

Calendar No. 624

113TH CONGRESS
2D SESSION**S. 2777**

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 8, 2014

Mr. ROCKEFELLER (for himself, Mr. THUNE, and Ms. BALDWIN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

DECEMBER 8, 2014

Reported by Mr. ROCKEFELLER, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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”.

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

2 Except as otherwise expressly provided, wherever in
3 this Act an amendment or repeal is expressed in terms
4 of an amendment to, or repeal of, a section or other provi-
5 sion, the reference shall be considered to be made to a
6 section or other provision of title 49, United States Code.

7 **SEC. 3. ESTABLISHMENT OF SURFACE TRANSPORTATION**

8 **BOARD AS AN INDEPENDENT ESTABLISH-**
9 **MENT.**

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

12 “(a) ESTABLISHMENT.—The Surface Transportation
13 Board is an independent establishment of the United
14 States Government.”.

15 (b) CONFORMING AMENDMENTS.—

16 (1) ADMINISTRATIVE PROVISIONS.—Section 703
17 is amended—

18 (A) by striking subsections (a), (c), (f),
19 and (g);

20 (B) by redesignating subsections (b), (d),
21 and (e) as subsections (a), (b), and (c), respec-
22 tively; and

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

24 “(d) SUBMISSIONS AND TRANSMITTALS.—Whenever
25 the Board submits or transmits any budget estimate,
26 budget request, supplemental budget estimate, or other

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

16 (2) ADMINISTRATIVE SUPPORT.—

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

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

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

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

23 (1) in paragraph (1)—

24 (A) by striking “3 members” and inserting
 25 “5 members”; and

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

3 (2) by striking paragraph (2) and inserting the
4 following:

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

13 (b) REPEAL OF HOLDOVER LIMITATION.—Section
14 701(b)(3) is amended by striking “qualified, but for a pe-
15 riod not to exceed one year” and inserting “qualified”.

16 (c) REPEAL OF OBSOLETE PROVISION.—Section
17 701(b) is amended—

18 (1) by striking paragraph (4);

19 (2) by redesignating paragraphs (5), (6), and
20 (7) as paragraphs (4), (5), and (6), respectively; and

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

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Surface Transportation*
 5 *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 of*
 9 *an amendment to, or repeal of, a section or other provision,*
 10 *the reference shall be considered to be made to a section or*
 11 *other provision of title 49, United States Code.*

12 **SEC. 3. ESTABLISHMENT OF SURFACE TRANSPORTATION**
 13 **BOARD AS AN INDEPENDENT ESTABLISH-**
 14 **MENT.**

15 *(a) IN GENERAL.—Section 701(a) is amended to read*
 16 *as follows:*

17 *“(a) ESTABLISHMENT.—The Surface Transportation*
 18 *Board is an independent establishment of the United States*
 19 *Government.”.*

20 *(b) CONFORMING AMENDMENTS.—*

21 *(1) ADMINISTRATIVE PROVISIONS.—Section 703*
 22 *is amended—*

23 *(A) by striking subsections (a), (c), (f), and*
 24 *(g);*

1 (B) by redesignating subsections (b), (d),
 2 and (e) as subsections (a), (b), and (c), respec-
 3 tively; and

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

5 “(d) *SUBMISSIONS AND TRANSMITTALS.*—Whenever
 6 *the Board submits or transmits any budget estimate, budget*
 7 *request, supplemental budget estimate, or other budget in-*
 8 *formation, legislative recommendation, prepared testimony*
 9 *for a congressional hearing, or comment on legislation to*
 10 *the President or to the Office of Management and Budget,*
 11 *it shall concurrently transmit a copy thereof to the Com-*
 12 *mittee on Commerce, Science, and Transportation of the*
 13 *Senate and the Committee on Transportation and Infra-*
 14 *structure of the House of Representatives. No officer or*
 15 *agency of the United States shall have any authority to re-*
 16 *quire the Board to submit its budget estimates or requests,*
 17 *legislative recommendations, prepared testimony for con-*
 18 *gressional hearings, or comments on legislation to any offi-*
 19 *cer or agency of the United States for approval, comments,*
 20 *or review, prior to the submission of the recommendations,*
 21 *testimony, or comments to Congress.”.*

22 (2) *ADMINISTRATIVE SUPPORT.*—

23 (A) *REPEALER.*—Section 725 is repealed.

1 (B) *CONFORMING AMENDMENT.*—*The table*
 2 *of contents for chapter 7 is amended by striking*
 3 *the item relating to section 725.*

4 (c) *DEPARTMENT OF TRANSPORTATION INSPECTOR*
 5 *GENERAL AUTHORITY.*—

6 (1) *IN GENERAL.*—*Subchapter II of chapter 7 is*
 7 *amended—*

8 (A) *by redesignating section 727 as section*
 9 728; and

10 (B) *by inserting after section 726 the fol-*
 11 *lowing:*

12 **“§ 727. Authority of the Inspector General**

13 “(a) *IN GENERAL.*—*The Inspector General of the De-*
 14 *partment of Transportation, in accordance with the mission*
 15 *of the Inspector General to prevent and detect fraud and*
 16 *abuse, shall have authority to review only the financial*
 17 *management, property management, and business oper-*
 18 *ations of the Surface Transportation Board, including in-*
 19 *ternal accounting and administrative control systems, to*
 20 *determine compliance with applicable Federal laws, rules,*
 21 *and regulations.*

22 “(b) *DUTIES.*—*In carrying out this section, the In-*
 23 *spector General shall—*

24 “(1) *keep the Chairman of the Board and the*
 25 *Committee on Commerce, Science, and Transpor-*

1 *tation of the Senate and the Committee on Transpor-*
 2 *tation and Infrastructure of the House of Representa-*
 3 *tives fully and currently informed about problems re-*
 4 *lating to administration of the internal accounting*
 5 *and administrative control systems of the Board;*

6 *“(2) issue findings and recommendations for ac-*
 7 *tions to address such problems; and*

8 *“(3) report periodically to the Committee on*
 9 *Commerce, Science, and Transportation of the Senate*
 10 *and the Committee on Transportation and Infrastruc-*
 11 *ture of the House of Representatives on any progress*
 12 *made in implementing actions to address such prob-*
 13 *lems.*

14 *“(c) ACCESS TO INFORMATION.—In carrying out this*
 15 *section, the Inspector General may exercise authorities*
 16 *granted to the Inspector General under subsections (a) and*
 17 *(b) of section 6 of the Inspector General Act of 1978 (5*
 18 *U.S.C. App.).*

19 *“(d) AUTHORIZATION OF APPROPRIATIONS.—*

20 *“(1) FUNDING.—There are authorized to be ap-*
 21 *propriated to the Secretary of Transportation for use*
 22 *by the Inspector General of the Department of Trans-*
 23 *portation such sums as may be necessary to cover ex-*
 24 *penses associated with activities pursuant to the au-*
 25 *thority exercised under this section.*

1 “(2) *REIMBURSABLE AGREEMENT.*—*In the ab-*
 2 *sence of an appropriation under this subsection for*
 3 *an expense referred to in paragraph (1), the Inspector*
 4 *General and the Board shall have a reimbursable*
 5 *agreement to cover such expense.*”.

6 (2) *CONFORMING AMENDMENT.*—*The table of*
 7 *contents for subchapter II of chapter 7 is amended—*

8 (A) *by redesignating the item relating to*
 9 *section 727 as relating to section 728; and*

10 (B) *by inserting after the item relating to*
 11 *section 726 the following:*

“727. Authority of the Inspector General.”.

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

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

14 (1) *in paragraph (1)—*

15 (A) *by striking “3 members” and inserting*
 16 *“5 members”; and*

17 (B) *by striking “2 members” and inserting*
 18 *“3 members”; and*

19 (2) *by striking paragraph (2) and inserting the*
 20 *following:*

21 “(2) *At any given time, at least 3 members of the*
 22 *Board shall be individuals with professional standing*
 23 *and demonstrated knowledge in the fields of transpor-*
 24 *tation, transportation regulation, or economic regula-*
 25 *tion, and at least 2 members shall be individuals with*

1 *professional or business experience (including agri-*
 2 *culture or other rail customers) in the private sec-*
 3 *tor.”.*

4 **(b) REPEAL OF HOLDOVER LIMITATION.**—Section
 5 701(b)(3) is amended by striking “qualified, but for a pe-
 6 riod not to exceed one year” and inserting “qualified”.

7 **(c) REPEAL OF OBSOLETE PROVISION.**—Section
 8 701(b) is amended—

9 (1) by striking paragraph (4);

10 (2) by redesignating paragraphs (5), (6), and (7)
 11 as paragraphs (4), (5), and (6), respectively; and

12 (3) in paragraph (4), as redesignated, by strik-
 13 ing “In the case of an individual who becomes a
 14 member of the Board pursuant to paragraph (4), or
 15 an individual” and inserting “In the case of an indi-
 16 vidual”.

17 **SEC. 5. NONPUBLIC COLLABORATIVE DISCUSSIONS.**

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

20 “(a) **OPEN MEETINGS.**—

21 “(1) **IN GENERAL.**—The Board shall be deemed
 22 to be an agency for purposes of section 552b of title
 23 5.

24 “(2) **NONPUBLIC COLLABORATIVE DISCUS-**
 25 **SIONS.**—

1 “(A) *IN GENERAL.*—*Notwithstanding sec-*
 2 *tion 552b of title 5, a majority of the members*
 3 *may hold a meeting that is not open to public*
 4 *observation to discuss official agency business*
 5 *if—*

6 “(i) *no vote or other disposition of offi-*
 7 *cial agency business is taken at the meeting;*

8 “(ii) *each individual present at the*
 9 *meeting is a member or an employee of the*
 10 *Board; and*

11 “(iii) *the General Counsel of the Board*
 12 *is present at the meeting.*

13 “(B) *DISCLOSURE OF NONPUBLIC COLLABO-*
 14 *RATIVE DISCUSSIONS.*—*Except as provided*
 15 *under subparagraph (C), not later than 2 busi-*
 16 *ness days after the conclusion of a meeting under*
 17 *subparagraph (A), the Board shall make avail-*
 18 *able to the public, in a place easily accessible to*
 19 *the public—*

20 “(i) *a list of the individuals present at*
 21 *the meeting; and*

22 “(ii) *a summary of the matters dis-*
 23 *cussed at the meeting, except for any mat-*
 24 *ters the Board properly determines may be*

1 *withheld from the public under section*
2 *552b(c) of title 5.*

3 “(C) *ONGOING PROCEEDINGS.*—*If a discus-*
4 *sion under subparagraph (A) relates, directly or*
5 *indirectly, to an ongoing proceeding before the*
6 *Board, the Board shall make the disclosure under*
7 *subparagraph (B) on the date of the final Board*
8 *decision.*

9 “(D) *PRESERVATION OF OPEN MEETINGS*
10 *REQUIREMENTS FOR AGENCY ACTION.*—*Nothing*
11 *in this paragraph shall limit the applicability of*
12 *section 552b of title 5 with respect to a meeting*
13 *of the members other than that described in this*
14 *paragraph.*

15 “(E) *STATUTORY CONSTRUCTION.*—*Nothing*
16 *in this paragraph—*

17 “(i) *shall limit the applicability of sec-*
18 *tion 552b of title 5 with respect to any in-*
19 *formation which is proposed to be withheld*
20 *from the public under subparagraph (B)(ii);*
21 *and*

22 “(ii) *authorizes the Board to withhold*
23 *from any individual any record that is ac-*
24 *cessible to that individual under section*
25 *552a of title 5, United States Code.”.*

1 **SEC. 6. INVESTIGATIVE AUTHORITY.**

2 (a) *AUTHORITY TO INITIATE INVESTIGATIONS.*—Section
3 *tion 11701(a) is amended by striking “only on complaint”*
4 *and inserting “on the Board’s own initiative or on com-*
5 *plaint”.*

6 (b) *RATE PROCEEDINGS.*—Section 10704(b) is amend-
7 *ed by striking the first sentence and inserting “The Board*
8 *may begin a proceeding under subsection (a)(1) on its own*
9 *initiative or upon complaint, except that a proceeding to*
10 *determine the reasonableness of the level of a rate charged*
11 *by a carrier may only be initiated upon complaint.”.*

12 (c) *ANNUAL REPORT; INVESTIGATIONS.*—Section 704
13 *is amended by striking “on its activities.” and inserting*
14 *“on its activities, including each instance in which the*
15 *Board has initiated an investigation on its own initiative*
16 *under this chapter or subtitle IV.”.*

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

18 (a) *SIMPLIFIED PROCEDURE.*—Section 10701(d)(3) is
19 *amended to read as follows:*

20 “(3) *The Board shall maintain a simplified and*
21 *expedited method for determining the reasonableness*
22 *of challenged rates in those cases in which a full*
23 *stand-alone cost presentation is too costly, given the*
24 *value of the case.”.*

25 (b) *EXPEDITED HANDLING.*—Section 10704(d) is
26 *amended by striking the first sentence and inserting “The*

1 *Board shall maintain procedures to ensure expeditious han-*
 2 *dling of challenges to the reasonableness of railroad rates.”.*

3 **SEC. 8. RATE REVIEW TIMELINES.**

4 *Section 10704(d), as amended by section 7 of this Act,*
 5 *is further amended—*

6 *(1) by striking “(d) The” and inserting “(d)(1)*
 7 *The”; and*

8 *(2) by adding at the end the following:*

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

12 *“(i) For discovery, completion not later*
 13 *than 150 days after the date that the chal-*
 14 *lenge is initiated.*

15 *“(ii) For development of the evi-*
 16 *dentiary record, completion not later than*
 17 *155 days after the date that discovery is*
 18 *complete under clause (i).*

19 *“(iii) For submission of a closing brief,*
 20 *submission not later than 60 days after the*
 21 *date that development of the evidentiary*
 22 *record is complete under clause (ii).*

23 *“(iv) For a final Board decision,*
 24 *issuance not later than 180 days after the*

1 date that the evidentiary record is complete
 2 under clause (ii).

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

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

7 Not later than 180 days after the date of enactment
 8 of this Act, the Surface Transportation Board shall initiate
 9 an *ex parte* proceeding on whether contract proposals for
 10 multiple origin-to-destination movements have adversely
 11 impacted the intent of Congress that the Surface Transpor-
 12 tation Board’s rate challenge procedures remain available
 13 to shippers that are subject to railroad market dominance,
 14 and how the Board can prevent such practices in the future.

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

16 Not later than 1 year after the date of enactment of
 17 this Act, the Surface Transportation Board shall report to
 18 the Committee on Commerce, Science, and Transportation
 19 of the Senate and the Committee on Transportation and
 20 Infrastructure of the House of Representatives on—

21 (1) whether current large rate case methodologies
 22 are sufficient, not unduly complex, and cost effective;
 23 and

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

1 **SEC. 11. ARBITRATION OF CERTAIN RAIL RATES, PRAC-**
 2 **TICES, AND COMMON CARRIER SERVICE EX-**
 3 **PECTATION DISPUTES.**

4 (a) *IN GENERAL.*—Chapter 117 is amended by adding
 5 at the end the following:

6 **“§11708. Voluntary arbitration of certain rail rates,**
 7 **practices, and common carrier service dis-**
 8 **putes**

9 “(a) *IN GENERAL.*—Not later than 1 year after the
 10 date of enactment of the Surface Transportation Board Re-
 11 authorization Act of 2014, the Board shall promulgate regu-
 12 lations to establish a voluntary, but binding, arbitration
 13 process to resolve rail rate, practice, and common carrier
 14 service expectation complaints subject to the jurisdiction of
 15 the Board.

16 “(b) *COVERED DISPUTES.*—The binding arbitration
 17 process—

18 “(1) shall apply to disputes involving rates, de-
 19 murrage, accessorial charges, misrouting or mis-
 20 handling of rail cars, and disputes involving a car-
 21 rier’s published rules and practices as applied to par-
 22 ticular rail transportation;

23 “(2) shall not apply to—

24 “(A) disputes to obtain the grant, denial,
 25 stay, or revocation of any license, authorization,
 26 or exemption, or to prescribe for the future any

1 *conduct, rules, or results of general, industry-*
 2 *wide applicability, or to enforce a labor protec-*
 3 *tive condition; and*

4 *“(B) disputes solely between 2 or more rail*
 5 *carriers; and*

6 *“(3) shall not prevent parties from independ-*
 7 *ently seeking or utilizing private arbitration services*
 8 *to resolve any disputes they may have.*

9 *“(c) ARBITRATION PROCEDURES.—*

10 *“(1) IN GENERAL.—The Board—*

11 *“(A) may make the voluntary, but binding,*
 12 *arbitration process available only to the relevant*
 13 *parties—*

14 *“(i) after the filing of a formal com-*
 15 *plaint;*

16 *“(ii) upon petition by all parties at*
 17 *the conclusion of any informal dispute reso-*
 18 *lution process provided by the Board for a*
 19 *complaint subject to this section; or*

20 *“(iii) through current or future proce-*
 21 *dures adopted by the Board to facilitate vol-*
 22 *untary, but binding, arbitration;*

23 *“(B) with respect to rate disputes, may*
 24 *make the binding arbitration process available*
 25 *only to the relevant parties if the rail carrier has*

1 *market dominance, as determined under section*
 2 *10707 of this title; and*

3 “(C) *shall determine whether to pursue the*
 4 *binding arbitration process not later than 30*
 5 *days after the date that a petition or formal*
 6 *complaint is filed.*

7 “(2) *LIMITATION.—Initiation of the binding ar-*
 8 *bitration process shall preclude the Board from sepa-*
 9 *rately reviewing a complaint or dispute related to the*
 10 *same rail rate, practice, or common carrier service*
 11 *expectation in a covered dispute involving the same*
 12 *parties.*

13 “(3) *RATES.—In resolving a covered dispute in-*
 14 *volving the reasonableness of a rail carrier’s rates, the*
 15 *arbitrator or panel of arbitrators, as applicable, shall*
 16 *consider the Board’s methodologies for setting max-*
 17 *imum lawful rates, giving due consideration to the*
 18 *need for differential pricing to permit a rail carrier*
 19 *to collect adequate revenues within the meaning of*
 20 *section 10704(a)(2).*

21 “(4) *SERVICE EXPECTATIONS.—In resolving a*
 22 *dispute involving common carrier service expecta-*
 23 *tions, the arbitrator or panel of arbitrators, as appli-*
 24 *cable, shall consider the rates and service terms, and*
 25 *any changes thereto, as published or otherwise made*

1 *available under subsection (b), (c), or (d) of section*
 2 *11101.*

3 “(d) *ARBITRATION DECISIONS.*—*Any decision reached*
 4 *in an arbitration process under this section—*

5 “(1) *shall—*

6 “(A) *be in writing;*

7 “(B) *contain findings of fact and conclu-*
 8 *sions; and*

9 “(C) *be binding upon the parties; and*

10 “(2) *shall not have any precedential effect in any*
 11 *other or subsequent arbitration dispute.*

12 “(e) *TIMELINES.*—

13 “(1) *SELECTION.*—*An arbitrator or panel of ar-*
 14 *bitrators shall be selected not later than 14 days after*
 15 *the date of the Board’s decision to initiate arbitra-*
 16 *tion.*

17 “(2) *EVIDENTIARY PROCESS.*—*The evidentiary*
 18 *process of the binding arbitration process shall be*
 19 *completed not later than 90 days after the date that*
 20 *the arbitration process is initiated, unless a party re-*
 21 *quests an extension and the arbitrator or panel of ar-*
 22 *bitrators, as applicable, grants it.*

23 “(3) *DECISION.*—*The arbitrator or panel of arbi-*
 24 *trators, as applicable, shall issue a decision not later*

1 *than 30 days after the date that the evidentiary*
 2 *record is closed.*

3 “(4) *EXTENSIONS.*—*The Board may extend any*
 4 *of the timelines in this subsection upon the agreement*
 5 *of all parties in the dispute.*

6 “(f) *ARBITRATORS.*—

7 “(1) *IN GENERAL.*—*Unless otherwise agreed by*
 8 *all of the parties, an arbitration under this section*
 9 *shall be conducted by a panel of arbitrators, selected*
 10 *from a roster, maintained by the Board, of persons*
 11 *with rail transportation, economic regulation, profes-*
 12 *sional or business experience, including agriculture,*
 13 *in the private sector.*

14 “(2) *SELECTION.*—

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

21 “(B) *PANEL OF ARBITRATORS.*—*For pur-*
 22 *poses of this section, a panel of arbitrators shall*
 23 *be selected as follows:*

24 “(i) *The parties to a dispute may mu-*
 25 *tually select 1 arbitrator from the roster to*

1 *serve as the lead arbitrator of the panel of*
 2 *arbitrators.*

3 “(ii) *If the parties cannot mutually*
 4 *agree on a lead arbitrator, the parties shall*
 5 *select a lead arbitrator using the process de-*
 6 *scribed in subparagraph (A).*

7 “(iii) *In addition to the lead arbi-*
 8 *trator selected under this subparagraph,*
 9 *each party to a dispute shall select 1 addi-*
 10 *tional arbitrator from the roster.*

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

13 “(g) *RELIEF.—An arbitral decision under this section*
 14 *may award the payment of damages or rate prescriptive*
 15 *relief, but the value of the award shall be limited as follows:*

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

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

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

4 “(1) a clear abuse of arbitral authority or discre-
5 tion occurred;

6 “(2) the decision directly contravenes statutory
7 authority; or

8 “(3) the award limitation under subsection (g)
9 was violated.”.

10 “(b) *CONFORMING AMENDMENT.*—The table of contents
11 for chapter 117 is amended by adding at the end the fol-
12 lowing:

“11708. Voluntary arbitration of certain rail rate, practice, and common carrier
service disputes.”.

13 **SEC. 12. COMPILATION OF COMPLAINTS AT SURFACE**
14 **TRANSPORTATION BOARD.**

15 “(a) *IN GENERAL.*—Section 704, as amended by section
16 6 of this Act, is further amended—

17 “(1) by striking the section heading and inserting
18 the following:

19 **“§ 704. Reports”;**

20 “(2) by inserting “(a) *ANNUAL REPORT.*—” before
21 “The Board” and indenting appropriately; and

22 “(3) by adding at the end the following:

23 “(b) *COMPLAINTS.*—

1 “(1) *IN GENERAL.*—*The Board shall establish*
 2 *and maintain a database of complaints received by*
 3 *the Board.*

4 “(2) *QUARTERLY REPORTS.*—*The Board shall*
 5 *post a quarterly report of formal and informal service*
 6 *complaints received by the Board during the previous*
 7 *quarter that includes—*

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

9 “(B) *the geographic region of each com-*
 10 *plaint; and*

11 “(C) *the resolution of each complaint, if ap-*
 12 *propriate.*

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

17 “(4) *WEBSITE POSTING.*—*Each quarterly report*
 18 *shall be posted on the Board’s public website.”.*

19 “(b) *CONFORMING AMENDMENT.*—*The table of contents*
 20 *for chapter 7 is amended by striking the item relating to*
 21 *section 704 and inserting the following:*

 “704. *Reports.*”.

22 **SEC. 13. QUARTERLY REPORTS.**

23 *Not later than 60 days after the date of enactment of*
 24 *this Act, the Surface Transportation Board shall begin pro-*
 25 *viding quarterly reports to the Committee on Commerce,*

1 *Science, and Transportation of the Senate and the Com-*
 2 *mittee on Transportation and Infrastructure of the House*
 3 *of Representatives on the Surface Transportation Board's*
 4 *progress toward addressing the issues raised in each unfin-*
 5 *ished regulatory proceeding, regardless of whether the pro-*
 6 *ceeding is subject to a statutory or regulatory deadline.*

7 **SEC. 14. SENSE OF CONGRESS.**

8 *It is the sense of Congress that—*

9 *(1) as part of Docket No. EP 722, the Surface*
 10 *Transportation Board should consider the costs and*
 11 *benefits of the annual determinations of revenue ade-*
 12 *quacy for Class I railroads;*

13 *(2) the Surface Transportation Board should re-*
 14 *view the methodology employed to define the business*
 15 *cycle in its annual determination of revenue ade-*
 16 *quacy and consider undertaking, if necessary, a rule-*
 17 *making to define the business cycle;*

18 *(3) as part of Docket No. EP 711, the Surface*
 19 *Transportation Board should consider if a rule-*
 20 *making proceeding on competitive switching is needed*
 21 *to promote a viable competitive national rail system;*
 22 *and*

23 *(4) if the Surface Transportation Board deter-*
 24 *mines a rulemaking proceeding on competitive*
 25 *switching is needed, the Surface Transportation*

1 *Board should ensure that such rulemaking is com-*
 2 *pleted in as timely a manner as possible.*

3 **SEC. 15. AUTHORIZATION OF APPROPRIATIONS.**

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

6 *“(1) \$33,000,000 for fiscal year 2015;*

7 *“(2) \$35,000,000 for fiscal year 2016;*

8 *“(3) \$35,500,000 for fiscal year 2017;*

9 *“(4) \$35,500,000 for fiscal year 2018; and*

10 *“(5) \$36,000,000 for fiscal year 2019.”.*

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

12 *(a) EXPIRED RAIL SERVICE CONTRACT LIMITATION.—*

13 *Section 10709 is amended by striking subsection (h).*

14 *(b) AGENT IN THE DISTRICT OF COLUMBIA.—*

15 *(1) DESIGNATION OF AGENT AND SERVICE OF*

16 *NOTICE.—Section 723 is amended—*

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

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

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

1 **SEC. 17. CONSTRUCTION.**

2 *Nothing in this Act shall be construed to affect any*
3 *suit commenced by or against the Surface Transportation*
4 *Board, or any proceeding or challenge pending before the*
5 *Surface Transportation Board, prior to the date of enact-*
6 *ment of this Act.*

Calendar No. 624

113TH CONGRESS
2^D Session

S. 2777

A BILL

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

DECEMBER 8, 2014

Reported with an amendment