

114TH CONGRESS
1ST SESSION

S. 808

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

IN THE SENATE OF THE UNITED STATES

MARCH 19, 2015

Mr. THUNE introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

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

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Surface Transportation Board Reauthorization Act of
4 2015”.

5 (b) TABLE OF CONTENTS.—The table of contents for
6 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. References to title 49, United States Code.
- Sec. 3. Establishment of Surface Transportation Board as an independent establishment.
- Sec. 4. Surface Transportation Board membership.
- Sec. 5. Nonpublic collaborative discussions.
- Sec. 6. Reports.
- Sec. 7. Authorization of appropriations.
- Sec. 8. Agent in the District of Columbia.

- Sec. 9. Department of Transportation Inspector General authority.
- Sec. 10. Amendment to table of sections.
- Sec. 11. Procedures for rate cases.
- Sec. 12. Investigative authority.
- Sec. 13. Arbitration of certain rail rates and practices disputes.
- Sec. 14. Effect of proposals for rates from multiple origins and destinations.
- Sec. 15. Reports.
- Sec. 16. Criteria.
- Sec. 17. Construction.

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) REDESIGNATION OF CHAPTER 7 OF TITLE 49,
 11 UNITED STATES CODE.—Title 49 is amended—

12 (1) by moving chapter 7 after chapter 11 in
 13 subtitle II;

14 (2) by redesignating chapter 7 as chapter 13;

15 (3) by redesignating sections 701 through 706
 16 as sections 1301 through 1306, respectively;

17 (4) by striking sections 725 and 727;

18 (5) by redesignating sections 721 through 724
 19 as sections 1321 through 1324, respectively; and

20 (6) by redesignating section 726 as section
 21 1325.

1 (b) INDEPENDENT ESTABLISHMENT.—Section 1301,
2 as redesignated by subsection (a)(3), is amended by strik-
3 ing subsection (a) and inserting the following:

4 “(a) ESTABLISHMENT.—The Surface Transportation
5 Board is an independent establishment of the United
6 States Government.”.

7 (c) CONFORMING AMENDMENTS.—

8 (1) ADMINISTRATIVE PROVISIONS.—Section
9 1303, as redesignated by subsection (a)(3), is
10 amended—

11 (A) by striking subsections (a), (c), (f),
12 and (g);

13 (B) by redesignating subsections (b), (d),
14 and (e) as subsections (a), (b), and (c), respec-
15 tively; and

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

17 “(d) SUBMISSION OF CERTAIN DOCUMENTS TO CON-
18 GRESS.—

19 “(1) IN GENERAL.—If the Board submits any
20 budget estimate, budget request, supplemental budg-
21 et estimate, or other budget information, legislative
22 recommendation, prepared testimony for a congress-
23 sional hearing, or comment on legislation to the
24 President or to the Office of Management and

1 Budget, the Board shall concurrently submit a copy
2 of such document to—

3 “(A) the Committee on Commerce,
4 Science, and Transportation of the Senate; and

5 “(B) the Committee on Transportation
6 and Infrastructure of the House of Representa-
7 tives.

8 “(2) NO APPROVAL REQUIRED.—No officer or
9 agency of the United States has any authority to re-
10 quire the Board to submit budget estimates or re-
11 quests, legislative recommendations, prepared testi-
12 mony for congressional hearings, or comments on
13 legislation to any officer or agency of the United
14 States for approval, comments, or review before sub-
15 mitting such recommendations, testimony, or com-
16 ments to Congress.”.

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

18 (a) IN GENERAL.—Section 1301(b), as redesignated
19 by subsection 3(a), is amended—

20 (1) in paragraph (1)—

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

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

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

3 “(2) At all times—

4 “(A) at least 3 members of the Board shall be
5 individuals with professional standing and dem-
6 onstrated knowledge in the fields of transportation,
7 transportation regulation, or economic regulation;
8 and

9 “(B) at least 2 members shall be individuals
10 with professional or business experience (including
11 agriculture) in the private sector.”.

12 (b) REPEAL OF OBSOLETE PROVISION.—Section
13 1301(b), as amended by this section, is further amended—

14 (1) by striking paragraph (4);

15 (2) by redesignating paragraphs (5), (6), and
16 (7) as paragraphs (4), (5), and (6), respectively; and

17 (3) in paragraph (4), as redesignated, by strik-
18 ing “who becomes a member of the Board pursuant
19 to paragraph (4), or an individual”.

20 **SEC. 5. NONPUBLIC COLLABORATIVE DISCUSSIONS.**

21 Section 1303(a), as redesignated by subsections (a)
22 and (c) of section 3, is amended to read as follows:

23 “(a) OPEN MEETINGS.—

1 “(1) IN GENERAL.—The Board shall be deemed
2 to be an agency for purposes of section 552b of title
3 5.

4 “(2) NONPUBLIC COLLABORATIVE DISCUS-
5 SIONS.—

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

11 “(i) no formal or informal vote or
12 other official agency action is taken at the
13 meeting;

14 “(ii) each individual present at the
15 meeting is a member or an employee of the
16 Board; and

17 “(iii) the General Counsel of the
18 Board is present at the meeting.

19 “(B) DISCLOSURE OF NONPUBLIC COL-
20 LABORATIVE DISCUSSIONS.—Except as provided
21 under subparagraph (C), not later than 2 busi-
22 ness days after the conclusion of a meeting
23 under subparagraph (A), the Board shall make
24 available to the public, in a place easily acces-
25 sible to the public—

1 “(i) a list of the individuals present at
2 the meeting; and

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

8 “(C) SUMMARY.—If the Board properly
9 determines matters may be withheld from the
10 public under section 555b(c) of title 5, the
11 Board shall provide a summary with as much
12 general information as possible on those mat-
13 ters withheld from the public.

14 “(D) ONGOING PROCEEDINGS.—If a dis-
15 cussion under subparagraph (A) directly relates
16 to an ongoing proceeding before the Board, the
17 Board shall make the disclosure under subpara-
18 graph (B) on the date of the final Board deci-
19 sion.

20 “(E) PRESERVATION OF OPEN MEETINGS
21 REQUIREMENTS FOR AGENCY ACTION.—Noth-
22 ing in this paragraph may be construed to limit
23 the applicability of section 552b of title 5 with
24 respect to a meeting of the members other than
25 that described in this paragraph.

1 “(F) STATUTORY CONSTRUCTION.—Noth-
2 ing in this paragraph may be construed—

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

8 “(ii) to authorize the Board to with-
9 hold from any individual any record that is
10 accessible to that individual under section
11 552a of title 5, United States Code.”.

12 **SEC. 6. REPORTS.**

13 (a) REPORTS.—Section 1304, as amended by section
14 3, is further amended—

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

17 **“§ 1304. Reports”;**

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

20 (3) by striking “on its activities.” and inserting
21 “on its activities, including each instance in which
22 the Board has initiated an investigation on its own
23 initiative under this chapter or subtitle IV.”; and

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

25 “(b) RATE CASE REVIEW METRICS.—

1 “(1) QUARTERLY REPORTS.—The Board shall
 2 post a quarterly report of rail rate review cases
 3 pending or completed by the Board during the pre-
 4 vious quarter that includes—

5 “(A) summary information of the case, in-
 6 cluding the docket number, case name, com-
 7 modity or commodities involved, and rate review
 8 guideline or guidelines used;

9 “(B) the date on which the rate review
 10 proceeding began;

11 “(C) the date for the completion of dis-
 12 covery;

13 “(D) the date for the completion of the evi-
 14 dentiary record;

15 “(E) the date for the submission of closing
 16 briefs;

17 “(F) the date on which the Board issued
 18 the final decision; and

19 “(G) a brief summary of the final decision;

20 “(2) WEBSITE POSTING.—Each quarterly re-
 21 port shall be posted on the Board’s public website.”.

22 (b) COMPILATION OF COMPLAINTS AT SURFACE
 23 TRANSPORTATION BOARD.—

1 (1) IN GENERAL.—Section 1304, as amended
2 by subsection (a), is further amended by adding at
3 the end the following:

4 “(c) COMPLAINTS.—

5 “(1) IN GENERAL.—The Board shall establish
6 and maintain a database of complaints received by
7 the Board.

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

12 “(A) the date on which the complaint was
13 received by the Board;

14 “(B) a list of the type of each complaint;

15 “(C) the geographic region of each com-
16 plaint; and

17 “(D) the resolution of each complaint, if
18 appropriate.

19 “(3) WRITTEN CONSENT.—The quarterly report
20 may identify a complainant that submitted an infor-
21 mal complaint only upon the written consent of the
22 complainant.

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

1 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

2 Section 1305, as redesignated by section 3, is amend-
 3 ed by striking paragraphs (1) through (3) and inserting
 4 the following:

5 “(1) \$33,000,000 for fiscal year 2016;

6 “(2) \$35,000,000 for fiscal year 2017;

7 “(3) \$35,500,000 for fiscal year 2018;

8 “(4) \$35,500,000 for fiscal year 2019; and

9 “(5) \$36,000,000 for fiscal year 2020.”.

10 **SEC. 8. AGENT IN THE DISTRICT OF COLUMBIA.**

11 (a) DESIGNATION OF AGENT AND SERVICE OF NO-
 12 TICE.—Section 1323, as redesignated by section 3(a), is
 13 amended—

14 (1) in subsection (a), by striking “in the Dis-
 15 trict of Columbia,”; and

16 (2) in subsection (c), by striking “in the Dis-
 17 trict of Columbia”.

18 (b) SERVICE OF PROCESS IN COURT PRO-
 19 CEEDINGS.—Section 1324(a), as redesignated by section
 20 3(a), is amended by striking “in the District of Columbia”
 21 each place such phrase appears.

22 **SEC. 9. DEPARTMENT OF TRANSPORTATION INSPECTOR**
 23 **GENERAL AUTHORITY.**

24 Subchapter II of chapter 13, as redesignated by sec-
 25 tion 3(a)(2), is amended by inserting after section 1325,
 26 as redesignated by section 3(a)(6), the following:

1 **“§ 1326. Authority of the Inspector General**

2 “(a) IN GENERAL.—The Inspector General of the
3 Department of Transportation, in accordance with the
4 mission of the Inspector General to prevent and detect
5 fraud and abuse, shall have authority to review only the
6 financial management, property management, and busi-
7 ness operations of the Surface Transportation Board, in-
8 cluding internal accounting and administrative control
9 systems, to determine the Board’s compliance with appli-
10 cable Federal laws, rules, and regulations.

11 “(b) DUTIES.—In carrying out this section, the In-
12 spector General shall—

13 “(1) keep the Chairman of the Board, the Com-
14 mittee on Commerce, Science, and Transportation of
15 the Senate, and the Committee on Transportation
16 and Infrastructure of the House of Representatives
17 fully and currently informed about problems relating
18 to administration of the internal accounting and ad-
19 ministrative control systems of the Board;

20 “(2) issue findings and recommendations for
21 actions to address the problems referred to in para-
22 graph (1); and

23 “(3) submit periodic reports to the Committee
24 on Commerce, Science, and Transportation of the
25 Senate, and the Committee on Transportation and
26 Infrastructure of the House of Representatives that

1 describe any progress made in implementing actions
2 to address the problems referred to in paragraph
3 (1).

4 “(c) ACCESS TO INFORMATION.—In carrying out this
5 section, the Inspector General may exercise authorities
6 granted to the Inspector General under subsections (a)
7 and (b) of section 6 of the Inspector General Act of 1978
8 (5 U.S.C. App.).

9 “(d) AUTHORIZATION OF APPROPRIATIONS.—

10 “(1) FUNDING.—There are authorized to be ap-
11 propriated to the Secretary of Transportation for
12 use by the Inspector General of the Department of
13 Transportation such sums as may be necessary to
14 cover expenses associated with activities pursuant to
15 the authority exercised under this section.

16 “(2) REIMBURSABLE AGREEMENT.—In the ab-
17 sence of an appropriation under this subsection for
18 an expense referred to in paragraph (1), the Inspec-
19 tor General and the Board shall have a reimburse-
20 ment agreement to cover such expense.”.

21 **SEC. 10. AMENDMENT TO TABLE OF SECTIONS.**

22 The table of sections for chapter 13, as redesignated
23 by section 3(a), is amended to read as follows:

1 **“CHAPTER 13—SURFACE**
 2 **TRANSPORTATION BOARD**

 “I—ESTABLISHMENT

“Sec.

“1301. Establishment of Board

“1302. Functions.

“1303. Administrative provisions.

“1304. Reports.

“1305. Authorization of appropriations.

“1306. Reporting official action.

 “II—ADMINISTRATIVE

“1321. Powers.

“1322. Board action.

“1323. Service of notice in Board proceedings.

“1324. Service of process in court proceedings.

“1325. Railroad-Shipper Transportation Advisory Council.

“1326. Authority of the Inspector General.”.

3 **SEC. 11. 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 1 or more simplified
 7 and expedited methods for determining the reasonableness
 8 of challenged rates in those cases in which a full stand-
 9 alone cost presentation is too costly, given the value of
 10 the case.”.

11 (b) EXPEDITED HANDLING; RATE REVIEW
 12 TIMELINES.—Section 10704(d) is amended—

13 (1) by striking “(d) Within 9 months” and all
 14 that follows through “railroad rates.” and inserting
 15 the following:

1 “(d)(1) The Board shall maintain procedures to en-
2 sure the expeditious handling of challenges to the reason-
3 ableness of railroad rates.”; and

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

5 “(2)(A) Except as provided under subparagraph (B),
6 in a stand-alone cost rate challenge, the Board shall com-
7 ply with the following timeline:

8 (i) Discovery shall be completed not later than
9 150 days after the date on which the challenge is
10 initiated.

11 (ii) The development of the evidentiary record
12 shall be completed not later than 155 days after the
13 date on which discovery is completed under clause
14 (i).

15 (iii) The closing brief shall be submitted not
16 later than 60 days after the date on which the devel-
17 opment of the evidentiary record is completed under
18 clause (ii).

19 (iv) A final Board decision shall be issued not
20 later than 180 days after the date on which the evi-
21 dentiary record is completed under clause (ii).

22 (B) The Board may extend a timeline under sub-
23 paragraph (A) after a request from any party or in the
24 interest of due process.”.

1 (c) PROCEDURES.—Not later than 180 days after the
 2 date of the enactment of this Act, the Surface Transpor-
 3 tation Board shall initiate a proceeding to assess proce-
 4 dures that are available to parties in litigation before
 5 courts to expedite such litigation and the potential applica-
 6 tion of any such procedures to rate cases.

7 (d) EXPIRED RAIL SERVICE CONTRACT LIMITA-
 8 TION.—Section 10709 is amended by striking subsection
 9 (h).

10 **SEC. 12. INVESTIGATIVE AUTHORITY.**

11 (a) AUTHORITY TO INITIATE INVESTIGATIONS.—
 12 Section 11701(a) is amended—

13 (1) by striking “only on complaint” and insert-
 14 ing “on the Board’s own initiative or upon receiving
 15 a complaint pursuant to subsection (b)”;

16 (2) by adding at the end the following: “If the
 17 Board finds a violation of this part in a proceeding
 18 brought on its own initiative, any remedy from such
 19 proceeding may only be applied prospectively.”.

20 (b) LIMITATIONS ON INVESTIGATIONS OF THE
 21 BOARD’S INITIATIVE.—Section 11701, as amended by
 22 subsection (a), is further amended by adding at the end
 23 the following:

24 “(d) In any investigation commenced on the Board’s
 25 own initiative, the Board shall—

1 “(1) not later than 30 days after initiating the
2 investigation, provide written notice to the parties
3 under investigation, which shall state the basis for
4 such investigation;

5 “(2) only investigate issues that are of national
6 or regional significance;

7 “(3) permit the parties under investigation to
8 file a written statement describing any or all facts
9 and circumstances concerning a matter which may
10 be the subject of such investigation;

11 “(4) make available to the parties under inves-
12 tigation and Board members—

13 “(A) any recommendations made as a re-
14 sult of the investigation; and

15 “(B) a summary of the findings that sup-
16 port such recommendations;

17 “(5) to the extent practicable, separate the in-
18 vestigative and decisionmaking functions of staff;

19 “(6) dismiss any investigation that is not con-
20 cluded by the Board with administrative finality
21 within 1 year after the date on which it was com-
22 menced; and

23 “(7) not later than 90 days after receiving the
24 recommendations and summary of findings under
25 paragraph (4)—

1 “(A) dismiss the investigation if no further
2 action is warranted; or

3 “(B) initiate a proceeding to determine if
4 a provision under this part has been violated.

5 “(e)(1) Any parties to an investigation against whom
6 a violation is found as a result of an investigation begun
7 on the Board’s own initiative may, not later than 60 days
8 after the date of the order of the Board finding such a
9 violation, institute an action in the United States court
10 of appeals for the appropriate judicial circuit for de novo
11 review of such order in accordance with chapter 7 of title
12 5.

13 “(2) The court—

14 “(A) shall have jurisdiction to enter a judgment
15 affirming, modifying, or setting aside, in whole or in
16 part, the order of the Board; and

17 “(B) may remand the proceeding to the Board
18 for such further action as the court may direct.”.

19 (c) RULEMAKINGS FOR INVESTIGATIONS OF THE
20 BOARD’S INITIATIVE.—Not later than 1 year after the
21 date of the enactment of this Act, the Board shall issue
22 rules, after notice and comment rulemaking, for investiga-
23 tions commenced on its own initiative that—

1 (1) comply with the requirements of section
2 11701(d) of title 49, United States Code, as added
3 by subsection (b);

4 (2) satisfy due process requirements; and

5 (3) take into account ex parte constraints.

6 **SEC. 13. ARBITRATION OF CERTAIN RAIL RATES AND PRAC-**
7 **TICES DISPUTES.**

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

10 **“§ 11708. Voluntary arbitration of certain rail rates**
11 **and practices disputes**

12 “(a) IN GENERAL.—Not later than 1 year after the
13 date of the enactment of the Surface Transportation
14 Board Reauthorization Act of 2015, the Board shall pro-
15 mulgate regulations to establish a voluntary and binding
16 arbitration process to resolve rail rate and practice com-
17 plaints subject to the jurisdiction of the Board.

18 “(b) COVERED DISPUTES.—The voluntary and bind-
19 ing arbitration process established pursuant to subsection
20 (a)—

21 “(1) shall apply to disputes involving—

22 “(A) rates, demurrage, accessorial charges,
23 misrouting, or mishandling of rail cars; or

1 “(B) a carrier’s published rules and prac-
2 tices as applied to particular rail transpor-
3 tation;

4 “(2) shall not apply to disputes—

5 “(A) to obtain the grant, denial, stay, or
6 revocation of any license, authorization, or ex-
7 emption;

8 “(B) to prescribe for the future any con-
9 duct, rules, or results of general, industry-wide
10 applicability;

11 “(C) to enforce a labor protective condi-
12 tion; or

13 “(D) that are solely between 2 or more rail
14 carriers; and

15 “(3) shall not prevent parties from independ-
16 ently seeking or utilizing private arbitration services
17 to resolve any disputes the parties may have.

18 “(c) ARBITRATION PROCEDURES.—

19 “(1) IN GENERAL.—The Board—

20 “(A) may make the voluntary and binding
21 arbitration process established pursuant to sub-
22 section (a) available only to the relevant parties;

23 “(B) may make the voluntary and binding
24 arbitration process available only—

1 “(i) after receiving the written con-
2 sent to arbitrate from all relevant parties;
3 and

4 “(ii)(I) after the filing of a written
5 complaint; or

6 “(II) through other procedures adopt-
7 ed by the Board in a rulemaking pro-
8 ceeding;

9 “(C) with respect to rate disputes, may
10 make the voluntary and binding arbitration
11 process available only to the relevant parties if
12 the rail carrier has market dominance (as de-
13 termined under section 10707); and

14 “(D) may initiate the voluntary and bind-
15 ing arbitration process not later than 40 days
16 after the date on which a written complaint is
17 filed or through other procedures adopted by
18 the Board in a rulemaking proceeding.

19 “(2) LIMITATION.—Initiation of the voluntary
20 and binding arbitration process shall preclude the
21 Board from separately reviewing a complaint or dis-
22 pute related to the same rail rate or practice in a
23 covered dispute involving the same parties.

24 “(3) RATES.—In resolving a covered dispute in-
25 volving the reasonableness of a rail carrier’s rates,

1 the arbitrator or panel of arbitrators, as applicable,
2 shall consider the Board’s methodologies for setting
3 maximum lawful rates, giving due consideration to
4 the need for differential pricing to permit a rail car-
5 rier to collect adequate revenues (as determined
6 under section 10704(a)(2)).

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

9 “(1) shall be consistent with sound principles of
10 rail regulation economics;

11 “(2) shall be in writing;

12 “(3) shall contain findings of fact and conclu-
13 sions;

14 “(4) shall be binding upon the parties; and

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

17 “(e) TIMELINES.—

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

22 “(2) EVIDENTIARY PROCESS.—The evidentiary
23 process of the voluntary and binding arbitration
24 process shall be completed not later than 90 days

1 after the date on which the arbitration process is ini-
2 tiated unless—

3 “(A) a party requests an extension; and

4 “(B) the arbitrator or panel of arbitrators,
5 as applicable, grants such extension request.

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

10 “(4) EXTENSIONS.—The Board may extend any
11 of the timelines under this subsection upon the
12 agreement of all parties in the dispute.

13 “(f) ARBITRATORS.—

14 “(1) IN GENERAL.—Unless otherwise agreed by
15 all of the parties, an arbitration under this section
16 shall be conducted by an arbitrator or panel of arbi-
17 trators, which shall be selected from a roster, main-
18 tained by the Board, of persons with rail transpor-
19 tation, economic regulation, professional or business
20 experience, including agriculture, in the private sec-
21 tor.

22 “(2) INDEPENDENCE.—In an arbitration under
23 this section, the arbitrators shall perform their du-
24 ties with diligence, good faith, and in a manner con-

1 sistent with the requirements of impartiality and
2 independence.

3 “(3) SELECTION.—

4 “(A) IN GENERAL.—If the parties cannot
5 mutually agree on an arbitrator, or the lead ar-
6 bitrator of a panel of arbitrators, the parties
7 shall select the arbitrator or lead arbitrator
8 from the roster by alternately striking names
9 from the roster until only 1 name remains
10 meeting the criteria set forth in paragraph (1).

11 “(B) PANEL OF ARBITRATORS.—If the
12 parties agree to select a panel of arbitrators, in-
13 stead of a single arbitrator, the panel shall be
14 selected under this subsection as follows:

15 “(i) The parties to a dispute may mu-
16 tually select 1 arbitrator from the roster to
17 serve as the lead arbitrator of the panel of
18 arbitrators.

19 “(ii) If the parties cannot mutually
20 agree on a lead arbitrator, the parties shall
21 select a lead arbitrator using the process
22 described in subparagraph (A).

23 “(iii) In addition to the lead arbi-
24 trator selected under this subparagraph,
25 each party to a dispute shall select 1 addi-

1 tional arbitrator from the roster, regard-
2 less of whether the other party struck out
3 the arbitrator's name under subparagraph
4 (A).

5 “(4) COST.—The parties shall share the costs
6 incurred by the Board and arbitrators equally, with
7 each party responsible for paying its own legal and
8 other associated arbitration costs.

9 “(g) RELIEF.—

10 “(1) IN GENERAL.—Subject to the limitations
11 set forth in paragraphs (2) and (3), an arbitral deci-
12 sion under this section may award the payment of
13 damages or rate prescriptive relief.

14 “(2) PRACTICE DISPUTES.—The damage award
15 for practice disputes may not exceed \$2,000,000.

16 “(3) RATE DISPUTES.—

17 “(A) MONETARY LIMIT.—The damage
18 award for rate disputes, including any rate pre-
19 scription, may not exceed \$25,000,000.

20 “(B) TIME LIMIT.—Any rate prescription
21 shall be limited to not longer than 5 years from
22 the date of the arbitral decision.

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

1 (2) the Committee on Transportation and In-
2 frastructure of the House of Representatives.

3 **SEC. 15. REPORTS.**

4 (a) REPORT ON RATE CASE METHODOLOGY.—Not
5 later than 1 year after the date of the enactment of this
6 Act, the Surface Transportation Board shall submit a re-
7 port to the congressional committees referred to in section
8 14(b) that—

9 (1) indicates whether current large rate case
10 methodologies are sufficient, not unduly complex,
11 and cost effective;

12 (2) indicates whether alternative methodologies
13 exist, or could be developed, to streamline, expedite,
14 and address the complexity of large rate cases; and

15 (3) only includes alternative methodologies,
16 which exist or could be developed, that are con-
17 sistent with sound economic principles.

18 (b) QUARTERLY REPORTS.—Beginning not later
19 than 60 days after the date of the enactment of this Act,
20 the Surface Transportation Board shall submit quarterly
21 reports to the congressional committees referred to in sec-
22 tion 14(b) that describes the Surface Transportation
23 Board's progress toward addressing the issues raised in
24 each unfinished regulatory proceeding, regardless of

1 whether the proceeding is subject to a statutory or regu-
2 latory deadline.

3 **SEC. 16. CRITERIA.**

4 Section 10704(a)(2) is amended by inserting “for the
5 infrastructure and investment needed to meet the present
6 and future demand for rail services and” after “manage-
7 ment,”.

8 **SEC. 17. CONSTRUCTION.**

9 Nothing in this Act may be construed to affect any
10 suit commenced by or against the Surface Transportation
11 Board, or any proceeding or challenge pending before the
12 Surface Transportation Board, before the date of the en-
13 actment of this Act.

○