

109TH CONGRESS
2D SESSION

S. 2921

To amend title 49, United States Code, to enhance competition among and between rail carriers in order to ensure efficient rail service and reasonable rail rates, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 22, 2006

Mr. REID (for Mr. DAYTON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend title 49, United States Code, to enhance competition among and between rail carriers in order to ensure efficient rail service and reasonable rail rates, 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; AMENDMENT OF TITLE 49,**
4 **UNITED STATES CODE.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Railroad Competition Act of 2006”.

7 (b) AMENDMENT OF TITLE 49, UNITED STATES
8 CODE.—Except as otherwise expressly provided, whenever

1 in this Act an amendment or repeal is expressed in terms
 2 of an amendment to, or a repeal of, a section or other
 3 provision, the reference shall be considered to be made to
 4 a section or other provision of title 49, United States
 5 Code.

6 **TITLE I—RAIL TRANSPORTATION COMPETITION**

8 **SEC. 101. CLARIFICATION OF RAIL TRANSPORTATION POLICY.**

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 “(1) to promote effective competition among
 17 rail carriers at origins and destinations;

18 “(2) to maintain reasonable rates in the ab-
 19 sence of effective competition; and

20 “(3) to maintain consistent and efficient rail
 21 transportation service for shippers, including the
 22 timely provision of rail cars requested by shippers.”.

23 **SEC. 102. REQUIREMENT FOR RATE QUOTES.**

24 Section 11101(a) is amended—

25 (1) by inserting “(1)” after “(a)”; and

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

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

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

12 “(B) whether the rate established is for only
13 part of a movement between a point of origin and
14 a destination;

15 “(C) whether the shipper has made arrange-
16 ments for transportation for any other part of that
17 movement; or

18 “(D) whether the shipper has a contract with
19 any rail carrier for part or all of its transportation
20 needs over the route of movement, in which case the
21 rate established by the carrier shall not apply to
22 transportation covered by the contract.”.

1 **SEC. 103. ELIMINATION OF BARRIERS TO COMPETITION BE-**
 2 **TWEEN CLASS I CARRIERS AND CLASS II AND**
 3 **CLASS III RAIL CARRIERS.**

4 (a) RESTRICTION ON APPROVAL OR EXEMPTION OF
 5 RAIL CARRIERS' ACTIVITIES BY SURFACE TRANSPOR-
 6 TATION BOARD.—Section 10901 is amended by adding at
 7 the end the following:

8 “(e)(1) The Board may not issue under this section
 9 a certificate authorizing an activity described in subsection
 10 (a), or exempt from the applicability of this section under
 11 section 10502 such an activity, that involves a transfer
 12 of interest in a line of railroad, from a Class I rail carrier
 13 to a Class II or a Class III rail carrier, if the activity
 14 directly or indirectly would result in—

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

18 “(B) a restriction of competition between or
 19 among rail carriers in the region affected by the ac-
 20 tivity in a manner or to an extent that would violate
 21 antitrust laws of the United States (notwithstanding
 22 any exemption from the applicability of antitrust
 23 laws that is provided under section 10706 of this
 24 title or any other provision of law).

25 “(2) Any party to an activity referred to in paragraph
 26 (1) that has been carried out, or any rail shipper affected

1 by such an activity, may request that the Board review
2 the activity to determine whether the activity has resulted
3 in a restriction described in that paragraph. If, upon re-
4 view of the activity, the Board determines that the activity
5 resulted in such a restriction and the restriction has been
6 in effect for at least 10 years, the Board shall declare the
7 restriction to be unlawful and terminate the restriction un-
8 less the Board finds that the termination of the restriction
9 would materially impair the ability of an affected rail car-
10 rier to provide service to the public or would otherwise
11 be inconsistent with the public interest.

12 “(3) In this subsection:

13 “(A) The term ‘antitrust laws’ has the meaning
14 given that term in subsection (a) of the first section
15 of the Clayton Act (15 U.S.C. 12(a)), except that
16 such term also means section 5 of the Federal Trade
17 Commission Act (15 U.S.C. 45) to the extent that
18 such section 5 applies to unfair methods of competi-
19 tion.

20 “(B) The terms ‘Class I rail carrier’, ‘Class II
21 rail carrier’, and ‘Class III rail carrier’ mean, re-
22 spectively, a rail carrier classified under regulations
23 of the Board as a Class I rail carrier, Class II rail
24 carrier, and Class III rail carrier.”.

1 (b) APPLICABILITY TO PREVIOUSLY APPROVED OR
 2 EXEMPTED ACTIVITIES.—Paragraph (2) of section
 3 10901(e) of title 49, United States Code (as added by sub-
 4 section (a)), shall apply with respect to any activity re-
 5 ferred to in that paragraph for which the Surface Trans-
 6 portation Board issued a certificate authorizing the activ-
 7 ity under section 10901 of such title, or exempted the ac-
 8 tivity from the necessity for such a certificate under sec-
 9 tion 10502 of such title, before, on, or after the date of
 10 the enactment of this Act.

11 **SEC. 104. RECIPROCAL SWITCHING ON COMPETITIVE**
 12 **TERMS.**

13 Section 11102(c) is amended—

14 (1) by striking “may require” in paragraph (1)
 15 and inserting “shall require”;

16 (2) by striking “may establish” in paragraph
 17 (1) inserting “shall establish”; and

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

19 “(3) In making any finding for the purposes of the
 20 first sentence of paragraph (1), the Board may not require
 21 that there be evidence of anticompetitive conduct by a rail
 22 carrier from which access is sought.”.

23 **SEC. 105. AREAS OF INADEQUATE RAIL COMPETITION.**

24 (a) DESIGNATION AND REMEDIES.—

1 (1) IN GENERAL.—Chapter 105 is amended by
 2 adding at the end the following:

3 **“§ 10503. Areas of inadequate rail competition**

4 “(a) DESIGNATION.—The Board shall designate any
 5 State or part of a State as an area of inadequate rail com-
 6 petition after finding either of the grounds set forth in
 7 subsection (b). An area of inadequate rail competition may
 8 be limited to be composed of the facilities of a group of
 9 shippers or receivers of one or more specific commodities
 10 within a geographic area.

11 “(b) GROUNDS FOR DESIGNATION.—The grounds for
 12 designating a State or part of a State as an area of inad-
 13 equate rail competition are as follows:

14 “(1) The State or part of a State encompasses
 15 a significant number of rail shipping origins and
 16 destinations that are served exclusively by only one
 17 Class I railroad.

18 “(2) A significant number of the persons that
 19 ship by rail or receive rail shipments in the State or
 20 part of a State—

21 “(A) usually find it necessary to pay rates
 22 for the rail shipments that exceed the rates nec-
 23 essary to yield recovery by the rail carrier of
 24 180 percent of revenue-variable costs, as deter-

1 mined under standards applied in the adminis-
 2 tration of section 10707(d); or

3 “(B) has experienced competitive disadvan-
 4 tage in the marketplace or other economic ad-
 5 versity because of high cost or poor quality of
 6 rail service in the State or part of a State, as
 7 the case may be.

8 “(c) AUTHORIZED PETITIONERS.—The following per-
 9 sons may petition the Board for a designation of a State
 10 or part of a State as an area of inadequate rail competi-
 11 tion:

12 “(1) The Governor from the State.

13 “(2) A Member of Congress from the State.

14 “(3) As provided in section 10504, the Rail
 15 Customer Advocate of the Department of Agri-
 16 culture and any State official referred to in sub-
 17 section (a)(2) of such section.

18 “(d) ACTIONS.—Upon designating a State or a part
 19 of a State as an area of inadequate rail competition, the
 20 Board shall attempt to resolve, within 60 days after the
 21 date of the designation, the conditions described in sub-
 22 section (b) that justify the designation. In addition to pro-
 23 viding other remedies authorized by law, the Board may,
 24 when requested in a petition, order any of the following
 25 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) of this title.

4 “(2) Haulage transportation of railroad cars by
 5 a rail carrier to or from facilities that such carrier
 6 alone physically serves on behalf of another rail car-
 7 rier, 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—

12 “(A) expedited review of the reasonable-
 13 ness of the rates under section 10701(d)(3); or

14 “(B) expedited final offer arbitration of
 15 the reasonableness of the rates under section
 16 11708(e).

17 “(4) Expedited review, under section
 18 10701(d)(3), of the reasonableness of—

19 “(A) increases in rates or other charges;
 20 and

21 “(B) new transportation service tariffs.

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

1 “(e) LIMITATIONS AND CONDITIONS APPLICABLE TO
2 SPECIFIC REMEDIES.—

3 “(1) In the case of a petition for an order for
4 reciprocal switching or access to tracks of another
5 rail carrier under subsection (d)(1), the Board may
6 not require that there be evidence of anticompetitive
7 conduct by a rail carrier as a prerequisite for order-
8 ing such action.

9 “(2) In the case of a petition for expedited re-
10 view of rates or final offer arbitration of rates under
11 subsection (d)(3)—

12 “(A) the Board or arbitrator or panel of
13 arbitrators, as the case may be, shall accord,
14 with respect to rail transportation of a specific
15 commodity, significant persuasive weight to evi-
16 dence comparing—

17 “(i) rates charged for rail transpor-
18 tation of various quantities of that com-
19 modity within the area of inadequate rail
20 competition; and

21 “(ii) rates charged for rail transpor-
22 tation of similar quantities of that com-
23 modity or any similar commodity or com-
24 modities in areas where there is competi-

1 tion among rail carriers for shipments of
2 such commodity or commodities; and

3 “(B) the Board or arbitrator or panel of
4 arbitrators, as the case may be, shall not apply
5 the stand-alone cost test that the Board applies
6 in determining the reasonableness of rates re-
7 viewed in cases not involving rail service in an
8 area of inadequate rail competition.

9 “(3) In the case of a petition for expedited re-
10 view, under subsection (d)(4), of an increase of a
11 rate or other charge or the imposition of a new serv-
12 ice tariff by a rail carrier—

13 “(A) the rail carrier shall have the burden
14 of proving the reasonableness of the increase or
15 tariff charge; and

16 “(B) the Board shall consider any evidence
17 comparing—

18 “(i) the increased rate or other
19 charge, or the tariff charge, as the case
20 may be; and

21 “(ii) corresponding rates, other
22 charges, or new service tariff charges, re-
23 spectively, imposed for rail transportation
24 in areas where there is a significant level
25 of competition among the rail carriers.”.

1 (2) CLERICAL AMENDMENT.—The chapter anal-
 2 ysis for chapter 105 is amended by inserting after
 3 the item relating to section 10502 the following:

“10503. Areas of inadequate rail competition”.

4 (b) STUDY AND REPORT ON AREAS OF INADEQUATE
 5 RAIL COMPETITION.—

6 (1) STUDY REQUIRED.—The Rail Customer Ad-
 7 vocate of the Department of Agriculture shall carry
 8 out a study of the process provided under section
 9 10503 of title 49, United States Code (as added by
 10 subsection (a)), for challenging and remedying con-
 11 ditions described in subsection (b) of such section in
 12 States and parts of States designated under such
 13 section as areas of inadequate rail competition inso-
 14 far as such conditions adversely affect rail shippers
 15 of agricultural or forestry commodities and products.

16 (2) FINDINGS ON EFFECTIVENESS OF PROC-
 17 ESS.—The Rail Customer Advocate shall make find-
 18 ings, on the basis of the study under paragraph (1),
 19 regarding the effectiveness of the process for rem-
 20 edying the conditions studied, particularly in the
 21 case of customers that ship agricultural or forestry
 22 commodities and products by rail in annual volumes
 23 of 1,500 rail cars or less.

24 (3) REPORT.—Not later than 3 years after the
 25 date of the enactment of this Act, the Rail Customer

1 Advocate shall submit to Congress a report on the
2 results of the study under paragraph (1), including
3 the findings required under paragraph (2).

4 **TITLE II—RAIL SERVICE**

5 **SEC. 201. RAIL SERVICE.**

6 (a) PUBLIC NOTICE.—The Board shall, within 7 days
7 after receipt of a formal or informal complaint by the
8 Board or any Member or staff of the Board, post on the
9 Board's internet web site information identifying the rail-
10 road in question, the general geographic area of the cus-
11 tomer's movement, a general description of the service
12 complaint, the date upon which the service problem oc-
13 curred and the date notice of the service complaint was
14 made to the Board, any Member or staff of the Board.
15 The Board shall not identify the rail customer, unless the
16 customer has consented in writing to the release of this
17 information. When and if the service complaint is resolved,
18 whether or not by action of the Board or any Member
19 or staff of the Board, the Board shall amend the informa-
20 tion posted to indicate that the service complaint has been
21 resolved, the means of its resolution, and the date of its
22 resolution.

23 (b) ANNUAL REPORT TO CONGRESS.—The Board
24 shall, by March 15th of each year, file with Congress, and
25 post on its internet web site, a comprehensive report on

1 the service complaints received in the previous calendar
2 year for each Class I railroad, including all of the informa-
3 tion posted for such service complaints on the internet web
4 site of the Board.

5 (c) TIME LIMIT ON PETITIONS FOR INJUNCTIVE RE-
6 LIEF.—Section 721 is amended by adding at the end the
7 following:

8 “(f) TIME LIMIT ON PETITIONS FOR INJUNCTIVE
9 RELIEF.—If a complaint is filed and injunctive or similar
10 relief is sought within 20 days after the publication of a
11 new or revised rail rate, rule, or practice, based on an alle-
12 gation of unlawfulness other than an allegation that a rate
13 level is not reasonable within the meaning of section
14 10701(d) of this title, the Board shall determine whether
15 or not to grant the requested relief within 90 days of re-
16 ceiving the request. If the moving party establishes that
17 the rule of practice complained of is unlawful per se, there
18 shall be a strong presumption of irreparable harm regard-
19 less of the availability of monetary relief. If the Board de-
20 nies injunctive or similar relief based in whole or in part
21 on the absence of irreparable harm due to the availability
22 of adequate monetary relief, then the Board may award
23 requested monetary damages to the complaining party if
24 that party prevails in its complaint.”.

1 **TITLE III—REASONABLE RATES**
 2 **FOR CAPTIVE RAIL CUSTOMERS**

3 **SEC. 301. ARBITRATION OF CERTAIN RAIL RATE, SERVICE,**
 4 **AND OTHER DISPUTES.**

5 (a) IN GENERAL.—

6 (1) AUTHORITY.—Chapter 117 is amended by
 7 adding at the end the following:

8 **“§ 11708. Arbitration of certain rail rate, service, and**
 9 **other disputes**

10 “(a) ELECTION OF ARBITRATION.—A dispute de-
 11 scribed in subsection (b) shall be submitted for resolution
 12 by arbitration upon the election of any party to the dispute
 13 that is not a rail carrier.

14 “(b) COVERED DISPUTES.—

15 “(1) IN GENERAL.—Except as provided in para-
 16 graph (2), subsection (a) applies to any dispute be-
 17 tween a party described in subsection (a) and a rail
 18 carrier that—

19 “(A) arises under section 10701(c),
 20 10701(d), 10702, 10704(a)(1), 10707, 10741,
 21 10745, 10746, 11101(a), 11102, 11121, 11122,
 22 or 11706 of this title; and

23 “(B) involves—

24 “(i) the payment of money;

1 “(ii) a rate or charge imposed by the
2 rail carrier; or

3 “(iii) transportation or other service
4 by the rail carrier.

5 “(2) EXCEPTION.—Subsection (a) does not
6 apply to a dispute if the resolution of the dispute
7 would necessarily involve the promulgation of regula-
8 tions generally applicable to all rail carriers.

9 “(c) ARBITRATION PROCEDURES.—The Secretary of
10 Transportation shall prescribe in regulations the proce-
11 dures for the resolution of disputes submitted for arbitra-
12 tion under subsection (a). The regulations shall include
13 the following:

14 “(1) Procedures, including time limits, for the
15 selection of an arbitrator or panel of arbitrators for
16 a dispute from among arbitrators listed on the ros-
17 ter of arbitrators established and maintained by the
18 Secretary under subsection (d)(1).

19 “(2) Policies, requirements, and procedures for
20 the compensation of each arbitrator for a dispute to
21 be paid by the parties to the dispute.

22 “(3) Procedures for expedited arbitration of a
23 dispute, including procedures for discovery author-
24 ized in the exercise of discretion by the arbitrator or
25 panel of arbitrators.

1 “(d) SELECTION OF ARBITRATORS.—

2 “(1) IN GENERAL.—The Secretary of Transpor-
3 tation shall establish, maintain, and revise as nec-
4 essary a roster of arbitrators who—

5 “(A) are experienced in transportation or
6 economic issues within the jurisdiction of the
7 Board or issues similar to those issues;

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

11 “(C) consent to serve as arbitrators under
12 this section; and

13 “(D) are not officers or employees of the
14 United States.

15 “(2) SMALLER DISPUTES.—For a dispute in-
16 volving an amount not in excess of \$1,000,000, the
17 regulations under subsection (c) shall provide for ar-
18 bitration by a single arbitrator who—

19 “(A) is selected by the parties to the dis-
20 pute; or

21 “(B) if the parties cannot agree, is selected
22 by the Secretary from among the arbitrators
23 listed on the roster of arbitrators under para-
24 graph (1).

25 “(3) LARGER DISPUTES.—

1 “(A) For a dispute involving an amount in
 2 excess of \$1,000,000, the regulations under
 3 subsection (c) shall provide for arbitration by a
 4 panel of three arbitrators selected as follows:

5 “(i) One arbitrator selected by the
 6 party electing the arbitration.

7 “(ii) One arbitrator selected by the
 8 rail carrier or all of the rail carriers who
 9 are parties to the dispute, as the case may
 10 be.

11 “(iii) One arbitrator selected by the
 12 two arbitrators selected under clauses (i)
 13 and (ii).

14 “(B) If a selection of an arbitrator is not
 15 made under clause (ii) or (iii) of subparagraph
 16 (A) within the time limits prescribed in the reg-
 17 ulations, then the Secretary shall select the ar-
 18 bitrator from among the arbitrators listed on
 19 the roster of arbitrators under paragraph (1).

20 “(e) DISPUTES OVER RATES OR CHARGES.—

21 “(1) LIMITATION.—The requirements of this
 22 subsection apply to a dispute submitted under this
 23 section concerning a rate or charge imposed by a rail
 24 carrier.

25 “(2) AWARDS.—

1 “(A) Subject to subparagraph (B), the de-
2 cision of an arbitrator or panel of arbitrators in
3 a dispute on an issue described in paragraph
4 (1) shall be the final offer of one of the parties
5 to the dispute.

6 “(B) A decision under subparagraph (A)
7 may not provide for a rate for transportation by
8 a rail carrier that would result in a revenue-
9 variable cost percentage for such transportation
10 that is less than 180 percent, as determined
11 under standards applied in the administration
12 of section 10707(d).

13 “(3) RATE AND CHARGE DISPUTES.—If the
14 party electing arbitration of a dispute described in
15 paragraph (1) seeks compensation for damages in-
16 curred by the party as a result of a specific rate or
17 charge imposed by a rail carrier for the transpor-
18 tation of items for the party and the party alleges
19 an amount of damages that does not exceed
20 \$500,000 for any year as a result of the imposition
21 of the specific rate or charge, the arbitrator, in mak-
22 ing a decision on the dispute, shall consider the
23 rates or charges, respectively, that are imposed by
24 rail carriers for the transportation of similar items
25 under similar circumstances in rail transportation

1 markets where there is effective competition, as de-
 2 termined under standards applied by the Board in
 3 the administration of section 10707(a).

4 “(f) TIME FOR ISSUANCE OF ARBITRATION DECI-
 5 SION.—Notwithstanding any other provision of this sub-
 6 title limiting the time for the taking of an action under
 7 this subtitle, the arbitrator or panel of arbitrators for a
 8 dispute submitted for resolution under this section shall
 9 issue a final decision on the dispute within the maximum
 10 period after the date on which the arbitrator or panel is
 11 selected to resolve the dispute under this section, as fol-
 12 lows:

13 “(1) In the case of a dispute involving
 14 \$1,000,000 or less, 120 days.

15 “(2) In the case of a dispute involving more
 16 than \$1,000,000, 180 days.

17 “(g) AUTHORIZED RELIEF.—A decision of an arbi-
 18 trator or panel of arbitrators under this section shall grant
 19 relief in either or both of the following forms:

20 “(1) Monetary damages, to the extent author-
 21 ized to be provided by the Board in such a dispute
 22 under this subtitle.

23 “(2) An order that requires specific perform-
 24 ance under any applicable law, including any law
 25 limiting rates to reasonable rates, for any period not

1 in excess of 2 years beginning on the date of the de-
 2 cision.

3 “(h) JUDICIAL CONFIRMATION AND REVIEW.—The
 4 following provisions of title 9 shall apply to an arbitration
 5 decision issued in a dispute under this section:

6 “(1) Section 9 (relating to confirmation of an
 7 award in an arbitration decision), which shall be ap-
 8 plied as if the parties had entered into an agreement
 9 under title 9 to submit the dispute to the arbitration
 10 and had provided in that agreement for a judgment
 11 of an unspecified court to be entered on the award
 12 made pursuant to the arbitration.

13 “(2) Section 10 (relating to judicial vacation of
 14 an award in an arbitration decision).”.

15 (2) CLERICAL AMENDMENT.—The chapter anal-
 16 ysis for chapter 117 is amended by inserting after
 17 the item relating to section 11707 the following: The
 18 table of sections at the beginning of such chapter is
 19 amended by inserting after the item relating to sec-
 20 tion 11707 the following:

“11708. Arbitration of certain rail rate, service, and other disputes”.

21 (b) TIME FOR IMPLEMENTING CERTAIN REQUIRE-
 22 MENTS.—Not later than 180 days after the date of the
 23 enactment of this Act, the Secretary of Transportation
 24 shall promulgate regulations, prescribe a roster of arbitra-
 25 tors, and complete any other action that is necessary for

1 the implementation of section 11708 of title 49, United
2 States Code (as added by subsection (a)).

3 **SEC. 302. FILING FEES ON PETITIONS FOR CAPTIVE RATE**
4 **RELIEF.**

5 Section 721 is amended by adding at the end the fol-
6 lowing:

7 “(f) LIMITATION ON FEES.—The Board may not
8 charge a fee for the filing of a complaint, protest, or other
9 request for relief in an amount greater than fees charged
10 by district courts of the United States for a comparable
11 filing.”.

12 **SEC. 303. RATE REASONABLENESS.**

13 Section 10701(d) is amended by adding at the end
14 the following:

15 “(4)(A) Not later than one year after the date of en-
16 actment of the Railroad Competition Act of 2006, the
17 Board shall adopt an alternative method for determining
18 the reasonableness of rail rates using the railroad’s actual
19 costs, including a portion of fixed costs and an adequate
20 return on equity. The method shall permit a final deter-
21 mination within nine months of filing a complaint, shall
22 ensure that necessary cost, financial and operational infor-
23 mation is available, and shall not require excessive litiga-
24 tion costs.

1 “(B) The Board may not, on or after the date of en-
 2 actment of that Act, use any method for determining the
 3 reasonableness of challenged rail rates based on the costs
 4 of a hypothetical competitor, except in a proceeding pend-
 5 ing on the date of enactment of that Act or where the
 6 complainant so elects. The simplified and expedited meth-
 7 od for determining the reasonableness of challenged rail
 8 rates provided for in paragraph (3) shall remain available
 9 at the election of qualifying complainants.

10 “(C) The Board shall adopt a method for applying
 11 the ‘phasing constraint’ in its existing rail rate method
 12 so that it can be practically administered without substan-
 13 tial litigation-related costs in any proceeding involving a
 14 challenge to a rail rate in which the Board determines that
 15 the phasing constraint applies.

16 “(5) Upon a challenge made by a shipper to the rea-
 17 sonableness of any rate established by a rail carrier in ac-
 18 cordance with subsection (c) or section 11101(a), the
 19 Board shall determine the reasonableness of the rate with-
 20 out regard to whether—

21 “(A) the rate is for part of a movement between
 22 a point of origin and a destination;

23 “(B) the shipper has made arrangements for
 24 transportation for any other part of that movement;

25 or

1 “(C) the shipper currently has a contract with
 2 a rail carrier for any part of the rail traffic involved,
 3 except that any rate prescribed by the Board shall
 4 not apply to transportation covered by such a con-
 5 tract.”.

6 **TITLE IV—MISCELLANEOUS**

7 **SEC. 401. RAIL CUSTOMER ADVOCATE IN THE DEPART-** 8 **MENT OF AGRICULTURE.**

9 (a) PARTICIPATION OF RAIL CUSTOMER ADVOCATE
 10 IN STB PROCEEDINGS.—

11 (1) AUTHORITY AND RESPONSIBILITIES.—

12 Chapter 105, as amended by section 105 of this Act,
 13 is further amended by adding at the end the fol-
 14 lowing:

15 **“§ 10504. Participation of Rail Customer Advocate in** 16 **Board proceedings**

17 “(a) AUTHORITY.—The following persons are author-
 18 ized to petition the Board for an exercise of authority of
 19 the Board regarding rail transportation of any agricul-
 20 tural or forestry commodity or product, and to participate
 21 in any proceeding of the Board regarding rail transpor-
 22 tation of such a commodity or product:

23 “(1) The Rail Customer Advocate of the De-
 24 partment of Agriculture.

1 “(2) Any official of the government of a State
 2 whose functions are the same as or similar to the
 3 functions of the Rail Customer Advocate of the De-
 4 partment of Agriculture.

5 “(b) CONSIDERATION OF PRESENTATIONS BY ADVO-
 6 CATE.—

7 “(1) The Board shall accord significant persua-
 8 sive weight to any material evidence, proposal, or
 9 view that is presented by an official referred to in
 10 subsection (a) with respect to rail transportation of
 11 an agricultural or forestry commodity or product.

12 “(2) In disposing of any matter before the
 13 Board in which an official referred to in subsection
 14 (a) has participated under the authority of such sub-
 15 section, the Board shall present in writing a detailed
 16 explanation of any disagreement of the Board with
 17 matters presented to the Board by that official.”.

18 (2) CLERICAL AMENDMENT.—The chapter anal-
 19 ysis for chapter 105, as amended by section 105, is
 20 further amended by inserting after the item relating
 21 to section 10503 the following:

“10504. Participation of Rail Customer Advocate in Board proceedings”.

22 (b) ESTABLISHMENT AND DUTIES.—

23 (1) IN GENERAL.—Subtitle I of title II of the
 24 Department of Agriculture Reorganization Act of

1 1994 (7 U.S.C. 7005) is amended by adding at the
2 end the following:

3 **“SEC. 286. RAIL CUSTOMER ADVOCATE.**

4 “(a) ESTABLISHMENT OF OFFICE.—There is estab-
5 lished within the Department an Office of Rail Customer
6 Advocacy.

7 “(b) RAIL CUSTOMER ADVOCATE.—

8 “(1) APPOINTMENT.—The Secretary shall ap-
9 point the Rail Customer Advocate.

10 “(2) HEAD OF OFFICE.—The Rail Customer
11 Advocate is the head of the Office of Rail Customer
12 Advocacy.

13 “(c) FUNCTIONS.—The Rail Customer Advocate has
14 the following functions:

15 “(1) PARTICIPATION IN STB PROCEEDINGS.—
16 To participate as a party in proceedings of the Sur-
17 face Transportation Board on petitions for action by
18 the Board regarding the regulation of rail transpor-
19 tation of agricultural or forestry commodities or
20 products, and to initiate any such action.

21 “(2) COMPILATION OF INFORMATION.—To col-
22 lect, compile, and maintain information regarding
23 the cost and efficiency of rail transportation of agri-
24 cultural commodities and products and forestry com-
25 modities and products.

1 “(3) STUDIES.—To perform studies regarding
2 rail transportation of agricultural commodities and
3 products and forestry commodities and products.

4 “(d) ACCESS TO STB INFORMATION.—To carry out
5 the functions under subsection (c), the Rail Customer Ad-
6 vocate shall have access to information, including data-
7 bases, of the Surface Transportation Board.”.

8 (2) CONFORMING AMENDMENTS.—Section
9 296(b) of the Department of Agriculture Reorga-
10 nization Act of 1994 (7 U.S.C. 7014(b)) is amend-
11 ed—

12 (A) by striking “or” after the semicolon in
13 paragraph (4);

14 (B) by striking “218.” in paragraph (5)
15 and inserting “218; or”; and

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

17 “(6) the establishment of the Office of Rail
18 Consumer Advocacy of the Department under sec-
19 tion 286.”.

20 **SEC. 402. STUDY OF COMPETITION AMONG RAIL CARRIERS.**

21 (a) REQUIREMENT FOR STUDY.—Chapter 101 is
22 amended by adding at the end the following:

1 **“§ 10103. Study of rail carrier competition and proc-**
 2 **esses of the Board**

3 “(a) REQUIREMENT FOR STUDY.—Within 2 years
 4 after the date of enactment of the Railroad Competition
 5 Act of 2006, the Secretary of Transportation shall conduct
 6 a comprehensive study of rail carrier competition and the
 7 processes of the Board, after consulting with the Depart-
 8 ment of Justice, the Department of Energy, the Depart-
 9 ment of Defense, the Department of Agriculture, rail
 10 users and railroads. The study shall include an assessment
 11 of—

12 “(1) the availability of effective competitive op-
 13 tions among and between rail carriers;

14 “(2) the effectiveness of the processes of the
 15 Board, including the process used for determining
 16 the reasonableness of rates of rail carriers;

17 “(3) the availability to rail users of effective
 18 regulatory dispute resolution options;

19 “(4) the Board’s implementation of the Rail-
 20 road Competition Act of 2006; and

21 “(5) the overall level of rail-to-rail competition
 22 in serving rail users in the United States.

23 “(b) REPORT TO CONGRESS.—Not later than Novem-
 24 ber 15 of the year in which the study is conducted under
 25 subsection (a), the Secretary shall submit a report on the

1 results of the study to Congress. The report shall in-
2 clude—

3 “(1) the Secretary’s assessment of the overall
4 level of rail-to-rail competition in the rail carrier in-
5 dustry in the United States;

6 “(2) the markets that have limited rail-to-rail
7 competition;

8 “(3) recommendations for enhancing rail-to-rail
9 competition, particularly in markets identified as
10 having limited rail-to-rail competition;

11 “(4) an assessment of the Board’s performance
12 of its purpose to promote and enhance competition
13 among and between railroads by—

14 “(A) implementing the provisions and poli-
15 cies of the Railroad Competition Act of 2006;

16 “(B) addressing complaints regarding
17 rates, charges, and service; and

18 “(C) promulgating regulations of general
19 applicability or taking other actions;

20 “(5) recommendations for modification of any
21 of the decisions of the Board (or decisions of the
22 former Interstate Commerce Commission continuing
23 in effect) or for modification of the general authority
24 or jurisdiction of the Board; and

1 “(6) any other findings, analyses, assessments,
2 and recommendations that result from the study.

3 “(c) UPDATES.—The Secretary shall update the
4 study every 3 years after the initial study is completed
5 and report the results to the Congress.”.

6 (b) CLERICAL AMENDMENT.—The chapter analysis
7 for chapter 101 is amended by inserting after the item
8 relating to section 10102 the following:

“10103. Periodic study of rail carrier competition and processes of the Board”.

○