



ARC

Alliance for Rail Competition

412 First St. S.E., Suite One, Washington, DC 20003
Phone (202) 484-7133, Fax: (202) 484-0770 www.railcompetition.org

Key Points in the STB Reauthorization Bill - S. 2889

In order to assist everyone in knowledge about the new Senate Bill (S. 2889) introduced on Wednesday - December 16th and receiving unanimous approval in mark up before the Senate Commerce, Science and Transportation Committee on December 17th - the following report provides analysis and the complete text of the bill as filed.

Some of the key provisions of the legislation are:

- The STB Board membership will increase from 3 to 5 and the two members are to have shipper backgrounds (with professional or business experience (including agriculture or other rail customers) in the private sector). In addition the STB is established as an independent agency and not part of the DOT as it is today
- Filing fees will be limited to that of the US District Courts that are \$350 today.
- The legislation clearly defines the objectives of the STB. It gives the railroads the right to earn an adequate return; however, rates must be reasonable to captive shippers.
- The legislation also redefines the Transportation policy - elevating competition to being one of the prime directives at the STB - while promoting a safe and efficient rail transportation system. Congressional focus is on maintaining reasonable rates where there is an absence of competition.
- Establish an Office of Public Assistance, Governmental Affairs and Compliance - to mediate, monitor and act as STB's point of contact with shippers and carriers.

- The STB is now being directed by Congress not to be a 'reactive' or 'adjudicatory' agency but to be a pro-active agency - initiating its actions on its own dealing with all aspects of rail transportation including rates and service
- The STB must also perform the following studies:
 - Within two years after enactment examine all class exemptions to determine if any should be revoked to protect shippers from railroad abuse of market power.
 - Within two years require rail carriers to report metrics on performance.
 - Within three years update or revise the Uniform Railroad Costing System (URCS).
 - Within 180 days initiate and then complete within 2 years a study to determine if replacement costs should be used by the railroads rather than original costs.
 - Within 180 days start studies on Rail Practice and Interchange. Then report to Congress within 180 days after completing the studies.
- The legislation also addressed key issues raised by captive shippers:
 - Paper barriers will not be allowed except if they are in the public interest.
 - Bottleneck rates must be quoted by the railroad. The burden of proof for the rate will be shifted to the railroad. However, the STB may determine a level of recovery of lost profits for the railroad.
 - The STB may require terminal access for one railroad to access another railroad's terminal. Rates and conditions for terminal access must be developed within one year of enactment of legislation.
- In challenging rates the following changes have been made:
 - Large rate cases must be completed within 1.5 years. Today nearly 3 years is expected to complete a case.
 - In small rate cases the maximum relief under the Three-Benchmark test increases from \$1 million to \$1.5.
 - For Simplified Stand Alone Cases the increase is from \$5 million to \$10 million.
 - The legislation provides for a "binding arbitration" process on rates, service and common carrier expectations. The level of settlement is limited to \$250,000 a year and not to exceed two years in length. The list of arbitrators will be maintained by the STB. The timeline to complete the arbitration is:

- After STB approves arbitration, the arbitrator must be chosen within 14 days
- Submit evidence within 90 days.
- Decision by arbitrator within 30 days after close of evidence.
- The Board has the duty to periodically review these maximum award levels and increase them when necessary.

S.2889

Surface Transportation Board Reauthorization Act of 2009 (Introduced in Senate)

SEC. 102. BOARD MEMBERS.

(a) MEMBERSHIP- Section 701(b) is amended--

- (1) by striking `3 members,' in paragraph (1) and inserting `5 members,';
- (2) by striking `2 members' in paragraph (1) and inserting `3 members'; and
- (3) by striking paragraph (2) and inserting the following:

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

(b) REPEAL OF HOLDOVER LIMITATION- Section 701(b) is amended by striking `qualified, but for a period not to exceed one year.' in paragraph (3) and inserting `qualified.'

(c) REPEAL OF OBSOLETE PROVISION- Section 701(b) is amended--

- (1) by striking paragraph (4) and redesignating paragraphs (5), (6), and (7) as paragraphs (4), (5), and (6), respectively; and
- (2) by striking `In the case of an individual who becomes a member of the Board pursuant to paragraph (4), or an individual' in paragraph (4), as redesignated, and inserting `An individual'.

SEC. 103. ESTABLISHMENT OF BOARD AS INDEPENDENT AGENCY.

(a) IN GENERAL- Section 701(a) is amended to read as follows:

`(a) Establishment of Board- The Surface Transportation Board is an independent establishment of the United States Government.'

(b) Conforming Amendments-

(1) ADMINISTRATIVE PROVISIONS- Section 703 is amended--

- (A) by striking subsections (a), (c), (f), and (g);
- (B) by redesignating subsections (b), (d), and (e) as subsections (a), (b), and (c), respectively; and

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

`(d) SUBMISSIONS AND TRANSMITTALS- Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget estimate, or other budget information, legislative recommendation, prepared testimony for congressional hearings, or comment on legislation to the President or to the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. No officer or agency of the United States shall have any authority to require the Board to submit its budget requests or estimates, legislative recommendations, prepared testimony for congressional hearings, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.'

(2) ADMINISTRATIVE SUPPORT-

- (A) Subchapter II of chapter 7 is amended by striking section 725.
- (B) The table of contents for chapter 7 is amended by striking the item relating to section 725.

SEC. 104. FILING FEES FOR CERTAIN CASES.

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

` 725. Filing fees

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

(b) CONFORMING AMENDMENT- The table of contents for chapter 7 is amended by inserting after the item relating to section 724 the following:

`725. Filing fees'.

SEC. 105. REPEAL OF EXPIRED AND OBSOLETE PROVISIONS.

(a) CONTRACT LIMITATION- Section 10709 is amended by striking subsection (h).

(b) Agent in D.C.-

(1) Section 723 is amended--

(A) by striking `in the District of Columbia,' in subsection (a); and

(B) by striking `in the District of Columbia' in subsection (c).

(2) Section 724(a) is amended by striking `in the District of Columbia' each place it appears.

SEC. 106. DEPARTMENT OF TRANSPORTATION INSPECTOR GENERAL AUTHORITY.

(a) IN GENERAL- Subchapter II of chapter 7 is amended--

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

(2) by inserting after section 726 the following:

` 727. Authority of the Inspector General

`(a) IN GENERAL- The Inspector General of the Department of Transportation, in accordance with the mission of the Inspector General to prevent and detect fraud and abuse, shall have authority to review only the financial management, property management, and business operations of the Surface Transportation Board, including internal accounting and administrative control systems, to determine compliance with applicable Federal laws, rules, and regulations.

`(b) DUTIES- In carrying out this section, the Inspector General shall--

`(1) keep the Chairman of the Board and the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure fully and currently informed about problems relating to administration of the internal accounting and administrative control systems of the Board;

`(2) issue findings and recommendations for actions to address such problems; and

`(3) report periodically to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on any progress made in implementing actions to address such problems.

`(c) ACCESS TO INFORMATION- In carrying out this section, the Inspector General may exercise authorities granted to the Inspector General under subsections (a) and (b) of section 6 of the Inspector General Act of 1978 (5 U.S.C. App.).

`(d) Authorizations of Appropriations-

` (1) FUNDING- There are authorized to be appropriated to the Secretary of Transportation for use by the Inspector General of the Department of Transportation such sums as may be necessary to cover expenses associated with activities pursuant to the authority exercised under this section.

` (2) REIMBURSABLE AGREEMENT- In the absence of an appropriation under this subsection for an expense referred to in paragraph (1), the Inspector General and the Board shall have a reimbursable agreement to cover such expense.'

(b) CONFORMING AMENDMENT- The table of contents for chapter 7 is amended by striking the item relating to section 701 and inserting the following:

` 727. Authority of the Inspector General

` 728. Definitions'

SEC. 107. RAILROAD-SHIPPER TRANSPORTATION ADVISORY COUNCIL.

Section 726 is amended--

(1) by striking `and' after the semicolon in subsection (a)(2)(A);

(2) by striking `railroads.' in subsection (a)(2)(B) and inserting `railroads; and';

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

` (C) the ninth voting member shall be a member-at-large, and may be a representative of rail labor, a State or local transportation agency, an academic institution, or other relevant entity selected by the Chairman.');

(4) by striking the second sentence of subsection (a)(4); and

(5) by striking the first sentence of subsection (f)(4) and inserting `The Council shall prepare an annual report concerning its activities and the results of Council efforts to resolve railroad and shipper issues and shall include in the report at least one recommendation to the Board stemming from the Council's activities and any proposal regarding regulations or legislation it considers appropriate.'

TITLE II--AUTHORITY IMPROVEMENTS

SEC. 201. RAIL TRANSPORTATION POLICY UPDATE.

Section 10101 is amended to read as follows:

` 10101. Rail transportation policy

` In regulating the railroad industry, it is the policy of the United States Government to balance the following objectives:

` (1) To promote a safe and efficient rail transportation system.

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

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

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

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

- ` (6) To prohibit predatory pricing and practices, avoid undue concentrations of market power, and to prohibit unlawful discrimination.
- ` (7) To provide fair and expeditious regulatory decisions and ensure that the regulatory process is accessible and cost-effective for all affected parties.
- ` (8) To advance the environmental and energy efficiency advantages of rail transportation and encourage energy conservation and environmentally-responsible practices among rail carriers.
- ` (9) To foster intercity and commuter rail passenger service.
- ` (10) To encourage fair wages and safe and suitable working conditions in the railroad industry.'

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

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

- (1) redesignating section 728 (as redesignated by section 106 of this Act) as section 729; and
- (2) by inserting after section 727 the following:

` 728. Office of Public Assistance, Governmental Affairs, and Compliance

` (a) IN GENERAL- The Board shall maintain an Office of Public Assistance, Governmental Affairs, and Compliance with authority over public assistance and outreach, governmental affairs, and compliance. The Office shall--

- ` (1) mediate disputes between affected parties;
- ` (2) monitor rail carrier operations subject to the Board's jurisdiction to ensure that such operations are in compliance with each rail carrier's statutory and regulatory responsibilities;
- ` (3) act as the Board's point of contact with government, public and private parties;
- ` (4) facilitate communication among stakeholders subject to the Board's jurisdiction; and
- ` (5) carry out other duties and powers prescribed by the Board.

` (b) CUSTOMER ADVOCATE- The Board shall appoint a rail customer advocate who shall report directly to the Board. The rail customer advocate--

- ` (1) shall review or investigate rail customer inquiries and complaints;
- ` (2) shall serve as a technical advisor to a rail customer in any appropriate proceeding of the Board;
- ` (3) shall advise the Board in certain matters, as appropriate;
- ` (4) shall review information regarding the cost and efficiency of rail transportation;
- ` (5) shall carry out other duties and powers prescribed by the Board; and
- ` (6) may participate as a party in a proceeding of the Board, as appropriate.

` (c) OMBUDSMAN- The Board may designate an employee of the Board to serve as an ombudsman of the Board in regional or local matters of Board interest, including matters related to railroad service, mergers and acquisitions, or any other matter designated by the Board.'

(b) CONFORMING AMENDMENT- The table of contents for chapter 7, as amended by section 106 of this Act, is amended by striking the item relating to section 728 and inserting the following:

` 728. Office of Public Assistance, Governmental Affairs, and Compliance
` 729. Definitions'.

SEC. 203. INVESTIGATIVE AUTHORITY.

- (a) AUTHORITY TO INITIATE INVESTIGATION- Section 11701(a) is amended by striking 'only on complaint.' and inserting 'on the Board's own initiative or on complaint.'
- (b) RATE PROCEEDINGS- Section 10704(b) is amended by striking the first sentence and inserting 'The Board may begin a proceeding under subsection (a)(1) on its own initiative or upon complaint, except that a proceeding to determine the reasonableness of the level of a rate charged by a carrier may only be initiated upon complaint.'

SEC. 204. COMPILATION OF COMPLAINTS.

- (a) In General- Section 704 is amended--
(1) by striking the section heading and inserting the following:

` 704. Reports';

- (2) by inserting '(a) ANNUAL REPORT- ' before 'The Board'; and
(3) by adding at the end the following:
- (b) Complaints-
- (1) The Board shall establish and maintain a database of complaints received by the Board.
 - (2) The Board shall post a quarterly report of formal and informal service complaints received by the Board during the previous quarter that shall include--
 - (A) a list of the type of each complaint;
 - (B) the geographic region of the complaint; and
 - (C) the resolution of the complaint, if appropriate.
 - (3) The quarterly report may identify a complainant that submitted an informal complaint only upon the written consent of the complainant.
 - (4) The report shall be posted on the Board's public website.'
- (b) Conforming Amendment- The table of contents for chapter 7 is amended by striking the item relating to section 704 and inserting the following:
- ' 704. Reports'.

SEC. 205. EXEMPT TRAFFIC.

- (a) IN GENERAL- Section 10502 is amended--
(1) by striking 'the Board, to the maximum extent consistent with this part, shall' in subsection (a) and inserting 'the Board shall'; and
(2) by striking 'title.' in subsection (d) and inserting 'title or to protect shippers from the abuse of market power.'
- (b) CURRENT CLASS EXEMPTIONS- Within 2 years after the date of enactment of this Act, the Surface Transportation Board shall conclude a study of class exemptions in effect on the date of enactment of this Act to determine whether any exemptions should be revoked pursuant to section 10502(d) of title 49, United States Code. In conducting the study, the Board shall provide public notice and opportunity for comment and conduct 1 or more public hearings. Upon completion of the study, the Board shall--
(1) revise any such exemptions as necessary on the basis of the Board's findings and conclusions from the study; and
(2) establish a process for the periodic review, and revision as necessary, of class exemptions.

SEC. 206. RAILROAD SERVICE METRICS AND PERFORMANCE DATA.

(a) REPORTING REQUIREMENTS- Within 2 years after the date of enactment of this Act, the Surface Transportation Board shall require Class I railroad carriers and other railroad carriers, as appropriate, to regularly report railroad service metrics and other performance data as prescribed by the Board. The metrics and data may include transportation cycle times and transit times and variations in such times, average train speed, and terminal dwell time by type of traffic and by geographic area and other metrics, as determined by the Board.

(b) CONFIDENTIALITY- The Board shall ensure that metrics submitted pursuant to this section and data and deemed confidential by the Board are appropriately protected.

SEC. 207. UNIFORM RAILROAD COSTING SYSTEM.

(a) STUDY- Within 180 days after the date of enactment of this Act, the Surface Transportation Board shall initiate a proceeding to examine the Uniform Railroad Costing System. The examination shall consider matters deemed appropriate by the Board.

(b) UPDATE- Within 3 years after the date of enactment of this Act, the Board shall update, revise, or replace the System and any related reporting of financial and operating information by rail carriers as deemed appropriate by the Board based on the examination required by subsection (a).

(c) Interim Report- Within 18 months after the date of enactment of this Act, the Board shall submit an interim report on its progress on the proceeding to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(d) Movement-Specific Adjustments- Until the Board updates, revises, or replaces the system pursuant to subsection (b), or thereafter at the discretion of the Board, parties may make reasonable movement-specific adjustments to the variable costs calculated by the System in full stand-alone cost rate challenges.

(e) Material Change Adjustments- If the System is materially changed pursuant to subsection (b), the Board shall develop a one-time adjustment factor to be used to adjust the variable costs in rate prescriptions determined under the changed procedures to equal those that would have been obtained under the prior procedures, and will apply this adjustment factor, upon request, in rate prescriptions that are in effect as of the date of enactment of this Act.

SEC. 208. REPLACEMENT COST STUDY.

(a) STUDY- Within 180 days after the date of enactment of this Act, the Surface Transportation Board shall initiate a study to review the use of a replacement cost approach to value the assets of rail facilities. The review shall include matters deemed appropriate by the Board, but shall include, at a minimum, consideration of the feasibility, effectiveness, and appropriateness of using a replacement cost approach in Board proceedings where replacement costs may be relevant. In conducting the study, the Board shall provide public notice and opportunity for comment and conduct one or more public hearings. The Board shall complete the study within 2 years after its initiation.

(b) Report to Congress- Within 180 days after completion of the study, the Board shall provide a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on its findings.

SEC. 209. RAIL PRACTICES STUDY.

(a) Study- Within 180 days after the date of enactment of this Act, the Surface Transportation Board shall initiate a study of rail practices, including switching, surcharges, penalties, demurrage, and accessorial charges. In conducting the study, the Board shall provide public notice and opportunity for comment and conduct one or more public hearings.

(b) Report to Congress- Within 180 days after completion of the study, the Board shall provide a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on its findings.

SEC. 210. RAIL CAR INTERCHANGE STUDY.

(a) Study- Within 180 days after the date of enactment of this Act, the Surface Transportation Board shall initiate a study of rail interchange rules, including car service, interchange, and other operating rules adopted and administered by the Association of American Railroads and the effect of those rules on the national rail system. In conducting the study, the Board shall provide public notice and opportunity for comment and conduct one or more public hearings.

(b) Report to Congress- Within 180 days after completion of the study, the Board shall provide a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on its findings.

SEC. 211. OFFERS OF FINANCIAL ASSISTANCE.

Section 10904 is amended--

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

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

(2) by striking `30 days' in subsection (f)(1)(A) and inserting `60 days'.

SEC. 212. ADVERSE ABANDONMENTS.

Section 10903 is amended--

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

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

(2) by striking `When a rail carrier providing transportation subject to the jurisdiction of the Board under this part files an application, the application' in subsection (a)(2) and inserting `An application filed under this section';

(3) by striking `rail carrier's' in subsection (a)(2)(A);

- (4) by striking `(C)(i)' in subsection (a)(2)(C) and inserting `(C) if filed by a rail carrier, (i)'; and
- (5) by striking `The rail carrier shall--' in subsection (a)(3) and inserting `The applicant shall--'.

SEC. 213. EMERGENCY SERVICE ORDERS.

Section 11123(c)(1) is amended by striking the second sentence and inserting `Action by the Board under subsection (a) of this section may be extended in 90-day increments until the Board finds that the emergency has ended.'.

SEC. 214. RATE AGREEMENTS.

(a) In General- Section 10706 is amended to read as follows:

` 10706. Rate agreements

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

`(b) Inadmissible Evidence- In any proceeding in which such a violation is alleged, evidence of a discussion or agreement between or among such rail carrier and one or more other rail carriers, or of any rate or other action resulting from such discussion or agreement, shall not be admissible if the discussion or agreement concerned an interline movement of the rail carrier, and the discussion or agreement would not, considered by itself, violate the laws referred to in subsection (a).

`(c) Determination by Court- In any such proceeding before a jury, the court shall determine whether the requirements of subsection (b) are satisfied before allowing the introduction of any such evidence.'.

(b) Conforming Amendment- The table of contents for chapter 107 is amended by striking the item relating to section 10706 and inserting the following:

` 10706. Rate agreements'.

SEC. 215. MISCELLANEOUS PROVISIONS.

(a) SIMPLIFIED PROCEDURE- Section 10701(d)(3) is amended to read as follows:

`(3) The Board shall maintain a simplified and expedited method for determining the reasonableness of challenged rates in those cases in which a full stand-alone cost presentation is too costly, given the value of the case.'.

(b) EXPEDITIOUS HANDLING- Section 10704(d) is amended by striking the first sentence and inserting `The Board shall maintain procedures to ensure expeditious handling of challenges to the reasonableness of railroad rates.'.

TITLE III--REGULATORY REFORM

SEC. 301. PAPER BARRIERS.

(a) Interchange Commitment Defined- Section 10102 is amended--

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

(2) by inserting after paragraph (3) the following:

`(4) `interchange commitment' means a contractual agreement between two or more rail carriers subject to the jurisdiction of the Board reached as part of a sale or lease of a rail line for which the approval of the Board is required under chapter 109 or 113 of this part, which limits the incentive or the ability of the purchaser or tenant rail carrier to interchange traffic with a rail carrier other than the seller or lessor rail carrier;'

(b) Authorizing an Acquisition or Operation Transaction-

(1) Section 10901(c) is amended by adding at the end thereof `The Board may not issue a certificate authorizing an acquisition or operation transaction under subsection (a)(4) that includes interchange commitments or other mechanisms restricting the purchaser's or tenant's ability to interchange with any other carrier unless such commitments or mechanisms are reasonable and in the public interest.'

(2) Section 10902(c) is amended by adding at the end thereof `The Board may not issue a certificate authorizing an acquisition or operation transaction under this section that includes interchange commitments or other mechanisms restricting the purchaser's or tenant's ability to interchange with any other carrier unless such commitments or mechanisms are reasonable and in the public interest.'

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

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

(c) Rights and Remedies of Persons Injured by Interchange Commitments- Chapter 117 is amended by adding at end thereof the following:

` 11708. Interchange commitments: rights and remedies

`(a) In General- The Board shall maintain a process to allow persons to challenge existing interchange commitments as contrary to other provisions of this part. The Attorney General and the Secretary of Transportation may participate in such proceedings.

`(b) Access to Interchange Commitments- After the filing of a complaint or petition, the Board shall provide affected persons access, upon request, to existing and proposed interchange commitments, subject to conditions protecting the confidentiality of those agreements.

`(c) Redress Authority- The Board shall take appropriate action to address any conflict between an interchange commitment and the provisions of this part.

`(d) Purchase Authority-

`(1) In general- Except as provided in paragraph (5), if the Board finds that--

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

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

the Board may require, upon application by the purchaser or tenant rail carrier, the elimination of the interchange commitment at a price paid by the purchaser or tenant rail carrier not less than the terms established under paragraph (2).

`(2) Terms- In the case of an interchange commitment subject to elimination under paragraph (1), the Board shall determine the fair market value of an interchange commitment by considering--

`(A) any credits, payments, expenses, or other income paid and due from the interchange commitment to the seller or lessor rail carrier;

`(B) reasonable financial hardships of the purchaser or tenant rail carrier due to unreasonable terms, if any, of the interchange agreement; and

`(C) other relevant factors as determined by the Board.

`(3) Employee protection- The Board shall require protections consistent with the requirements of section 11326(a) for rail labor employees who are affected by an action under this subsection.

`(4) Purchaser preconditions- Any purchaser or tenant rail carrier that buys out an interchange commitment under this subsection may determine preconditions, such as payment of a subsidy, which must be met by shippers in order to obtain service over such lines, but such rail carrier must notify the shippers on the line of its intention to impose such preconditions.

`(5) Exception- If the Board requires the elimination of an interchange commitment under paragraph (1), and the purchaser or tenant rail carrier or the seller or lessor rail carrier demonstrates that the sale or lease agreement containing the interchange commitment that contains a provision governing the manner in which the agreement may be terminated, the Board shall permit the agreement to be terminated in accordance with that provision.

`(6) Definitions- In this subsection:

`(A) Purchaser or tenant rail carrier- The term `purchaser or tenant rail carrier' means a Class II or Class III rail carrier that purchases or leases a rail line that is subject to terms of an interchange commitment.

`(B) Seller or lessor rail carrier- The term `seller or lessor rail carrier' means a Class I rail carrier that leased or sold a rail line subject to terms of an interchange commitment.

`(e) Deadline for completion of proceeding- The Board shall complete any proceeding under this section within 180 days after the close of the administrative record.'

(d) Railroad Rehabilitation and Improvement Financing-

(1) Section 502(b)(1) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(b)(1)) is amended--

(A) by striking `or' after the semicolon in subparagraph (B);

(B) by striking `facilities.' in subparagraph (C) and inserting `facilities; or'; and

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

`(D) provide financial assistance to purchase or lease a rail line subject to terms established by the Surface Transportation Board under section 11708(d) of title 49, United States Code.'

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

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

`(3) Interest rate reduction- Subject to the availability of funds authorized by subsection (k), the Secretary may reduce the interest to be paid on direct loans provided to a Class II or Class III rail carrier for the purpose of subsection (b)(1)(D).';

(B) in subsection (f)(1)--

(i) by inserting `or private insurance, including bond insurance,' after `in part credit risk'; and

(ii) by inserting `or insurance, including bond insurance,' after
`authority and credit risk';

(C) by striking `amounts.' in subsection (f)(3) and inserting `amounts or, at the discretion of the Secretary, in a series of payments over the term of the loan. If insurance, including bond insurance, is used, the policy premium shall be paid before the loan is disbursed.'; and

(D) by adding at the end the following:

`(k) Authorization of Appropriations- There are authorized to be appropriated to the Secretary for purposes of carrying out subsection (e)(3) such funds as may be necessary for fiscal years 2010 through 2014.'

(e) Interchange Commitment Relief Grants- Chapter 201 is amended by adding at end thereof the following:

` 20168. Interchange commitment relief grants

`(a) In General- Upon application, the Secretary of Transportation, in consultation with the Surface Transportation Board, may make grants available to assist any Class III rail carrier providing transportation subject to the jurisdiction of the Surface Transportation Board with the credit risk premium of a direct loan or loan guarantee made for the purposes of section 502(b)(1)(D) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(b)(1)(D)).

`(b) Limitations- The Secretary of Transportation--

`(1) shall award grants only to applicants with financial need; and

`(2) may approve a grant under this section only as part of an application for a Railroad Rehabilitation and Improvement Financing loan or loan guarantee.

`(c) Authorization of Appropriations- There are authorized to be appropriated to the Secretary of Transportation for grants under this section \$37,500,000 for fiscal years 2010 through 2014.'

(f) Conforming Amendments-

(1) The table of contents for chapter 117 is amended by inserting after the item relating to section 11707 the following:

` 11708. Interchange commitments: rights and remedies'.

(2) The table of contents for chapter 201 is amended by inserting after the item relating to section 20167 the following:

` 20168. Interchange commitment relief grants'.

SEC. 302. BOTTLENECK AND TERMINAL SWITCHING RATES.

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

` 10710. Bottleneck and terminal switching rates

`(a) A Class I rail carrier, or other rail carrier as deemed appropriate by the Board, that provides a rate for transportation between an origin and destination either as a single line movement or as part of an interline movement and over which the carrier has market dominance pursuant to section 10707 shall, upon the reasonable request of a rail customer, establish a bottleneck rate for the purpose of providing transportation over a bottleneck segment located between such an origin and destination pursuant to this section. If the rail carrier contends that the transportation is not subject to market dominance under that section, the rail carrier shall seek an expedited determination of that issue from the Board.

`(b) Such a carrier shall establish such a rate and provide service upon such request without regard to whether the shipper has made arrangements for transportation for any other part of that movement.

`(c)(1) If the Board determines, under section 10707 of this title, that such a rail carrier has market dominance between the origin and destination, the bottleneck rate established for transportation pursuant to this section must be reasonable.

`(2)(A) Not later than one year after the date of enactment of the Surface Transportation Board Reauthorization Act of 2009, the Board shall establish and maintain standards for determining whether a bottleneck rate established by a rail carrier is reasonable for purposes of this section and establish a simplified and expedited method for determining the reasonableness of challenged bottleneck rates. In developing those standards the Board shall consider rail carriers' need to earn adequate revenues to provide and sustain consistent, efficient, and reliable transportation services and to maintain the national rail system.

`(B) In developing the standards, the Board shall include, as part of a reasonable rate-- -
` (i) operating costs, including any additional labor costs, of providing the requested transportation service over the bottleneck segment;

` (ii) maintenance costs associated with providing the requested transportation service;

` (iii) additional capital and investment costs required to perform the requested transportation service over the bottleneck segment;

` (iv) a reasonable return on embedded capital used for the requested transportation service over the bottleneck segment sufficient to meet the rail carrier's cost of capital or, if such cost is not available, the rail industry cost of capital;

` (v) a reasonable contribution, to the extent appropriate, to that carrier's network infrastructure costs of the non-bottleneck segment of the route offered by the incumbent rail carrier that is sufficient, along with other traffic on the segment, to maintain the non-bottleneck segment; and

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

`(d) In any proceeding in which a rail customer challenges a bottleneck rate established under this section as unreasonable, the burden of proof that the rate is reasonable shall be on the rail carrier.

`(e) In this section:

`(1) The term `bottleneck rate' means a rate for transportation over a bottleneck segment.

`(2) The term `bottleneck segment' means the rail facilities, including rail facilities located entirely in terminal areas, between an origin on the carrier's system and an interchange or between a destination on the carrier's system and an interchange.

`(3) The term `interchange' means an interchange on such a rail carrier's system that exists on the date of the shipper's request for a rate covered by this section that--

`(A) is practicable and would not significantly adversely affect such rail carrier's network efficiency; and

`(B) would not significantly impair service to other customers of such rail carrier.'

(b) Conforming Amendments-

(1) The table of contents for chapter 107 is amended by inserting after the item relating to section 10709 the following:

`10710. Bottleneck and terminal switching rates'.

(2) Section 10705(a)(2)(A) is amended by inserting ` 10710,' after ` under section'.

SEC. 303. TERMINAL ACCESS.

Section 11102 is amended to read as follows:

` 11102. Use of terminal facilities

` (a) For a Class I rail carrier, or other rail carrier as deemed appropriate by the Board, providing transportation over which the rail carrier has market dominance pursuant to section 10707 in a terminal area, the Board may require the rail carrier to make its terminal facilities, including mainline tracks for a reasonable distance outside of that terminal, available for use by another rail carrier for such transportation.

` (b) The Board may only require that a rail carrier take such action under subsection (a) if the Board finds that such action--

` (1) would be practicable and would not significantly adversely affect the operations of the terminal or facility owned by such rail carrier or rail carriers otherwise entitled to use the terminal or facilities;

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

` (3) would not significantly impair service to other customers of such rail carrier or other rail carriers entitled to use the terminal or facilities;

` (4) is necessary to promote the efficient operation of the railroad system and improve rail service; and

` (5) is in the public interest.

` (c) The rail carriers required to make facilities available or provide service pursuant to subsection (a) are responsible for establishing reasonable conditions and compensation for the use of the facilities. The compensation shall be paid or adequately secured before a rail carrier may begin to use the facilities of another rail carrier.

` (d)(1) Not later than one year after the date of enactment of the Surface Transportation Board Reauthorization Act of 2009, the Board shall establish and maintain standards for determining whether compensation is reasonable for purposes of this section and establish a simplified and expedited method for determining the reasonableness of challenged compensation rates.

` (2) In developing such standards, the Board shall consider rail carriers' need to earn adequate revenues to provide and sustain consistent, efficient, and reliable transportation services and to maintain the national rail system.

` (e) In developing the standards required by subsection (d), the Board shall include, as part of a reasonable compensation-- -

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

` (2) maintenance costs associated with providing the requested usage;

` (3) additional capital and investment costs required to perform the requested usage;

` (4) a reasonable return on embedded capital employed for the requested usage of terminal facilities sufficient to meet the rail carrier's cost of capital or, if such cost is not available, the rail industry cost of capital;

` (5) a reasonable contribution, to the extent appropriate, to that carrier's network infrastructure costs of the route beyond the terminal facilities and main line tracks made available for the requested usage, that is sufficient, along with other traffic on the route and mainline track, to maintain the route beyond the terminal facilities and mainline tracks made available for the requested usage; and

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

` (g) A rail carrier whose terminal facilities are required to be used by another rail carrier under this section is entitled to recover compensation from the other rail carrier for damages sustained as the result of compliance with the requirement in a civil action.

` (h) In any proceeding in which a rail carrier challenges a compensation rate established under this section as unreasonable, the burden of proof that the rate is reasonable shall be on the rail carrier whose terminal facilities are required to be used by the other rail carrier.

` (i) If the Board requires that a rail carrier take such an action under subsection (a), the Board shall provide for the protection of the interests of employees affected thereby, consistent with the level of protection under section 10902 of this title.

` (j) The Board shall complete any proceeding under this section within 180 days after the closing of the evidentiary record. The Board may extend the deadline in incremental 30-day periods if it issues a decision demonstrating why such an extension is necessary.'.

SEC. 304. SERVICE.

Section 11101 is amended--

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following:

` (f) The Board shall, by regulation, require rail carriers to publish reasonable common carrier service expectation ranges. These may include ranges for normal car cycle times, transit times, switching frequency, and other service components as determined by the Board to be appropriate.'.

SEC. 305. ARBITRATION OF CERTAIN RAIL RATE, PRACTICE, AND COMMON CARRIER SERVICE EXPECTATION DISPUTES.

(a) In General- Chapter 117, as amended by section 301, is further amended by adding at the end the following:

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

` (a) In General- Not later than one year after enactment of the Surface Transportation Board Reauthorization Act of 2009, the Board shall promulgate regulations to establish a binding arbitration process to resolve rail rate, practice, and common carrier service expectation complaints subject to the jurisdiction of the Board.

` (b) Covered Disputes- The binding arbitration process--

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

` (2) shall not apply to disputes to obtain the grant, denial, stay or revocation of any license, authorization or exemption, to prescribe for the future any conduct, rules, or results of general, industry-wide applicability, or to enforce labor protective conditions; and

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

` (c) Arbitration Procedures-

` (1) The Board--

` (A) may make the binding arbitration process available only to the relevant parties--

` (i) after the filing of a formal complaint; or

- (ii) upon petition by a party at the conclusion of any informal dispute resolution process provided by the Board for a complaint subject to this section;
 - (B) with respect to rate disputes, may make the binding arbitration process available only to the relevant parties if the rail carrier has market dominance, as determined under section 10707 of this title; and
 - (C) shall determine whether to pursue the binding arbitration process no later than 30 days after the filing of a petition or formal complaint.
- (2) Initiation of the binding arbitration process shall preclude the Board from separately reviewing a complaint or dispute related to the same rate, practice, or common carrier service expectation in a covered dispute involving the same parties.
- (3) In resolving disputes involving the reasonableness of a rail carrier's rates, the arbitrator shall consider the Board's methodologies for setting maximum lawful rates, giving due consideration to the need for differential pricing to permit a rail carrier to collect adequate revenues within the meaning of section 10704(a)(2) of this title.
- (4) In resolving disputes involving common carrier service expectations, the arbitrator shall consider service expectations as published pursuant to section 11101(f).
- (d) Arbitration Decisions- Any decision reached in an arbitration process under this section shall--
- (1) be consistent with subtitle IV of this title;
 - (2) be in writing and shall contain findings of fact and conclusions;
 - (3) have no precedential effect in any other or subsequent arbitration dispute; and
 - (4) be binding upon the parties.
- (e) Timelines-
- (1) The arbitrator shall be selected within 14 days after the Board's decision to initiate arbitration.
 - (2) The evidentiary process of the arbitration process shall be completed within 90 days after the date of initiation of the arbitration process, unless a party requests an extension and the arbitrator grants it.
 - (3) The arbitrator shall issue a decision within 30 days after the close of the evidentiary record.
 - (4) The Board may extend any of the timelines in this subsection upon the agreement of all parties in the dispute.
- (f) Arbitrators- Arbitration under this section shall be conducted by an arbitrator selected from a roster, maintained by the Board, of persons with transportation, economic regulation, professional or business experience, including agriculture, in the private sector. If the parties cannot mutually agree on an arbitrator, the parties shall select an arbitrator from the roster by alternately striking names from the roster until only 1 name remains. The parties shall share the costs of the arbitration equally.
- (g) Relief-
- (1) Limitation- A decision under this section may award the payment of damages or rate prescriptive relief, but the value of the award may not exceed \$250,000 per year and the award may not cover a total time period of more than 2 years.
 - (2) Review- The board shall periodically review the amount in paragraph (1) and adjust it as necessary to reflect inflation.
- (h) Board Review- If a party appeals an arbitrator's decision to the Board, the Board may review the decision under this section to determine if--

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

` (2) if the award limitation in subsection (g).'

(b) Conforming Amendment- The table of contents for chapter 117 is amended by adding at the end following:

` 11709. Arbitration of certain rail rate, practice, and common carrier service disputes'.

SEC. 306. MAXIMUM RELIEF IN CERTAIN RATE CASES.

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

(1) \$1,500,000 in a rate case brought using the Board's `three-benchmark' procedure; and

(2) \$10,000,000 in a rate case brought using the Board's `simplified stand-alone cost' procedure.

(b) PERIODIC REVIEW- The Board shall periodically review the amounts established by subsection (a) and revise them as appropriate.

SEC. 307. ADVANCE RATE CHALLENGE.

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

SEC. 308. RATE REVIEW TIMELINES.

In stand-alone cost rate challenges, the Surface Transportation Board shall comply with the following timelines unless it extends them, after a request from any party or in the interest of due process:

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

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

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

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