

1 (b) AMENDMENT OF TITLE 49, UNITED STATES
2 CODE.—Except as otherwise expressly provided, whenever
3 in this Act an amendment or repeal is expressed in terms
4 of an amendment to, or a repeal of, a section or other
5 provision, the reference shall be considered to be made to
6 a section or other provision of title 49, United States
7 Code.

8 **SEC. 2. CLARIFICATION OF RAIL TRANSPORTATION POL-**
9 **ICY.**

10 Section 10101 is amended—

11 (1) by inserting “(a) IN GENERAL.—” before
12 “In regulating”; and

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

14 “(b) PRIMARY OBJECTIVES.—The primary objectives
15 of the rail transportation policy of the United States are
16 as follows:

17 “(1) To maintain consistent and efficient rail
18 transportation service for shippers, including the
19 timely provision of rail cars requested by shippers.

20 “(2) To promote effective competition among
21 rail carriers at origins and destinations.

22 “(3) To maintain reasonable rates in the ab-
23 sence of effective competition.”.

24 **SEC. 3. REQUIREMENT FOR RATE QUOTES.**

25 Section 11101(a) is amended—

1 (1) by inserting “(1)” after “(a)”;

2 (2) by redesignating the second and third sen-
3 tences as paragraph (3) and indenting accordingly;
4 and

5 (3) by inserting a new paragraph (2) as follows:

6 “(2) Upon the request of a shipper, a rail carrier
7 shall establish a rate for transportation and provide serv-
8 ices requested by the shipper between any two points on
9 the system of that carrier where traffic originates, termi-
10 nates, or may reasonably be interchanged. A carrier shall
11 establish a rate and provide service upon such request
12 without regard to—

13 “(A) the location of the movement on the rail
14 system, including terminal areas;

15 “(B) whether the rate established is for part of
16 a movement between a point of origin and a destina-
17 tion;

18 “(C) whether the shipper has made arrange-
19 ments for transportation for any other part of that
20 movement; or

21 “(D) any other contract the shipper has with
22 any rail carrier for part or all of its transportation
23 needs over the route of movement.”.

1 **SEC. 4. ELIMINATION OF BARRIERS TO COMPETITION BE-**
2 **TWEEN CLASS I, CLASS II, AND CLASS III RAIL**
3 **CARRIERS.**

4 Section 10901 is amended by adding at the end the
5 following new subsection:

6 “(e)(1) The Board may not issue a certificate author-
7 izing an activity described in subsection (a), or exempt a
8 person, class of persons, or a transaction or service from
9 the applicability of this section with respect to such an
10 activity under section 10502, if the activity involves a
11 transfer of interest in a line of railroad, from a Class I
12 rail carrier to a Class II rail carrier or Class III rail car-
13 rier and the activity directly or indirectly would—

14 “(A) restrict the ability of the Class II or Class
15 III rail carrier to interchange traffic with other rail
16 carriers; or

17 “(B) restrict competition of rail carriers in the
18 region affected by the activity in a manner that
19 would violate antitrust laws of the United States.

20 “(2) Any party to an activity described in paragraph
21 (1) that was authorized by the Board within the 10-year
22 period preceding the date of enactment of this subsection,
23 and any rail shipper affected by such an activity, may re-
24 quest that the Board review the activity to determine
25 whether the activity has resulted in a restriction described
26 in paragraph (1)(A) or (B). If, upon review of the activity,

1 the Board determines that the activity resulted in such
2 a restriction, the Board shall declare the restriction to be
3 unlawful and terminate the restriction unless the Board
4 finds that the termination of the restriction would materi-
5 ally impair the ability of an affected rail carrier to provide
6 service to the public or would otherwise be inconsistent
7 with the public interest.

8 “(3) In this subsection, the term ‘antitrust laws’ has
9 the meaning given that term in subsection (a) of the first
10 section of the Clayton Act (15 U.S.C. 12(a)), except that
11 such term also means section 5 of the Federal Trade Com-
12 mission Act (15 U.S.C. 45) to the extent that section 5
13 applies to unfair methods of competition.”.

14 **SEC. 5. RECIPROCAL SWITCHING.**

15 Section 11102(c) is amended—

16 (1) in paragraph (1)—

17 (A) by striking “may require” in the first
18 sentence and inserting “shall require”; and

19 (B) by striking “may establish” in the sec-
20 ond sentence and inserting “shall establish”;
21 and

22 (2) by adding at the end the following new
23 paragraph:

24 “(3) In making any finding under paragraph (1), the
25 Board shall not require that there be evidence of anti-

1 competitive conduct by a rail carrier from which access
2 is sought.”.

3 **SEC. 6. AREAS OF INADEQUATE RAIL COMPETITION.**

4 (a) DESIGNATION AND REMEDIES.—

5 (1) IN GENERAL.—Chapter 105 is amended by
6 adding at the end the following new section:

7 **“§ 10503. Areas of inadequate rail competition**

8 “(a) IN GENERAL.—The Board shall designate any
9 State or substantial part of a State as an area of inad-
10 equate rail competition after finding that—

11 “(1) the State or substantial part of the State
12 encompasses rail shipping origins and destinations
13 that are served exclusively by one Class I railroad;
14 and

15 “(2) persons that ship by rail or receive rail
16 shipments in the State or substantial part of the
17 State—

18 “(A) pay rates for the rail shipments that
19 exceed the rates necessary to yield recovery by
20 the rail carrier of 180 percent of revenue-vari-
21 able costs, as determined under standards ap-
22 plied in the administration of section 10707(d);
23 or

24 “(B) have experienced competitive dis-
25 advantage in the marketplace or other economic

1 adversity because of high cost or poor quality of
2 rail service in the State or substantial part of
3 the State.

4 “(b) SPECIFIC COMMODITIES.—An area of inad-
5 equated rail competition may be composed of the facilities
6 of a group of shippers or receivers of one or more specific
7 commodities within a geographic area.

8 “(c) AUTHORIZED PETITIONERS.—A Governor of a
9 State, an Attorney General of a State, a Member of Con-
10 gress, and the Rail Customer Advocate of the Department
11 of Transportation are authorized to petition the Board for
12 a designation of a State or substantial part of a State
13 as an area of inadequate rail competition.

14 “(d) ACTIONS.—Upon designating a State or sub-
15 stantial part of a State as an area of inadequate rail com-
16 petition, the Board shall resolve, not later than 60 days
17 after the date of the designation, the conditions described
18 in subsection (a) that justify the designation. In taking
19 such action, the Board shall not require rates lower than
20 those necessary to yield recovery of 180 percent of rev-
21 enue-variable costs. In addition to providing other rem-
22 edies authorized by law, the Board may order any of the
23 following actions:

1 “(1) Provision of reciprocal switching and ac-
2 cess to tracks of another rail carrier beyond the lim-
3 its specified in section 11102(a).

4 “(2) Haulage transportation of railroad cars by
5 a rail carrier to or from facilities that such carrier
6 physically serves on behalf of another rail carrier,
7 for a fee prescribed by the Board.

8 “(3) Regarding rates on any rail segments
9 within or connected to the area of inadequate rail
10 competition on which rail service is susceptible to
11 delay or interruption due to traffic congestion, expe-
12 dited final offer arbitration under section 11708(e).

13 “(4) Expedited review, under guidelines estab-
14 lished under section 10701(d)(3), of the reasonable-
15 ness of—

16 “(A) increases in rates or other charges;

17 and

18 “(B) new transportation service tariffs.

19 “(5) Expedited review of whether a rate violates
20 the prohibition against discriminatory rates con-
21 tained in section 10741, without regard to sub-
22 section (b)(2) of such section.

23 “(e) PROCEDURES.—(1) In the case of a petition for
24 an order for reciprocal switching or access to tracks of
25 another rail carrier under subsection (d)(1), the Board

1 may not require that there be evidence of anticompetitive
2 conduct by a rail carrier as a prerequisite for ordering
3 such action.

4 “(2) In the case of a petition for expedited review
5 of rates under subsection (d)(4) or final offer arbitration
6 of rates under subsection (d)(3)—

7 “(A) the Board or arbitrator or arbitrators
8 shall accord, with respect to rail transportation of a
9 specific commodity, significant persuasive weight to
10 evidence comparing—

11 “(i) rates charged for rail transportation of
12 various quantities of that commodity within the
13 area of inadequate rail competition; and

14 “(ii) rates charged for rail transportation
15 of similar quantities of that commodity or any
16 similar commodity or commodities in areas
17 where there is competition among rail carriers
18 for shipments of such commodity or commod-
19 ities; and

20 “(B) the Board or arbitrator or arbitrators
21 shall not apply any method for determining the rea-
22 sonableness of rail rates which involves the costs of
23 a hypothetical competitor.

24 “(3) In the case of a petition for expedited review,
25 under subsection (d)(4), of an increase of a rate or other

1 charge or the imposition of a new service tariff by a rail
2 carrier—

3 “(A) the rail carrier shall have the burden of
4 proving the reasonableness of the increase or tariff
5 charge; and

6 “(B) the Board shall consider any evidence
7 comparing—

8 “(i) the increased rate or other charge, or
9 the tariff charge; and

10 “(ii) corresponding rates, other charges, or
11 new service tariff charges, respectively, imposed
12 for rail transportation in areas where there is
13 a significant level of competition among the rail
14 carriers.”.

15 (2) CLERICAL AMENDMENT.—The table of sec-
16 tions at the beginning of chapter 105 is amended by
17 adding at the end the following new item:

“10503. Areas of inadequate rail competition.”.

18 (b) STUDY ON AREAS OF INADEQUATE RAIL COM-
19 PETITION.—Not later than 1 year after the date of enact-
20 ment of this Act, the Rail Customer Advocate of the De-
21 partment of Transportation shall—

22 (1) review the process under section 10503 for
23 challenging and remedying conditions adversely af-
24 fecting rail shippers of agricultural and forestry
25 commodities and products, including commodities

1 and products shipped by rail in annual volumes of
2 1500 rail cars or less, in areas of inadequate rail
3 competition; and

4 (2) report the results of the study, together
5 with any recommendations that the Rail Customer
6 Advocate may have for improving the process, to
7 Congress.

8 **SEC. 7. RAIL SERVICE.**

9 (a) PUBLIC NOTICE.—The Surface Transportation
10 Board shall, within 7 days after receipt by the Board or
11 any Member or staff of the Board of a complaint from
12 a customer about rail service, post on the Board’s Internet
13 Web site a description of the complaint, including informa-
14 tion identifying the railroad or railroads providing the
15 service that is the subject of the complaint, the general
16 geographic area of the customer’s movement, the date
17 upon which the service problem occurred and the date no-
18 tice of the complaint was made to the Board or any Mem-
19 ber or staff of the Board. The Internet posting shall iden-
20 tify the rail customer only upon the written consent of the
21 rail customer. Not later than 5 days after the date the
22 complaint is resolved, the Board shall update the informa-
23 tion posted on the Board’s Internet Web site to indicate
24 that the complaint has been resolved, the means of its res-
25 olution, and the date of its resolution.

1 (b) ANNUAL REPORT TO CONGRESS.—Not later than
2 March 15, 2006, and annually thereafter, the Surface
3 Transportation Board shall transmit to Congress a report
4 regarding the service complaints received by the Board,
5 or any Member or staff of the Board, in the previous cal-
6 endar year for each Class I railroad. The report shall in-
7 clude a description of each service complaint, including in-
8 formation identifying the railroad in question, the geo-
9 graphic area of the customer’s movements, the date upon
10 which the service problem occurred, the date notice of the
11 service complaint was made to the Board or any Member
12 or staff of the Board, and the date and nature of the reso-
13 lution of the complaint. The report shall be posted on the
14 Board’s Internet Web site.

15 (c) TIME LIMITS ON PETITIONS FOR INJUNCTIVE
16 RELIEF.—Section 721(b)(4) is amended by adding at the
17 end the following: “Where a complaint is filed and injunc-
18 tive or similar relief is sought within 20 days after the
19 publication of a new or revised rail rate, rule, or practice,
20 based on an allegation of unlawfulness other than an alle-
21 gation that a rate level is not reasonable within the mean-
22 ing of section 10701(d), the Board shall determine, based
23 on applicable law, not later than 90 days after receiving
24 the request for injunctive or similar relief, whether or not
25 to grant such relief. If the moving party establishes that

1 the rule or practice involved in the complaint is unlawful
2 per se, there shall be a strong presumption of irreparable
3 harm regardless of the availability of monetary relief. The
4 Board shall not deny injunctive or similar relief based in
5 whole or in part on the absence of irreparable harm due
6 to the availability of adequate monetary relief unless mon-
7 etary damages have been awarded to the complaining
8 party.”.

9 **SEC. 8. ARBITRATION OF RAIL DISPUTES.**

10 (a) AMENDMENT.—Chapter 117 is amended by add-
11 ing the following section after section 11707:

12 **“§ 11708. Arbitration of rail disputes**

13 “(a) IN GENERAL.—Whenever a dispute arises be-
14 tween a rail shipper and a rail carrier under this part,
15 the dispute shall, on request of one party to the dispute,
16 be submitted to final offer arbitration.

17 “(b) SELECTION OF ARBITRATORS.—The rail carrier
18 or carriers that are parties to arbitration under this sec-
19 tion shall collectively name one arbitrator, and the rail
20 shipper or shippers that are parties to the arbitration shall
21 collectively name one arbitrator. The two arbitrators thus
22 chosen shall select a third arbitrator from the roster of
23 arbitrators established under subsection (c). If the arbitra-
24 tors chosen by the parties fail to name the third arbitrator
25 within 5 days after their first meeting, such third arbi-

1 trator shall be named by the Secretary of Transportation
2 from the roster of arbitrators established under subsection
3 (c).

4 “(c) ROSTER OF ARBITRATORS.—The Secretary of
5 Transportation shall establish, maintain, and revise as
6 necessary a roster of arbitrators who—

7 “(1) are experienced in transportation or eco-
8 nomic issues;

9 “(2) satisfy requirements for neutrality and
10 other qualification requirements prescribed by the
11 Secretary;

12 “(3) consent to serve as arbitrators under this
13 section; and

14 “(4) are not officers or employees of the United
15 States.

16 “(d) RULES FOR ARBITRATION.—The arbitrators
17 shall organize and select and make all necessary rules for
18 conducting hearings. The arbitrators shall give the parties
19 to the dispute a full and fair hearing, which shall include
20 an opportunity to present evidence in support of their
21 claims, and an opportunity to present their case in person,
22 by counsel, or by other representative as they may elect.

23 “(e) COMPENSATION.—Each arbitrator named by ei-
24 ther party to the arbitration shall be compensated by the
25 party naming the arbitrator. The third arbitrator chosen

1 under subsection (b) by both parties or named by the Sec-
2 retary of Transportation shall be compensated by the
3 Board. The Secretary of Transportation shall fix the com-
4 pensation for all of the arbitrators, and the Board shall
5 pay each arbitrator's necessary traveling expenses and ex-
6 penses actually incurred for subsistence, while serving as
7 an arbitrator.

8 “(f) DECISION.—The decision of the arbitrators shall
9 be the final offer of one of the parties to the dispute.

10 “(g) REVENUE-VARIABLE COST PERCENTAGE.—The
11 decision may not provide for a rate for transportation by
12 a rail carrier that would result in a revenue-variable cost
13 percentage of such transportation that is less than 180
14 percent, as determined under standards applied in the ad-
15 ministration of section 10707(d).

16 “(h) EFFECTIVE COMPETITION STANDARD.—If the
17 party requesting arbitration of a dispute under subsection
18 (a) seeks compensation for damages incurred by the party
19 as a result of a specific rate or charge imposed by a rail
20 carrier for the transportation of goods for the party and
21 the party alleges an amount of damages that does not ex-
22 ceed \$500,000 for any year as a result of the imposition
23 of the specific rate or charge, the arbitrators, in making
24 an award on the dispute, shall consider the rates or
25 charges that are imposed by rail carriers for the transpor-

1 tation of similar goods under similar circumstances in rail
2 transportation markets where there is effective competi-
3 tion, as determined under standards applied by the Board
4 in the administration of section 10707(a).

5 “(i) COPIES OF AWARD.—The arbitrators shall fur-
6 nish a certified copy of its award to the parties to the
7 dispute, and shall transmit the original, together with the
8 paper and proceedings and a transcript of the evidence
9 taken at the hearings, certified under the hands of at least
10 a majority of the arbitrators, to the Board, to be filed in
11 its office.

12 “(j) ASSISTANTS.—The arbitrators may employ and
13 fix the compensation of such assistants as it considers nec-
14 essary in carrying on the arbitration proceedings. The
15 compensation of such assistants, together with their nec-
16 essary traveling expenses and expenses actually incurred
17 for subsistence, while so employed, and the necessary ex-
18 penses of the arbitration panel, shall be paid by the Board.

19 “(k) OATHS; SUBPOENAS.—All testimony before ar-
20 bitrators under this section shall be given under oath or
21 affirmation, and any arbitrator shall have the power to
22 administer oaths or affirmations. The arbitrators shall
23 have the power to require the attendance of witnesses and
24 the production of such books, papers, contracts, agree-
25 ments, and documents as may be necessary to a just deter-

1 mination of the matters submitted to arbitration, and may
2 request the district court of the United States for the dis-
3 trict where the arbitration is being conducted to issue the
4 necessary subpoenas. Any witness appearing before arbi-
5 trators under this section shall receive the same fees and
6 mileage reimbursement as witnesses in courts of the
7 United States, to be paid by the party securing the sub-
8 poena, or in the case of a subpoena secured by the arbitra-
9 tors, to be paid by the Board.

10 “(l) TIME FOR ISSUANCE OF ARBITRATION DECI-
11 SION.—The arbitration panel shall issue a final decision
12 on a dispute under this section not later than 180 days
13 after the date on which the panel of arbitrators is com-
14 pleted to resolve the dispute.

15 “(m) REGULATIONS.—Not later than 90 days after
16 the date of enactment of this section, the Secretary of
17 Transportation shall issue final regulations establishing
18 procedures for the resolution of disputes submitted for ar-
19 bitration, in accordance with the requirements of this sec-
20 tion.

21 “(n) APPLICABILITY OF TITLE 9.—The following
22 provisions of title 9, United States Code, shall apply to
23 an arbitration decision issued in a dispute under this sec-
24 tion:

1 **SEC. 10. IMPROVEMENT OF RATE REASONABLENESS**
2 **STANDARD.**

3 Section 10701(d) is amended by adding the following
4 new paragraphs:

5 “(4)(A) Not later than one year after the date of en-
6 actment of this paragraph, the Board shall adopt a meth-
7 od for determining the reasonableness of rail rates based
8 on the railroad’s actual costs, including of a portion of
9 fixed costs and an adequate return on debt and equity.
10 The method adopted shall permit a final determination
11 within 9 months after filing a complaint, shall ensure that
12 necessary cost and operational information is available to
13 the complainant, and shall not require excessive litigation
14 costs.

15 “(B) The Board shall not use any method for deter-
16 mining the reasonableness of rail rates based on the costs
17 of a hypothetical competitor, except that, in any rate rea-
18 sonableness proceeding filed before the method required
19 under subparagraph (A) is adopted, the complaint, upon
20 the election of the complainant, shall be decided based on
21 applicable rate standards in effect on the date of the filing,
22 including small rate guidelines.

23 “(C) The Board shall adopt a method under this
24 paragraph that applies the ‘phasing constraint’ in its ex-
25 isting rail rate method so that it can be practically admin-
26 istered without substantial litigation-related costs in any

1 proceeding involving a challenge to a rail rate in which
 2 the Board determines that the phasing constraint applies.

3 “(5) Upon a challenge made by a shipper to the rea-
 4 sonableness of any rate established by a rail carrier, the
 5 Board shall determine the reasonableness of the rate with-
 6 out regard to—

7 “(A) whether the rate is for part of a movement
 8 between a point of origin and a destination;

9 “(B) whether the shipper has made arrange-
 10 ments for transportation for any other part of that
 11 movement; or

12 “(C) any other contract the shipper has with a
 13 rail carrier for any part of the rail traffic involved.”.

14 **SEC. 11. RAIL CUSTOMER ADVOCATE.**

15 (a) AMENDMENT.—Subchapter II of chapter 7 is
 16 amended by adding at the end the following new section:

17 **“§ 728. Office of Rail Customer Advocacy**

18 “(a) IN GENERAL.—The Office of Rail Customer Ad-
 19 vocacy shall be an office in the Department of Transpor-
 20 tation.

21 “(b) RAIL CUSTOMER ADVOCATE.—The head of the
 22 Office of Rail Customer Advocacy shall be the Rail Cus-
 23 tomer Advocate, who shall be appointed in the competitive
 24 service by the Secretary of Transportation, in consultation
 25 with the Secretary of Agriculture.

1 “(c) DUTIES AND POWERS OF RAIL CUSTOMER AD-
2 VOCATE.—The Rail Customer Advocate shall—

3 “(1) accept rail customer complaints;

4 “(2) participate as a party in proceedings of the
5 Board on petitions for action by the Board regard-
6 ing the regulation of rail transportation, and may
7 initiate such an action;

8 “(3) collect, compile, and maintain information
9 regarding the cost and efficiency of rail transpor-
10 tation; and

11 “(4) carry out other duties and powers pre-
12 scribed by the Board.

13 “(d) ACCESS TO INFORMATION.—To carry out the
14 duties and powers under subsection (c), the Rail Customer
15 Advocate shall have access to information, including data-
16 bases, of the Board.”.

17 (b) CONFORMING AMENDMENT.—The table of sec-
18 tions for chapter 7 is amended by inserting after the item
19 relating to section 727 the following:

“728. Office of Rail Customer Advocacy.”.

20 **SEC. 12. STUDY OF RAIL TRANSPORTATION COMPETITION.**

21 (a) REQUIREMENT.—Not later than 9 months after
22 the date of enactment of this Act, the Secretary of Trans-
23 portation shall enter into an arrangement with the Na-
24 tional Academy of Science’s Transportation Research
25 Board to conduct a comprehensive study of rail carrier

1 competition since the enactment of the Staggers Rail Act
2 of 1980. The study shall include an assessment of—

3 (1) the overall level of rail-to-rail competition in
4 the rail transportation industry of the United States;

5 (2) the markets that have limited rail-to-rail
6 competition; and

7 (3) the Board’s ability to measure and balance
8 the railroads’ need to earn a fair return on invested
9 capital with the captive shippers’ need for fair and
10 reasonable rates.

11 (b) REPORT TO CONGRESS.—Not later than 2 years
12 after the date of enactment of this Act, the Secretary shall
13 transmit the results of the study conducted under sub-
14 section (a) to Congress. The report shall include the
15 Transportation Research Board’s recommendations for
16 enhancing rail-to-rail competition, particularly in markets
17 identified as having limited rail-to-rail competition.

18 **SEC. 13. EFFECT OF MERGERS ON LOCAL COMMUNITIES**

19 **AND RAIL PASSENGER TRANSPORTATION.**

20 Section 11324 is amended—

21 (1) in subsection (b)—

22 (A) by striking “and” at the end of para-
23 graph (4);

24 (B) by striking the period at the end of
25 paragraph (5) and inserting a semicolon; and

1 (C) by adding at the end the following new
2 paragraphs:

3 “(6) the safety and environmental effects of the
4 proposed transaction, including the effect on local
5 communities, and the public interest in enforcing
6 Federal, State, and local safety and environmental
7 laws; and

8 “(7) the effect of the proposed transaction on
9 rail passenger transportation.”; and

10 (2) in subsection (c), by inserting “The Board
11 shall impose conditions under this subsection to
12 mitigate the effects of the transaction on local com-
13 munities when such conditions are in the public in-
14 terest. In imposing such conditions, the Board shall
15 consider the effect of those conditions on local com-
16 munities, and shall consider the public interest in
17 the enforcement of Federal, State, and local safety
18 and environmental laws.” after “effects are allevi-
19 ated.”.

20 **SEC. 14. AUTHORIZATION OF APPROPRIATIONS.**

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

23 “(1) \$24,000,000 for fiscal year 2006;

24 “(2) \$26,000,000 for fiscal year 2007; and

1 “(3) \$28,000,000 for fiscal year 2008.”.

○