

114TH CONGRESS  
1ST SESSION

# S. 853

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

MARCH 24, 2015

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 2015”.

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 cover shipments moving under contract if such ship-  
8 ments are part of a regional service order issued in accord-  
9 ance 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) FINES.—Section 11901 of such title is amend-  
23           ed—

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;”.

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

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

18           (c) MARKET DOMINANCE.—Section 10707(b) of such  
19 title is amended by inserting “A rail carrier could have  
20 market dominance even in circumstances in which a ship-  
21 per is served by 2 carriers.” after “the rate applies.”.

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

24           “(c)(1) Except as provided in paragraph (2), the  
25 Board shall require a Class 1 rail carrier to enter into

1 a competitive switching agreement if a shipper or receiver,  
2 or a group of shippers or receivers, files a petition with  
3 the Board that demonstrates, to the satisfaction of the  
4 Board, that—

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

8           “(B) subject to paragraph (4), there is, or can  
9 be a working interchange between—

10           “(i) the Class I rail carrier serving the  
11 shipper or receiver for whom such switching is  
12 sought; and

13           “(ii) another rail carrier within a reason-  
14 able distance of the facilities of such shipper or  
15 receiver.

16           “(2) Competitive switching may not be imposed  
17 under this subsection if—

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

21           “(B) the presence of reciprocal switching will  
22 unduly restrict the ability of a rail carrier to serve  
23 its own shippers.

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

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

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

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

10       (a) **STAND-ALONE COST CASES.**—Section 10702 of  
11 title 49, United States Code, is amended—

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

13       and

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

15       “(b)(1) The Board shall prohibit a rail carrier pro-  
16 viding transportation subject to the jurisdiction of the  
17 Board under this part to charge the challenged rate for  
18 providing such transportation to rail customers while a  
19 maximum reasonable rate case brought by such rail cus-  
20 tomers is pending before the Board.

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

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

3       “(4) The Board shall use market-based revenue divi-  
4 sions methodology in deciding stand-alone cost cases.

5       “(5) In a stand-alone cost case, if the Board deter-  
6 mines that the rail carrier is revenue adequate, the rail  
7 carrier shall have the burden of proof to demonstrate that  
8 the railroad carrier is charging a reasonable rate.”.

9       (b) MARKET DOMINANCE.—Section 10707 of such  
10 title, as amended by section 3(c), is further amended—

11           (1) in subsection (d)(1)(B), by adding at the  
12 end the following “A shipper may introduce move-  
13 ment-specific Uniform Rail Costing System cost cal-  
14 culations.”; and

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

16       “(e) In making a determination under this section,  
17 the Board may not utilize a qualitative analysis in which  
18 the Board attempts to identify any feasible transportation  
19 alternatives that could be used by the shipper.”.

20 **SEC. 5. REVENUE ADEQUACY.**

21       (a) ELIMINATION OF REVENUE ADEQUACY TEST.—  
22 Section 10704(a) of title 49, United States Code, is  
23 amended by striking paragraph (3).

1 (b) RAILROAD COST OF CAPITAL.—Section 10704(a)  
 2 of such title, as amended by subsection (a), is further  
 3 amended by adding at the end the following:

4 “(3) In calculating a rail carrier’s cost of capital, the  
 5 Board shall multiply the value of the capital by the sum  
 6 of—

7 (A) the current annual yield on a 10-year  
 8 United States Treasury Bond; and

9 (B) a prospective market risk premium, which  
 10 shall not exceed 5 percent per year.”.

11 **SEC. 6. SURFACE TRANSPORTATION BOARD STRUCTURAL**  
 12 **CHANGES.**

13 Chapter 7 of title 49, United States Code, is amend-  
 14 ed—

15 (1) in section 701(b)—

16 (A) in paragraph (1)—

17 (i) by striking “3 members” and in-  
 18 sserting “5 members”; and

19 (ii) by striking “2 members” and in-  
 20 sserting “3 members”; and

21 (B) in paragraph (2)—

22 (i) by striking “time, at least 2 mem-  
 23 bers” and inserting the following: “time—

24 “(A) at least 2 members”; and

1 (ii) by striking “regulation, and at  
2 least one member” and inserting the fol-  
3 lowing: “regulation;

4 “(B) at least 2 members shall have a back-  
5 ground in shipping or consumer advocacy; and

6 “(C) at least 1 member”; and

7 (2) in section 703, by amending subsection (b)  
8 to read as follows:

9 “(b) MEETINGS.—

10 “(1) REGULAR MEETINGS.—The Board shall  
11 meet regularly.

12 “(2) OPEN MEETINGS.—The Board shall be  
13 deemed to be an agency of the United States Gov-  
14 ernment and subject to the provisions set forth in  
15 section 552b of title 5.”.

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