

116TH CONGRESS  
2D SESSION

# S. 4961

To improve the efficiency and reliability of rail transportation by reforming the Surface Transportation Board, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

DECEMBER 3, 2020

Ms. BALDWIN introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To improve the efficiency and reliability of rail transportation by reforming 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 “Rail Shipper Fairness  
5 Act of 2020”.

6 **SEC. 2. IMPROVING RAIL SERVICE.**

7 (a) COMMON CARRIER OBLIGATIONS.—Section  
8 11101(a) of title 49, United States Code, is amended by  
9 inserting “, as necessary for the efficient and reliable

1 transportation based on the shipper's reasonable service  
2 requirements," after "the transportation or service".

3 (b) EMERGENCY SERVICE ORDERS.—Section  
4 11123(b) of such title is amended by adding at the end  
5 the following:

6 “(4) The Board may issue emergency service orders  
7 that include shipments moving under contract if such  
8 shipments are part of a regional service order issued in  
9 accordance with this section.”.

10 (c) REPORTS.—Section 11145(a) of such title is  
11 amended—

12 (1) in paragraph (1), by striking “and” at the  
13 end;

14 (2) by redesignating paragraph (2) as para-  
15 graph (3); and

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

18 “(2) reports, service plans, or other documents  
19 that cover shipments moving under contract if such  
20 shipments are part of a general report, service plan,  
21 or other document that generally covers the geo-  
22 graphic area or commodity; and”.

23 (d) EQUITABLE RELIEF; DAMAGES.—Section 11704  
24 of such title is amended—

1           (1) in subsection (a), by inserting “or subjected  
2           to inadequate or deficient service” after “injured”;

3           (2) by amending subsection (b) to read as fol-  
4           lows:

5           “(b) A rail carrier providing transportation subject  
6           to the jurisdiction of the Board under this part is liable—

7           “(1) for damages sustained by a person as a re-  
8           sult of an act or omission of that carrier in violation  
9           of this part;

10           “(2) to a person for amounts charged to that  
11           person that exceed the applicable rate for the trans-  
12           portation; and

13           “(3) to a person for damages or equitable relief  
14           as a result of inadequate or deficient service in viola-  
15           tion of this part.”; and

16           (3) in subsection (c), by adding at the end the  
17           following:

18           “(3) The Board may order a rail carrier to pay dam-  
19           ages or to provide equitable relief, as appropriate, to a  
20           person subjected to inadequate or deficient service as a  
21           result of a violation of this part by that carrier.”.

22           (e) CIVIL PENALTIES.—Section 11901 of such title  
23           is amended—

24           (1) in subsection (a), by striking “\$5,000” and  
25           inserting “\$25,000”;

1           (2) in subsection (c), by striking “\$5,000” and  
2           inserting “\$25,000”; and

3           (3) in subsection (e), by striking “\$100” each  
4           place such term appears and inserting “\$1,000”.

5 **SEC. 3. IMPROVING RAIL COMPETITION.**

6           (a) RAIL TRANSPORTATION POLICY.—Section 10101  
7 of title 49, United States Code, is amended—

8           (1) by redesignating paragraphs (14) and (15)  
9           as paragraphs (15) and (16), respectively; and

10           (2) by inserting after paragraph (13) the fol-  
11           lowing:

12           “(14) to provide for and promote the protection  
13           of the shipping public from the unreasonable exer-  
14           cise of market power;”.

15           (b) RATES.—Section 10705 of such title is amended  
16 by adding at the end the following:

17           “(d) Shippers may obtain rates to or from any inter-  
18           change points of 2 or more rail carriers.”.

19           (c) MARKET DOMINANCE.—Section 10707 of such  
20 title is amended—

21           (1) in subsection (a)—

22           (A) by striking “In this section, ‘market  
23           dominance’ means” and inserting the following:

24           “(a) In this section—

1           “(1) ‘effective competition’ only includes modes  
2 of transportation with existing and supporting infra-  
3 structure; and

4           “(2) ‘market dominance’ means”; and  
5           (2) in subsection (b)—

6           (A) by inserting “A rail carrier could have  
7 market dominance even in circumstances in  
8 which a shipper is served by 2 carriers.” after  
9 “the rate applies.”; and

10           (B) by striking “rate or transportation”  
11 and inserting “rate for transportation”.

12           (d) TERMINAL FACILITIES.—Section 11102(c) of  
13 such title is amended to read as follows:

14           “(c)(1) Except as provided in paragraph (2), the  
15 Board shall require a Class I rail carrier to enter into a  
16 competitive switching agreement if a shipper or receiver,  
17 or a group of shippers or receivers, files a petition with  
18 the Board that demonstrates, to the satisfaction of the  
19 Board, that—

20           “(A) the facilities of the shipper or receiver for  
21 whom such switching is sought are served by rail  
22 only by a single, Class I rail carrier; and

23           “(B) subject to paragraph (3), there is, or can  
24 be a working interchange between—

1           “(i) the Class I rail carrier serving the  
2 shipper or receiver for whom such switching is  
3 sought; and

4           “(ii) another rail carrier within a reason-  
5 able distance of the facilities of such shipper or  
6 receiver.

7           “(2) Competitive switching may not be imposed  
8 under this subsection if—

9           “(A) either rail carrier between which such  
10 switching is to be established demonstrates that the  
11 proposed switching is not feasible or is unsafe; or

12           “(B) the presence of reciprocal switching will  
13 unduly restrict the ability of a rail carrier to serve  
14 its own shippers.

15           “(3) The requirement set forth in paragraph (1)(B)  
16 is satisfied if each facility of the shipper or receiver for  
17 which competitive switching is sought is—

18           “(A) within the boundaries of a terminal of the  
19 Class I rail carrier; or

20           “(B) within a 100-mile radius of an interchange  
21 between the Class I rail carrier and another carrier  
22 at which rail cars are regularly switched.”.

1 **SEC. 4. IMPROVING REASONABLE RATE STANDARDS.**

2 (a) BENCHMARK-BASED RATE REASONABLENESS  
3 STANDARD.—Section 10701(d) of title 49, United States  
4 Code, is amended by adding at the end the following:

5 “(4)(A) Not later than 90 days after the date of the  
6 enactment of the Rail Shipper Fairness Act of 2020, the  
7 Board shall initiate a rulemaking proceeding to develop  
8 a methodology for determining the reasonableness of chal-  
9 lenged rail rates based on competitive rate benchmarking  
10 that predicts a competitive rate level based upon econo-  
11 metric models.

12 “(B) Rather than utilizing its existing Three-Bench-  
13 mark Methodology, the Board shall develop a methodology  
14 that considers competitive markets or a proxy of such  
15 markets.

16 “(C) In determining the reasonableness of a chal-  
17 lenged rate under the new benchmarking methodology de-  
18 veloped under this paragraph, the Board shall presume  
19 that a rate above the benchmark rate level is unreasonable  
20 unless the rail carrier proves that the margin above the  
21 competitive rate benchmark is necessary to allow the rail  
22 carrier to earn adequate revenues.

23 “(D) Relief under the new benchmarking method  
24 shall have no monetary limit and any rate prescription set  
25 by the Board shall remain in effect not less than 5 years.

1 “(E) The Board’s rulemaking under this paragraph  
2 shall set a standard procedural schedule for such cases,  
3 subject to necessary adjustments in particular adjudica-  
4 tions, which may not exceed 1 year.”.

5 (b) STAND-ALONE COST CASES.—Section 10702 of  
6 such title is amended—

7 (1) by inserting “(a)” before “A rail carrier”;

8 and

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

10 “(b)(1) The Board shall prohibit a rail carrier pro-  
11 viding transportation subject to the jurisdiction of the  
12 Board under this part from increasing the challenged rate  
13 for providing such transportation to rail customers while  
14 a maximum reasonable rate case brought by such rail cus-  
15 tomers is pending before the Board.

16 “(2) A rail customer may file a maximum reasonable  
17 rate case with the Board after the date that is 2 years  
18 before the date on which a common carrier shipment rate  
19 is anticipated to begin.

20 “(3) The Board may not use cross-subsidy tests in  
21 deciding stand-alone cost cases.

22 “(4) The Board shall use a market-based revenue di-  
23 visions methodology in deciding stand-alone cost cases.

24 “(5) In a stand-alone cost case, if the Board deter-  
25 mines that the rail carrier is revenue adequate, the rail



1 carrier shall have the burden of proof to demonstrate that  
2 the railroad carrier is charging a reasonable rate.”.

3 (c) CONFORMING AMENDMENT.—Section 10704 of  
4 such title is amended—

5 (1) by striking subsection (c); and

6 (2) by redesignating subsection (d) as sub-  
7 section (c).

8 (d) MARKET DOMINANCE.—Section 10707(d)(1)(B)  
9 of such title is amended by adding at the end the following  
10 “A shipper may introduce movement-specific Uniform Rail  
11 Costing System cost calculations.”.

12 **SEC. 5. PROTECTIONS FROM UNREASONABLE PRACTICES.**

13 Section 10701 of title 49, United States Code, as  
14 amended by section 4(a), is further amended by adding  
15 at the end the following:

16 “(e)(1) A rail carrier providing transportation subject  
17 to the jurisdiction of the Board under this part may not  
18 use an index when establishing fuel surcharges.

19 “(2) Any fuel surcharges imposed by the rail carrier  
20 shall be directly accounted for by changes to the carrier’s  
21 actual fuel prices. The carrier’s fuel surcharge may not  
22 be greater than the amount necessary to recover the car-  
23 rier’s incremental fuel cost increases.

1 “(3) The Board is authorized to require any rail car-  
 2 rier to report actual fuel prices as necessary to carry out  
 3 the purposes of this subsection.

4 “(4) A shipper may challenge a fuel surcharge as an  
 5 unreasonable practice under section 10702(2) if such  
 6 charges, as applied to that shipper, exceed the carrier’s  
 7 incremental fuel costs.”.

8 **SEC. 6. REPLACEMENT OF REVENUE ADEQUACY TEST.**

9 Section 10704(a)(3) of title 49, United States Code,  
 10 is amended to read as follows:

11 “(3) In calculating a rail carrier’s cost of capital, the  
 12 Board shall multiply the value of the capital by the sum  
 13 of—

14 “(A) the current annual yield on a 10-year  
 15 United States Treasury Bond; and

16 “(B) a prospective market risk premium, which  
 17 shall not exceed 5 percent per year.”.

18 **SEC. 7. GAO STUDY ON CHANGES IN FREIGHT RAILROAD**

19 **OPERATING AND SCHEDULING PRACTICES.**

20 (a) STUDY.—The Comptroller General of the United  
 21 States shall conduct a study of the impact on freight rail  
 22 shippers, Amtrak, commuter railroads, railroad employees,  
 23 and other affected parties of changes in freight railroad  
 24 operating and scheduling practices as a result of the im-  
 25 plementation of the precision scheduled railroading model.

1 (b) CONTENTS.—The study conducted pursuant to  
2 subsection (a) shall examine—

3 (1) the impacts of the precision scheduled rail-  
4 roading model on the operation of longer trains;

5 (2) the safety impacts of the reduction in work-  
6 force, including occupational injury rates, impacts to  
7 inspection frequencies and repair quality, and  
8 changes in workforce demands;

9 (3) the elimination or downsizing of yards, re-  
10 pair facilities, and other operational facilities;

11 (4) increases in demurrage or accessorial  
12 charges or other costs to shippers;

13 (5) capital expenditures for rail infrastructure;  
14 and

15 (6) the effect of changes to dispatching prac-  
16 tices and locations of dispatching centers on—

17 (A) the on-time performance of passenger  
18 trains; and

19 (B) the quality and reliability of service to  
20 freight shippers.

21 (c) REPORT.—Not later than 1 year after the date  
22 of the enactment of this Act, the Comptroller General of  
23 the United States shall submit a report to the Committee  
24 on Commerce, Science, and Transportation of the Senate  
25 and the Committee on Transportation and Infrastructure

1 of the House of Representatives summarizing the results  
2 of the study conducted pursuant subsection (a), including  
3 recommendations for addressing any negative impacts of  
4 precision scheduled railroading on freight shippers or pas-  
5 senger railroads.

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