

113TH CONGRESS  
2D SESSION

# S. 2777

To establish the Surface Transportation Board as an independent establishment, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 8, 2014

Mr. ROCKEFELLER (for himself and Mr. THUNE) 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 establish the Surface Transportation Board as an independent establishment, 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 2014”.

6 **SEC. 2. REFERENCES TO TITLE 49, UNITED STATES CODE.**

7 Except as otherwise expressly provided, wherever in  
8 this Act an amendment or repeal is expressed in terms  
9 of an amendment to, or repeal of, a section or other provi-

1 sion, the reference shall be considered to be made to a  
 2 section or other provision of title 49, United States Code.

3 **SEC. 3. ESTABLISHMENT OF SURFACE TRANSPORTATION**  
 4 **BOARD AS AN INDEPENDENT ESTABLISH-**  
 5 **MENT.**

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

8 “(a) ESTABLISHMENT.—The Surface Transportation  
 9 Board is an independent establishment of the United  
 10 States Government.”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) ADMINISTRATIVE PROVISIONS.—Section 703  
 13 is amended—

14 (A) by striking subsections (a), (c), (f),  
 15 and (g);

16 (B) by redesignating subsections (b), (d),  
 17 and (e) as subsections (a), (b), and (c), respec-  
 18 tively; and

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

20 “(d) SUBMISSIONS AND TRANSMITTALS.—Whenever  
 21 the Board submits or transmits any budget estimate,  
 22 budget request, supplemental budget estimate, or other  
 23 budget information, legislative recommendation, prepared  
 24 testimony for a congressional hearing, or comment on leg-  
 25 islation to the President or to the Office of Management

1 and Budget, it shall concurrently transmit a copy thereof  
 2 to the Committee on Commerce, Science, and Transpor-  
 3 tation of the Senate and the Committee on Transportation  
 4 and Infrastructure of the House of Representatives. No  
 5 officer or agency of the United States shall have any au-  
 6 thority to require the Board to submit its budget estimates  
 7 or requests, legislative recommendations, prepared testi-  
 8 mony for congressional hearings, or comments on legisla-  
 9 tion to any officer or agency of the United States for ap-  
 10 proval, comments, or review, prior to the submission of  
 11 the recommendations, testimony, or comments to Con-  
 12 gress.”.

13 (2) ADMINISTRATIVE SUPPORT.—

14 (A) REPEALER.—Section 725 is repealed.

15 (B) CONFORMING AMENDMENT.—The  
 16 table of contents for chapter 7 is amended by  
 17 striking the item relating to section 725.

18 **SEC. 4. SURFACE TRANSPORTATION BOARD MEMBERSHIP.**

19 (a) IN GENERAL.—Section 701(b) is amended—

20 (1) in paragraph (1)—

21 (A) by striking “3 members” and inserting  
 22 “5 members”; and

23 (B) by striking “2 members” and inserting  
 24 “3 members”; and

1           (2) by striking paragraph (2) and inserting the  
2 following:

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

11       (b) REPEAL OF HOLDOVER LIMITATION.—Section  
12 701(b)(3) is amended by striking “qualified, but for a pe-  
13 riod not to exceed one year” and inserting “qualified”.

14       (c) REPEAL OF OBSOLETE PROVISION.—Section  
15 701(b) is amended—

16           (1) by striking paragraph (4);

17           (2) by redesignating paragraphs (5), (6), and  
18 (7) as paragraphs (4), (5), and (6), respectively; and

19           (3) by striking “In the case of an individual  
20 who becomes a member of the Board pursuant to  
21 paragraph (4), or an individual” in paragraph (4),  
22 as redesignated, and inserting “In the case of an in-  
23 dividual”.

1 **SEC. 5. NONPUBLIC COLLABORATIVE DISCUSSIONS.**

2 Section 703(a), as redesignated by section 3 of this  
3 Act, is amended to read as follows:

4 “(a) OPEN MEETINGS.—

5 “(1) IN GENERAL.—The Board shall be deemed  
6 to be an agency for purposes of section 552b of title  
7 5.

8 “(2) NONPUBLIC COLLABORATIVE DISCUS-  
9 SIONS.—

10 “(A) IN GENERAL.—Notwithstanding sec-  
11 tion 552b of title 5, a majority of the members  
12 may hold a meeting that is not open to public  
13 observation to discuss official agency business  
14 if—

15 “(i) no vote or other disposition of of-  
16 ficial agency business is taken at the meet-  
17 ing;

18 “(ii) each individual present at the  
19 meeting is a member or an employee of the  
20 Board; and

21 “(iii) the General Counsel of the  
22 Board is present at the meeting.

23 “(B) DISCLOSURE OF NONPUBLIC COL-  
24 LABORATIVE DISCUSSIONS.—Except as provided  
25 under subparagraph (C), not later than 2 busi-  
26 ness days after the conclusion of a meeting

1 under subparagraph (A), the Board shall make  
2 available to the public, in a place easily acces-  
3 sible to the public—

4 “(i) a list of the individuals present at  
5 the meeting; and

6 “(ii) a summary of the matters dis-  
7 cussed at the meeting, except for any mat-  
8 ters the Board properly determines may be  
9 withheld from the public under section  
10 552b(c) of title 5.

11 “(C) ONGOING PROCEEDINGS.—If a dis-  
12 cussion under subparagraph (A) relates, di-  
13 rectly or indirectly, to an ongoing proceeding  
14 before the Board, the Board shall make the dis-  
15 closure under subparagraph (B) on the date of  
16 the final Board decision.

17 “(D) PRESERVATION OF OPEN MEETINGS  
18 REQUIREMENTS FOR AGENCY ACTION.—Noth-  
19 ing in this paragraph shall limit the applica-  
20 bility of section 552b of title 5 with respect to  
21 a meeting of the members other than that de-  
22 scribed in this paragraph.

23 “(E) STATUTORY CONSTRUCTION.—Noth-  
24 ing in this paragraph—

1                   “(i) shall limit the applicability of sec-  
 2                   tion 552b of title 5 with respect to any in-  
 3                   formation which is proposed to be withheld  
 4                   from the public under subparagraph  
 5                   (B)(ii); and

6                   “(ii) authorizes the Board to withhold  
 7                   from any individual any record that is ac-  
 8                   cessible to that individual under section  
 9                   552a of title 5, United States Code.”.

10 **SEC. 6. INVESTIGATIVE AUTHORITY.**

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

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

22           (c) **ANNUAL REPORT; INVESTIGATIONS.**—Section  
 23 704 is amended by striking “on its activities.” and insert-  
 24 ing “on its activities, including each instance in which the

1 Board has initiated an investigation on its own initiative  
2 under this chapter or subtitle IV.”.

3 **SEC. 7. PROCEDURES FOR RATE CASES.**

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

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

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

16 **SEC. 8. RATE REVIEW TIMELINES.**

17 Section 10704(d), as amended by section 7 of this  
18 Act, is further amended—

19 (1) by striking “(d) The” and inserting “(d)(1)  
20 The”; and

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

22 “(2)(A) Except as provided under subparagraph  
23 (B), in a stand-alone cost rate challenge, the Board  
24 shall comply with the following timeline:



1           “(i) For discovery, completion not  
2 later than 150 days after the date that the  
3 challenge is initiated.

4           “(ii) For development of the evi-  
5 dentiary record, completion not later than  
6 155 days after the date that discovery is  
7 complete under clause (i).

8           “(iii) For submission of a closing  
9 brief, submission not later than 60 days  
10 after the date that development of the evi-  
11 dentiary record is complete under clause  
12 (ii).

13           “(iv) For a final Board decision,  
14 issuance not later than 180 days after the  
15 date that the last closing brief is submitted  
16 under clause (iii).

17           “(B) The Board may extend a timeline  
18 under subparagraph (A) after a request from  
19 any party or in the interest of due process.”.

20 **SEC. 9. EFFECT OF RATE BUNDLING.**

21           Not later than 180 days after the date of enactment  
22 of this Act, the Surface Transportation Board shall ini-  
23 tiate an ex parte proceeding on whether contract proposals  
24 for multiple origin-to-destination movements have ad-  
25 versely impacted the intent of Congress that the Surface

1 Transportation Board’s rate challenge procedures remain  
 2 available to shippers that are subject to railroad market  
 3 dominance, and how the Board can prevent such practices  
 4 in the future.

5 **SEC. 10. REPORT ON RATE CASE METHODOLOGY.**

6 Not later than 1 year after the date of enactment  
 7 of this Act, the Surface Transportation Board shall report  
 8 to the Committee on Commerce, Science, and Transpor-  
 9 tation of the Senate and the Committee on Transportation  
 10 and Infrastructure of the House of Representatives on—

11 (1) whether current methodologies are sufficient  
 12 to address the complexity of large rate cases; and

13 (2) alternative methodologies that could stream-  
 14 line and expedite large rate cases.

15 **SEC. 11. ARBITRATION OF CERTAIN RAIL RATES, PRAC-**  
 16 **TICES, AND COMMON CARRIER SERVICE EX-**  
 17 **PECTATION DISPUTES.**

18 (a) IN GENERAL.—Chapter 117 is amended by add-  
 19 ing at the end the following:

20 **“§ 11709. Arbitration of certain rail rates, practices,**  
 21 **and common carrier service disputes**

22 “(a) IN GENERAL.—Not later than 1 year after the  
 23 date of enactment of the Surface Transportation Board  
 24 Reauthorization Act of 2014, the Board shall promulgate  
 25 regulations to establish a binding arbitration process to

1 resolve rail rate, practice, and common carrier service ex-  
 2 pectation complaints subject to the jurisdiction of the  
 3 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; and

9 “(2) shall not apply to—

10 “(A) disputes to obtain the grant, denial,  
 11 stay, or revocation of any license, authorization,  
 12 or exemption, or to prescribe for the future any  
 13 conduct, rules, or results of general, industry-  
 14 wide applicability, or to enforce a labor protec-  
 15 tive condition; and

16 “(B) disputes solely between 2 or more rail  
 17 carriers.

18 “(c) ARBITRATION PROCEDURES.—

19 “(1) IN GENERAL.—The Board—

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

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

24 “(ii) upon petition by a party at the  
 25 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 not later than 30  
10          days after the date that a petition or formal  
11          complaint is filed.

12          “(2) LIMITATION.—Initiation of the binding ar-  
13          bitration process shall preclude the Board from sep-  
14          arately reviewing a complaint or dispute related to  
15          the same rail rate, practice, or common carrier serv-  
16          ice expectation in a covered dispute involving the  
17          same parties.

18          “(3) RATES.—In resolving a covered dispute in-  
19          volving the reasonableness of a rail carrier’s rates,  
20          the arbitrator or panel of arbitrators, as applicable,  
21          shall consider the Board’s methodologies for setting  
22          maximum lawful rates, giving due consideration to  
23          the need for differential pricing to permit a rail car-  
24          rier to collect adequate revenues within the meaning  
25          of section 10704(a)(2).

1           “(4) SERVICE EXPECTATIONS.—In resolving a  
2           dispute involving common carrier service expecta-  
3           tions, the arbitrator or panel of arbitrators, as appli-  
4           cable, shall consider the rates and service terms, and  
5           any changes thereto, as published or otherwise made  
6           available under subsection (b), (c), or (d) of section  
7           11101.

8           “(d) ARBITRATION DECISIONS.—Any decision  
9           reached in an arbitration process under this section—

10           “(1) shall—

11                   “(A) be consistent with subtitle IV;

12                   “(B) be in writing;

13                   “(C) contain findings of fact and conclu-  
14                   sions; and

15                   “(D) be binding upon the parties; and

16           “(2) shall not have any precedential effect in  
17           any other or subsequent arbitration dispute.

18           “(e) TIMELINES.—

19                   “(1) SELECTION.—An arbitrator or panel of ar-  
20                   bitrators shall be selected not later than 14 days  
21                   after the date of the Board’s decision to initiate ar-  
22                   bitration.

23                   “(2) EVIDENTIARY PROCESS.—The evidentiary  
24                   process of the binding arbitration process shall be  
25                   completed not later than 90 days after the date that

1 the arbitration process is initiated, unless a party re-  
2 quests an extension and the arbitrator or panel of  
3 arbitrators, as applicable, grants it.

4 “(3) DECISION.—The arbitrator or panel of ar-  
5 bitrators, as applicable, shall issue a decision not  
6 later than 30 days after the date that the evi-  
7 dentiary record is closed.

8 “(4) EXTENSIONS.—The Board may extend any  
9 of the timelines in this subsection upon the agree-  
10 ment of all parties in the dispute.

11 “(f) ARBITRATORS.—

12 “(1) IN GENERAL.—Arbitration under this sec-  
13 tion shall be conducted by an arbitrator, or a panel  
14 of arbitrators, selected from a roster, maintained by  
15 the Board, of persons with rail transportation, eco-  
16 nomic regulation, professional or business experi-  
17 ence, including agriculture, in the private sector.

18 “(2) SELECTION.—

19 “(A) IN GENERAL.—If the parties cannot  
20 mutually agree on an arbitrator, or the lead ar-  
21 bitrator of a panel of arbitrators, the parties  
22 shall select the arbitrator or lead arbitrator  
23 from the roster by alternately striking names  
24 from the roster until only 1 name remains.

1           “(B) PANEL OF ARBITRATORS.—For pur-  
2           poses of this section, a panel of arbitrators shall  
3           be selected as follows:

4                   “(i) Notwithstanding subparagraph  
5                   (A), each party to a dispute shall select 1  
6                   arbitrator from the roster.

7                   “(ii) The parties to a dispute may  
8                   mutually select 1 arbitrator from the ros-  
9                   ter to serve as the lead arbitrator of the  
10                  panel of arbitrators.

11                  “(3) COST.—The parties shall share the costs  
12                  of the arbitration equally.

13                  “(g) RELIEF.—An arbitral decision under this sec-  
14                  tion may award the payment of damages or rate prescrip-  
15                  tive relief, but the value of the award shall be limited as  
16                  follows:

17                   “(1) For common carrier service and practice  
18                   disputes, the damage award may not exceed  
19                   \$2,000,000.

20                   “(2) For rate disputes, the damage award, in-  
21                   cluding any rate prescription, may not exceed  
22                   \$25,000,000, and any rate prescription shall be lim-  
23                   ited to not longer than 5 years from the date of the  
24                   arbitral decision.

1       “(h) BOARD REVIEW.—If a party appeals a decision  
2 under this section to the Board, the Board may review  
3 the decision under this section to determine if—

4               “(1) the decision is consistent with subtitle IV  
5 as applied by the Board; or

6               “(2) the award limitation under subsection  
7 (g).”.

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

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

11 **SEC. 12. COMPILATION OF COMPLAINTS AT SURFACE**  
12 **TRANSPORTATION BOARD.**

13       (a) IN GENERAL.—Section 704, as amended by sec-  
14 tion 6 of this Act, is further amended—

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

17 **“§ 704. Reports”;**

18               (2) by inserting “(a) ANNUAL REPORT.—” be-  
19 fore “The Board” and indenting appropriately; and

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

21       “(b) COMPLAINTS.—

22               “(1) IN GENERAL.—The Board shall establish  
23 and maintain a database of complaints received by  
24 the Board.



1           “(2) QUARTERLY REPORTS.—The Board shall  
2           post a quarterly report of formal and informal serv-  
3           ice complaints received by the Board during the pre-  
4           vious quarter that includes—

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

6                   “(B) the geographic region of each com-  
7           plaint; and

8                   “(C) the resolution of each complaint, if  
9           appropriate.

10           “(3) WRITTEN CONSENT.—The quarterly report  
11           may identify a complainant that submitted an infor-  
12           mal complaint only upon the written consent of the  
13           complainant.

14           “(4) WEBSITE POSTING.—Each quarterly re-  
15           port shall be posted on the Board’s public website.”.

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

“704. Reports.”.

19   **SEC. 13. QUARTERLY REPORTS.**

20           Not later than 60 days after the date of enactment  
21           of this Act, the Surface Transportation Board shall begin  
22           providing quarterly reports to the Committee on Com-  
23           merce, Science, and Transportation of the Senate and the  
24           Committee on Transportation and Infrastructure of the  
25           House of Representatives on the Surface Transportation

1 Board's progress toward addressing the issues raised in  
2 each unfinished regulatory proceeding, regardless of  
3 whether the proceeding is subject to a statutory or regu-  
4 latory deadline.

5 **SEC. 14. SENSE OF CONGRESS.**

6 It is the sense of Congress that—

7 (1) as part of Docket No. EP 722, the Surface  
8 Transportation Board should consider the costs and  
9 benefits of the annual determinations of revenue  
10 adequacy for Class I railroads;

11 (2) the Surface Transportation Board should  
12 review the methodology employed to define the busi-  
13 ness cycle in its annual determination of revenue  
14 adequacy and consider undertaking, if necessary, a  
15 rulemaking to define the business cycle;

16 (3) as part of Docket No. EP 711, the Surface  
17 Transportation Board should consider if a rule-  
18 making proceeding on mandatory competitive switch-  
19 ing is needed to ensure a viable competitive national  
20 rail system; and

21 (4) if the Surface Transportation Board deter-  
22 mines a rulemaking proceeding on mandatory com-  
23 petitive switching is needed, the Surface Transpor-  
24 tation Board should ensure that such rulemaking is  
25 completed in as timely a manner as possible.

1 **SEC. 15. AUTHORIZATION OF APPROPRIATIONS.**

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

4 “(1) \$33,000,000 for fiscal year 2015;

5 “(2) \$35,000,000 for fiscal year 2016;

6 “(3) \$35,500,000 for fiscal year 2017;

7 “(4) \$35,500,000 for fiscal year 2018; and

8 “(5) \$36,000,000 for fiscal year 2019.”.

9 **SEC. 16. REPEAL OF EXPIRED AND OBSOLETE PROVISIONS.**

10 (a) EXPIRED RAIL SERVICE CONTRACT LIMITA-  
11 TION.—Section 10709 is amended by striking subsection  
12 (h).

13 (b) AGENT IN THE DISTRICT OF COLUMBIA.—

14 (1) DESIGNATION OF AGENT AND SERVICE OF  
15 NOTICE.—Section 72 is amended—

16 (A) in subsection (a), by striking “in the  
17 District of Columbia,”; and

18 (B) in subsection (c), by striking “in the  
19 District of Columbia”.

20 (2) SERVICE OF PROCESS IN COURT PRO-  
21 CEEDINGS.—Section 724(a) is amended by striking  
22 “in the District of Columbia” each place it appears.

23 **SEC. 17. CONSTRUCTION.**

24 Nothing in this Act shall be construed to affect any  
25 suit commenced by or against the Surface Transportation  
26 Board, or any proceeding or challenge pending before the

1 Surface Transportation Board, prior to the date of enact-  
2 ment of this Act.

○