

115TH CONGRESS
1ST SESSION

S. 1233

To improve the efficiency and reliability of rail transportation by reforming the Surface Transportation Board, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 25, 2017

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

A BILL

To improve the efficiency and reliability of rail transportation by reforming the Surface Transportation Board, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Rail Shipper Fairness
5 Act of 2017”.

6 **SEC. 2. IMPROVING RAIL SERVICE.**

7 (a) COMMON CARRIER OBLIGATIONS.—Section
8 11101(a) of title 49, United States Code, is amended by
9 inserting “, as necessary for the efficient and reliable

1 transportation based on the shipper's reasonable service
 2 requirements," after "the transportation or service".

3 (b) EMERGENCY SERVICE ORDERS.—Section
 4 11123(b) of such title is amended by adding at the end
 5 the following:

6 “(4) The Board may issue emergency service orders
 7 that include shipments moving under contract if such
 8 shipments are part of a regional service order issued in
 9 accordance with this section.”.

10 (c) REPORTS.—Section 11145(a) of such title is
 11 amended—

12 (1) in paragraph (1), by striking “and” at the
 13 end;

14 (2) by redesignating paragraph (2) as para-
 15 graph (3); and

16 (3) by inserting after paragraph (1) the fol-
 17 lowing:

18 “(2) reports, service plans, or other documents
 19 that cover shipments moving under contract if such
 20 shipments are part of a general report, service plan,
 21 or other document that generally covers the geo-
 22 graphic area or commodity; and”.

23 (d) EQUITABLE RELIEF; DAMAGES.—Section 11704
 24 of such title is amended—

1 (1) in subsection (a), by inserting “or subjected
2 to inadequate or deficient service” after “injured”;

3 (2) by amending subsection (b) to read as fol-
4 lows:

5 “(b) A rail carrier providing transportation subject
6 to the jurisdiction of the Board under this part is liable—

7 “(1) for damages sustained by a person as a re-
8 sult of an act or omission of that carrier in violation
9 of this part;

10 “(2) to a person for amounts charged to that
11 person that exceed the applicable rate for the trans-
12 portation; and

13 “(3) to a person for damages or equitable relief
14 as a result of inadequate or deficient service in viola-
15 tion of this part.”; and

16 (3) in subsection (c), by adding at the end the
17 following:

18 “(3) The Board may order a rail carrier to pay dam-
19 ages or to provide equitable relief, as appropriate, to a
20 person subjected to inadequate or deficient service as a
21 result of a violation of this part by that carrier.”.

22 (e) CIVIL PENALTIES.—Section 11901 of such title
23 is amended—

24 (1) in subsection (a), by striking “\$5,000” and
25 inserting “\$25,000”;

1 (2) in subsection (c), by striking “\$5,000” and
 2 inserting “\$25,000”; and

3 (3) in subsection (e), by striking “\$100” each
 4 place such term appears and inserting “\$1,000”.

5 **SEC. 3. IMPROVING RAIL COMPETITION.**

6 (a) RAIL TRANSPORTATION POLICY.—Section 10101
 7 of title 49, United States Code, is amended—

8 (1) by redesignating paragraphs (14) and (15)
 9 as paragraphs (15) and (16), respectively; and

10 (2) by inserting after paragraph (13) the fol-
 11 lowing:

12 “(14) to provide for and promote the protection
 13 of the shipping public;”.

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

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

18 (c) MARKET DOMINANCE.—Section 10707 of such
 19 title is amended—

20 (1) in subsection (a)—

21 (A) by striking “In this section, ‘market
 22 dominance’ means” and inserting the following:

23 “(a) In this section:

1 “(1) ‘effective competition’ only includes modes
 2 of transportation with existing and supporting infra-
 3 structure; and

4 “(2) ‘market dominance’ means”; and
 5 (2) in subsection (b)—

6 (A) by inserting “A rail carrier could have
 7 market dominance even in circumstances in
 8 which a shipper is served by two carriers.” after
 9 “the rate applies.”; and

10 (B) by striking “rate or transportation”
 11 and inserting “rate for transportation”.

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

14 “(c)(1) Except as provided in paragraph (2), the
 15 Board shall require a Class I rail carrier to enter into a
 16 competitive switching agreement if a shipper or receiver,
 17 or a group of shippers or receivers, files a petition with
 18 the Board that demonstrates, to the satisfaction of the
 19 Board, that—

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

23 “(B) subject to paragraph (3), there is, or can
 24 be a working interchange between—

1 “(i) the Class I rail carrier serving the
2 shipper or receiver for whom such switching is
3 sought; and

4 “(ii) another rail carrier within a reason-
5 able distance of the facilities of such shipper or
6 receiver.

7 “(2) Competitive switching may not be imposed
8 under this subsection if—

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

12 “(B) the presence of reciprocal switching will
13 unduly restrict the ability of a rail carrier to serve
14 its own shippers.

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

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

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

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

2 (a) BENCHMARK-BASED RATE REASONABLENESS
3 STANDARD.—Section 10701(d) of title 49, United States
4 Code, is amended by adding at the end the following:

5 “(4)(A) Not later than 90 days after the date of the
6 enactment of this paragraph, the Board shall initiate a
7 rulemaking proceeding to develop a methodology for deter-
8 mining the reasonableness of challenged rail rates based
9 on competitive rate benchmarking that predicts a competi-
10 tive rate level based upon econometric models.

11 “(B) Rather than utilizing its existing Three-Bench-
12 mark Methodology, the Board shall develop a methodology
13 that considers competitive markets or a proxy of such
14 markets.

15 “(C) In determining the reasonableness of a chal-
16 lenged rate under the new benchmarking methodology de-
17 veloped under this paragraph, the Board shall presume
18 that a rate above the benchmark rate level is unreasonable
19 unless the rail carrier proves that the margin above the
20 competitive rate benchmark is necessary to allow the rail
21 carrier to earn adequate revenues.

22 “(D) Relief under the new benchmarking method
23 shall have no monetary limit, but any rate prescription
24 set by the Board shall remain in effect not less than 5
25 years.

1 “(E) The Board’s rulemaking under this paragraph
 2 shall set a standard procedural schedule for such cases,
 3 subject to necessary adjustments in particular adjudica-
 4 tions, which may not exceed 365 days.”.

5 (b) STAND-ALONE COST CASES.—Section 10702 of
 6 such title is amended—

7 (1) by inserting “(a)” before “A rail carrier”;
 8 and

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

10 “(b)(1) The Board shall prohibit a rail carrier pro-
 11 viding transportation subject to the jurisdiction of the
 12 Board under this part to change the challenged rate for
 13 providing such transportation to rail customers while a
 14 maximum reasonable rate case brought by such rail cus-
 15 tomers is pending before the Board.

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

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

22 “(4) The Board shall use a market-based revenue di-
 23 visions methodology in deciding stand-alone cost cases.

24 “(5) In a stand-alone cost case, if the Board deter-
 25 mines that the rail carrier is revenue adequate, the rail

1 carrier shall have the burden of proof to demonstrate that
 2 the railroad carrier is charging a reasonable rate.”.

3 (c) CONFORMING AMENDMENT.—Section 10704 of
 4 such title is amended—

5 (1) by striking subsection (c); and

6 (2) by redesignating subsection (d) as sub-
 7 section (c).

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

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

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

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

19 **SEC. 5. PROTECTIONS FROM UNREASONABLE PRACTICES.**

20 Section 10701 of title 49, United States Code, is
 21 amended by adding at the end the following:

22 “(e)(1) A rail carrier providing transportation subject
 23 to the jurisdiction of the Board under this part may not
 24 use an index when establishing fuel surcharges.

1 “(2) Any fuel surcharges imposed by the rail carrier
 2 shall be directly accounted for by changes to the carrier’s
 3 actual fuel prices. The carrier’s fuel surcharge may not
 4 be greater than the amount necessary to recover the car-
 5 rier’s incremental fuel cost increases.

6 “(3) The Board is authorized to require any rail car-
 7 rier to report actual fuel prices as necessary to carry out
 8 the purposes of this subsection.

9 “(4) A shipper may challenge a fuel surcharge as an
 10 unreasonable practice under section 10702(2) if such
 11 charges, as applied to that shipper, exceed the carrier’s
 12 incremental fuel costs.”.

13 **SEC. 6. REVENUE ADEQUACY.**

14 (a) **ELIMINATION OF REVENUE ADEQUACY TEST.**—
 15 Section 10704(a) of title 49, United States Code, is
 16 amended by striking paragraph (3).

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

20 “(3) In calculating a rail carrier’s cost of capital, the
 21 Board shall multiply the value of the capital by the sum
 22 of—

23 “(A) the current annual yield on a 10-year
 24 United States Treasury Bond; and

- 1 “(B) a prospective market risk premium, which
- 2 shall not exceed 5 percent per year.”.

