphs (5) through (11), respectively;
 25 and

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

3 “(4) ‘interchange commitment’ means a con-
4 tractual agreement between two or more rail carriers
5 subject to the jurisdiction of the Board reached as
6 part of a sale or lease of a rail line for which the
7 approval of the Board is required under chapter 109
8 or 113 of this part, which limits the incentive or the
9 ability of the purchaser or tenant rail carrier to
10 interchange traffic with a rail carrier other than the
11 seller or lessor rail carrier;”.

12 (b) AUTHORIZING AN ACQUISITION OR OPERATION
13 TRANSACTION.—

14 (1) Section 10901(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 subsection (a)(4) that includes inter-
18 change commitments or other mechanisms restrict-
19 ing the purchaser’s or tenant’s ability to interchange
20 with any other carrier unless such commitments or
21 mechanisms are reasonable and in the public inter-
22 est.”.

23 (2) Section 10902(c) is amended by adding at
24 the end thereof “The Board may not issue a certifi-
25 cate authorizing an acquisition or operation trans-

1 action under this section that includes interchange
 2 commitments or other mechanisms restricting the
 3 purchaser's or tenant's ability to interchange with
 4 any other carrier unless such commitments or mech-
 5 anisms are reasonable and in the public interest.”.

6 (3) Section 11323 is amended by adding at the
 7 end thereof the following:

8 “(d) The Board may not authorize an acquisition or
 9 operation transaction under this section that includes
 10 interchange commitments or other mechanisms restricting
 11 the purchaser's or tenant's ability to interchange with any
 12 other carrier unless such commitments or mechanisms are
 13 reasonable and in the public interest.”.

14 (c) RIGHTS AND REMEDIES OF PERSONS INJURED
 15 BY INTERCHANGE COMMITMENTS.—Chapter 117 is
 16 amended by adding at end thereof the following:

17 **“§ 11708. Interchange commitments: rights and rem-
 18 edies**

19 “(a) IN GENERAL.—The Board shall maintain a
 20 process to allow persons to challenge existing interchange
 21 commitments as contrary to other provisions of this part.
 22 The Attorney General and the Secretary of Transportation
 23 may participate in such proceedings.

24 “(b) ACCESS TO INTERCHANGE COMMITMENTS.—
 25 After the filing of a complaint or petition, the Board shall

1 provide affected persons access, upon request, to existing
2 and proposed interchange commitments, subject to condi-
3 tions protecting the confidentiality of those agreements.

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

7 “(d) PURCHASE AUTHORITY.—

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

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

12 “(B) the purchaser or tenant rail carrier
13 and the seller or lessor rail carrier cannot bring
14 the interchange commitment into compliance
15 with this part within a reasonable period of
16 time,

17 the Board may require, upon application by the pur-
18 chaser or tenant rail carrier, the elimination of the
19 interchange commitment at a price paid by the pur-
20 chaser or tenant rail carrier not less than the terms
21 established under paragraph (2).

22 “(2) TERMS.—In the case of an interchange
23 commitment subject to elimination under paragraph
24 (1), the Board shall determine the fair market value
25 of an interchange commitment by considering—

1 “(A) any credits, payments, expenses, or
2 other income paid and due from the inter-
3 change commitment to the seller or lessor rail
4 carrier;

5 “(B) reasonable financial hardships of the
6 purchaser or tenant rail carrier due to unrea-
7 sonable terms, if any, of the interchange agree-
8 ment; and

9 “(C) other relevant factors as determined
10 by the Board.

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

15 “(4) PURCHASER PRECONDITIONS.—Any pur-
16 chaser or tenant rail carrier that buys out an inter-
17 change commitment under this subsection may de-
18 termine preconditions, such as payment of a subsidy,
19 which must be met by shippers in order to obtain
20 service over such lines, but such rail carrier must
21 notify the shippers on the line of its intention to im-
22 pose such preconditions.

23 “(5) EXCEPTION.—If the Board requires the
24 elimination of an interchange commitment under
25 paragraph (1), and the purchaser or tenant rail car-

1 rier or the seller or lessor rail carrier demonstrates
 2 that the sale or lease agreement containing the
 3 interchange commitment that contains a provision
 4 governing the manner in which the agreement may
 5 be terminated, the Board shall permit the agreement
 6 to be terminated in accordance with that provision.

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

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

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

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

21 (d) RAILROAD REHABILITATION AND IMPROVEMENT
 22 FINANCING.—

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

1 (A) by striking “or” after the semicolon in
2 subparagraph (B);

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

5 (C) by inserting after subparagraph (C)
6 the following:

7 “(D) provide financial assistance to pur-
8 chase or lease a rail line subject to terms estab-
9 lished by the Surface Transportation Board
10 under section 11708(d) of title 49, United
11 States Code.”.

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

14 (A) by adding at the end of subsection (e)
15 the following:

16 “(3) INTEREST RATE REDUCTION.—Subject to
17 the availability of funds authorized by subsection
18 (k), the Secretary may reduce the interest to be paid
19 on direct loans provided to a Class II or Class III
20 rail carrier for the purpose of subsection
21 (b)(1)(D).”;

22 (B) in subsection (f)(1)—

23 (i) by inserting “or private insurance,
24 including bond insurance,” after “in part
25 credit risk”; and

1 (ii) by inserting “or insurance, includ-
 2 ing bond insurance,” after “authority and
 3 credit risk”;

4 (C) by striking “amounts.” in subsection
 5 (f)(3) and inserting “amounts or, at the discre-
 6 tion of the Secretary, in a series of payments
 7 over the term of the loan. If insurance, includ-
 8 ing bond insurance, is used, the policy premium
 9 shall be paid before the loan is disbursed.”; and

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

11 “(k) AUTHORIZATION OF APPROPRIATIONS.—There
 12 are authorized to be appropriated to the Secretary for pur-
 13 poses of carrying out subsection (e)(3) such funds as may
 14 be necessary for fiscal years 2010 through 2014.”.

15 (e) INTERCHANGE COMMITMENT RELIEF GRANTS.—
 16 Chapter 201 is amended by adding at end thereof the fol-
 17 lowing:

18 “§ 20168. **Interchange commitment relief grants**

19 “(a) IN GENERAL.—Upon application, the Secretary
 20 of Transportation, in consultation with the Surface Trans-
 21 portation Board, may make grants available to assist any
 22 Class III rail carrier providing transportation subject to
 23 the jurisdiction of the Surface Transportation Board with
 24 the credit risk premium of a direct loan or loan guarantee
 25 made for the purposes of section 502(b)(1)(D) of the Rail-

1 road Revitalization and Regulatory Reform Act of 1976
2 (45 U.S.C. 822(b)(1)(D)).

3 “(b) LIMITATIONS.—The Secretary of Transpor-
4 tation—

5 “(1) shall award grants only to applicants with
6 financial need; and

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

11 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated to the Secretary of
13 Transportation for grants under this section \$37,500,000
14 for fiscal years 2010 through 2014.”.

15 (f) CONFORMING AMENDMENTS.—

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

“11708. Interchange commitments: rights and remedies”.

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

“20168. Interchange commitment relief grants”.

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

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

1 **“§ 10710. Bottleneck and terminal switching rates**

2 “(a) A Class I rail carrier, or other rail carrier as
3 deemed appropriate by the Board, that provides a rate for
4 transportation between an origin and destination either as
5 a single line movement or as part of an interline movement
6 and over which the carrier has market dominance pursu-
7 ant to section 10707 shall, upon the reasonable request
8 of a rail customer, establish a bottleneck rate for the pur-
9 pose of providing transportation over a bottleneck segment
10 located between such an origin and destination pursuant
11 to this section. If the rail carrier contends that the trans-
12 portation is not subject to market dominance under that
13 section, the rail carrier shall seek an expedited determina-
14 tion of that issue from the Board.

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

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

24 “(2)(A) Not later than one year after the date of en-
25 actment of the Surface Transportation Board Reauthor-
26 ization Act of 2009, the Board shall establish and main-

1 tain standards for determining whether a bottleneck rate
2 established by a rail carrier is reasonable for purposes of
3 this section and establish a simplified and expedited meth-
4 od for determining the reasonableness of challenged bottle-
5 neck rates. In developing those standards the Board shall
6 consider rail carriers' need to earn adequate revenues to
7 provide and sustain consistent, efficient, and reliable
8 transportation services and to maintain the national rail
9 system.

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

12 “(i) operating costs, including any additional
13 labor costs, of providing the requested transpor-
14 tation service over the bottleneck segment;

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

17 “(iii) additional capital and investment costs re-
18 quired to perform the requested transportation serv-
19 ice over the bottleneck segment;

20 “(iv) a reasonable return on embedded capital
21 used for the requested transportation service over
22 the bottleneck segment sufficient to meet the rail
23 carrier's cost of capital or, if such cost is not avail-
24 able, the rail industry cost of capital;

1 “(v) a reasonable contribution, to the extent ap-
2 propriate, to that carrier’s network infrastructure
3 costs of the non-bottleneck segment of the route of-
4 fered by the incumbent rail carrier that is sufficient,
5 along with other traffic on the segment, to maintain
6 the non-bottleneck segment; and

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

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

13 “(e) In this section:

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

16 “(2) The term ‘bottleneck segment’ means the
17 rail facilities, including rail facilities located entirely
18 in terminal areas, between an origin on the carrier’s
19 system and an interchange or between a destination
20 on the carrier’s system and an interchange.

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

1 “(A) is practicable and would not signifi-
2 cantly adversely affect such rail carrier’s net-
3 work efficiency; and

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

6 (b) CONFORMING AMENDMENTS.—

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

“10710. Bottleneck and terminal switching rates”.

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

12 **SEC. 303. TERMINAL ACCESS.**

13 Section 11102 is amended to read as follows:

14 **“§ 11102. Use of terminal facilities**

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

23 “(b) The Board may only require that a rail carrier
24 take such action under subsection (a) if the Board finds
25 that such action—

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

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

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

11 “(4) is necessary to promote the efficient oper-
12 ation of the railroad system and improve rail service;
13 and

14 “(5) is in the public interest.

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

21 “(d)(1) Not later than one year after the date of en-
22 actment of the Surface Transportation Board Reauthor-
23 ization Act of 2009, the Board shall establish and main-
24 tain standards for determining whether compensation is
25 reasonable for purposes of this section and establish a sim-

1 plified and expedited method for determining the reason-
2 ableness of challenged compensation rates.

3 “(2) In developing such standards, the Board shall
4 consider rail carriers’ need to earn adequate revenues to
5 provide and sustain consistent, efficient, and reliable
6 transportation services and to maintain the national rail
7 system.

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

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

13 “(2) maintenance costs associated with pro-
14 viding the requested usage;

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

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

22 “(5) a reasonable contribution, to the extent ap-
23 propriate, to that carrier’s network infrastructure
24 costs of the route beyond the terminal facilities and
25 main line tracks made available for the requested

1 usage, that is sufficient, along with other traffic on
2 the route and mainline track, to maintain the route
3 beyond the terminal facilities and mainline tracks
4 made available for the requested usage; and

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

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

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

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

22 “(j) The Board shall complete any proceeding under
23 this section within 180 days after the closing of the evi-
24 dentiary record. The Board may extend the deadline in

1 incremental 30-day periods if it issues a decision dem-
 2 onstrating why such an extension is necessary.”.

3 **SEC. 304. SERVICE.**

4 Section 11101 is amended—

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

7 (2) by inserting after subsection (e) the fol-
 8 lowing:

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

15 **SEC. 305. ARBITRATION OF CERTAIN RAIL RATE, PRACTICE,**
 16 **AND COMMON CARRIER SERVICE EXPECTA-**
 17 **TION DISPUTES.**

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

21 **“§ 11709. Arbitration of certain rail rate, practice,**
 22 **and common carrier service disputes**

23 “(a) IN GENERAL.—Not later than one year after en-
 24 actment of the Surface Transportation Board Reauthor-
 25 ization Act of 2009, the Board shall promulgate regula-

1 tions to establish a binding arbitration process to resolve
2 rail rate, practice, and common carrier service expectation
3 complaints subject to the jurisdiction of the Board.

4 “(b) COVERED DISPUTES.—The binding arbitration
5 process—

6 “(1) shall apply to disputes involving rates,
7 practices, and common carrier service expectations
8 subject to the jurisdiction of the Board;

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

15 “(3) shall not apply to disputes solely between
16 2 or more rail carriers.

17 “(c) ARBITRATION PROCEDURES.—

18 “(1) The Board—

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

21 “(i) after the filing of a formal com-
22 plaint; or

23 “(ii) upon petition by a party at the
24 conclusion of any informal dispute resolu-

1 tion process provided by the Board for a
2 complaint subject to this section;

3 “(B) with respect to rate disputes, may
4 make the binding arbitration process available
5 only to the relevant parties if the rail carrier
6 has market dominance, as determined under
7 section 10707 of this title; and

8 “(C) shall determine whether to pursue the
9 binding arbitration process no later than 30
10 days after the filing of a petition or formal
11 complaint.

12 “(2) Initiation of the binding arbitration proc-
13 ess shall preclude the Board from separately review-
14 ing a complaint or dispute related to the same rate,
15 practice, or common carrier service expectation in a
16 covered dispute involving the same parties.

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

24 “(4) In resolving disputes involving common
25 carrier service expectations, the arbitrator shall con-

1 sider service expectations as published pursuant to
2 section 11101(f).

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

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

7 “(2) be in writing and shall contain findings of
8 fact and conclusions;

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

11 “(4) be binding upon the parties.

12 “(e) TIMELINES.—

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

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

21 “(3) The arbitrator shall issue a decision within
22 30 days after the close of the evidentiary record.

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

1 “(f) ARBITRATORS.—Arbitration under this section
2 shall be conducted by an arbitrator selected from a roster,
3 maintained by the Board, of persons with transportation,
4 economic regulation, professional or business experience,
5 including agriculture, in the private sector. If the parties
6 cannot mutually agree on an arbitrator, the parties shall
7 select an arbitrator from the roster by alternately striking
8 names from the roster until only 1 name remains. The
9 parties shall share the costs of the arbitration equally.

10 “(g) RELIEF.—

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

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

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

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

24 “(2) if the award limitation in subsection (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” and
19 inserting “strategies and methods to prevent train-
20 related accidents, incidents, injuries, and fatalities
21 that involve a pedestrian at or near a railroad pas-
22 senger 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 “Secretary of
25 Transportation” and inserting “Secretary”.

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 “Secretary of Transpor-
9 tation” and inserting “Secretary”.

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

12 (1) in paragraph (2) by striking “parts 171.8,
13 173.115,” and inserting “sections 171.8, 173.115,”;
14 and

15 (2) by striking “part 1520.5” and inserting
16 “section 1520.5”.

17 (m) Section 416 of the Rail Safety Improvement Act
18 of 2008 is amended—

19 (1) by striking “Secretary of Transportation”
20 and inserting “Secretary”;

21 (2) in paragraphs (3) and (4), by striking
22 “Federal Railroad Administration” and inserting
23 “Secretary”; and

24 (3) in paragraph (4) by striking “subsection”
25 and inserting “section”.

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

4 (o) Section 503 of the Rail Safety Improvement Act
5 of 2008 is amended—

6 (1) in subsection (a) by striking “rail acci-
7 dents” and inserting “rail passenger accidents”; and

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

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

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

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

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

24 (1) by inserting “of this division” after
25 “101(e)” in subsection (d); and

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

3 (r) Section 1139 is amended—

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

6 (2) in subsection (a)(2) by striking “post trau-
7 ma communication with families” and inserting
8 “post-trauma communication with families”;

9 (3) in subsection (h)(1)(A) by striking “inter-
10 state”;

11 (4) in subsection (h)(2)(A)—

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

13 and

14 (B) by striking “26105” and inserting
15 “26106(b)(4)”;

16 (5) in subsection (j)(1) by striking “(other than
17 subsection (g))” and inserting “(other than sub-
18 sections (g) and (k))”; and

19 (6) in paragraphs (1) and (2) of subsection (j)
20 by striking “railroad passenger accident” and insert-
21 ing “rail passenger accident”.

22 (s) Section 10909(b) is amended by striking “Clean
23 Railroad Act of 2008,” and inserting “Clean Railroads
24 Act of 2008,”.

1 (t) Section 20109(c)(1) is amended by striking “the
2 railroad shall promptly arrange” and inserting “the rail-
3 road carrier shall promptly arrange”.

4 (u) Section 20120(a) is amended—

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

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

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

14 (w) Section 20152(b) is amended by striking “Class
15 II and Class III rail carriers” and inserting “Class II and
16 III 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 171.8, 173.115, and
2 173.132” and inserting “sections 171.8, 173.115,
3 and 173.132”.

4 (z) Section 20158(b)(3) is amended by striking
5 “20156(e)(2)” and inserting “20156(e)”.

6 (aa) Section 20159 is amended by striking “the Sec-
7 retary” and inserting “the Secretary of Transportation”.

8 (bb) Section 20160 is amended—

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

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

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

16 (dd) Section 20164(a) is amended by striking “the
17 Railroad Safety Enhancement Act of 2008” and inserting
18 “the Rail Safety Improvement Act of 2008”.

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

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

24 (gg) Section 24105(e) of title 49, United States Code,
25 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”;

14 (2) by striking “22504(a)(5)” in subsection (e)
15 and inserting “22705(a)(5)”;

16 (3) by striking subsection (e) and inserting the
17 following:

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

1 Act of 2008 to fulfill the non-Federal share requirements
2 under subsection (g) of this section.”;

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

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

9 (6) by striking subsection (k) and inserting the
10 following:

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

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

1 (mm) Section 24405(b)(2) is amended by striking
2 “43 16 U.S.C. 151” and inserting “45 U.S.C. 151”.

3 (nn) Section 24702(a) is amended by striking “not
4 included in the national rail passenger transportation sys-
5 tem”.

6 (oo) Section 24706 is amended—

7 (1) by striking “a discontinuance under section
8 24704 or” in subsection (a)(1);

9 (2) by striking “section 24704 or” in subsection
10 (a)(2); and

11 (3) by striking “section 24704 or” under sub-
12 section (b).

13 (pp) Section 24709 is amended by striking “The Sec-
14 retary of the Treasury and the Attorney General,” and
15 inserting “The Secretary of Homeland Security,”.

16 (qq) Section 24905(f)(1) is amended—

17 (1) in subparagraph (C) by striking “freight
18 carriers” and inserting “freight railroad carriers”;
19 and

20 (2) in subparagraph (F) by striking “rail labor”
21 and inserting “representatives of nonprofit employee
22 labor organizations representing railroad employ-
23 ees”.

24 (rr) Section 26106(e)(4) is amended by striking
25 “22506” and inserting “22706”.

1 **TITLE V—MISCELLANEOUS**

2 **SEC. 501. PIPELINE INVESTIGATIVE AUTHORITY.**

3 Section 15901(a) is amended by striking “only on
4 complaint.” and inserting “on the Board’s own initiative
5 or on complaint.”.

6 **SEC. 502. CARBON DIOXIDE PIPELINES.**

7 (a) **IN GENERAL.**—Section 15301(a) is amended by
8 striking “gas, or oil.” and inserting “oil, or natural or arti-
9 ficial gases that are used primarily as a fuel or for other
10 energy purposes.”.

11 (b) **PIPELINE STUDY.**—Not later than 18 months
12 after the date of enactment of this Act, the Comptroller
13 General shall submit a study to the Senate Committee on
14 Commerce, Science, and Transportation and the House of
15 Representatives Committee on Transportation and Infra-
16 structure that analyzes the Federal and State regulatory
17 framework to support the development of pipelines for the
18 purposes of the capture, transportation, and sequestration
19 of carbon dioxide. The study shall examine the Federal
20 permitting process for new carbon dioxide pipelines, the
21 regulatory process for access, siting, eminent domain, and
22 rate regulation. In conducting the study, the Comptroller
23 General shall consult with the Surface Transportation
24 Board, the Federal Energy Regulatory Commission, and
25 other entities as appropriate.

1 **SEC. 503. EFFECTIVE DATES; EFFECT ON EXISTING RATE**
2 **PRESCRIPTONS.**

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

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

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