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

IN THE SENATE OF THE UNITED STATES

Mr. ROCKEFELLER (for himself and Mr. THUNE) introduced the following bill; which was read twice and referred to the Committee on

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-

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-
tation 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 an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 3. ESTABLISHMENT OF SURFACE TRANSPORTATION BOARD AS AN INDEPENDENT ESTABLISHMENT.

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

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

(b) CONFORMING AMENDMENTS.—

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

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

(B) by redesignating subsections (b), (d), and (e) as subsections (a), (b), and (c), respectively; and

(C) by adding at the end the following:

“(d) SUBMISSIONS AND TRANSMITTALS.—Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget estimate, or other budget information, legislative recommendation, prepared testimony for a congressional hearing, or comment on leg-
islation to the President or to the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives. No officer or agency of the United States shall have any authority to require the Board to submit its budget estimates or requests, legislative recommendations, prepared testimony for congressional hearings, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of the recommendations, testimony, or comments to Congress.”.

(2) ADMINISTRATIVE SUPPORT.—

(A) REPEALER.—Section 725 is repealed.

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

SEC. 4. SURFACE TRANSPORTATION BOARD MEMBERSHIP.

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

(1) in paragraph (1)—

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

(B) by striking “2 members” and inserting “3 members”; and
(2) by striking paragraph (2) and inserting the following:

“(2) At any given time, at least 3 members of the Board shall be individuals with professional standing and demonstrated knowledge in the fields of transportation, transportation regulation, or economic regulation, and at least 2 members shall be individuals with professional or business experience (including agriculture or other rail customers) in the private sector.”.

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

(e) REPEAL OF OBSOLETE PROVISION.—Section 701(b) is amended—

(1) by striking paragraph (4);

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

(3) by striking “In the case of an individual who becomes a member of the Board pursuant to paragraph (4), or an individual” in paragraph (4), as redesignated, and inserting “In the case of an individual”.
SEC. 5. NONPUBLIC COLLABORATIVE DISCUSSIONS.

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

“(a) OPEN MEETINGS.—

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

“(2) NONPUBLIC COLLABORATIVE DISCUSSIONS.—

“(A) IN GENERAL.—Notwithstanding section 552b of title 5, a majority of the members may hold a meeting that is not open to public observation to discuss official agency business if—

“(i) no vote or other disposition of official agency business is taken at the meeting;

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

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

“(B) DISCLOSURE OF NONPUBLIC COLLABORATIVE DISCUSSIONS.—Except as provided under subparagraph (C), not later than 2 business days after the conclusion of a meeting.
under subparagraph (A), the Board shall make available to the public, in a place easily accessible to the public—

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

“(ii) a summary of the matters discussed at the meeting, except for any matters the Board properly determines may be withheld from the public under section 552b(c) of title 5.

“(C) ONGOING PROCEEDINGS.—If a discussion under subparagraph (A) relates, directly or indirectly, to an ongoing proceeding before the Board, the Board shall make the disclosure under subparagraph (B) on the date of the final Board decision.

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

“(E) STATUTORY CONSTRUCTION.—Nothing in this paragraph—
“(i) shall limit the applicability of section 552b of title 5 with respect to any information which is proposed to be withheld from the public under subparagraph (B)(ii); and

“(ii) authorizes the Board to withhold from any individual any record that is accessible to that individual under section 552a of title 5, United States Code.”.

SEC. 6. INVESTIGATIVE AUTHORITY.

(a) Authority to Initiate Investigations.—Section 11701(a) is amended by striking “only on complaint” and inserting “on the Board’s own initiative or on complaint”.

(b) Rate Proceedings.—Section 10704(b) is amended by striking the first sentence and inserting “The Board may begin a proceeding under subsection (a)(1) on its own initiative or upon complaint, except that a proceeding to determine the reasonableness of the level of a rate charged by a carrier may only be initiated upon complaint.”.

(c) Annual Report; Investigations.—Section 704 is amended by striking “on its activities.” and inserting “on its activities, including each instance in which the
Board has initiated an investigation on its own initiative under this chapter or subtitle IV.”

SEC. 7. PROCEDURES FOR RATE CASES.

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

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

(b) EXPEDITED HANDLING.—Section 10704(d) is amended by striking the first sentence and inserting “The Board shall maintain procedures to ensure expeditious handling of challenges to the reasonableness of railroad rates.”.

SEC. 8. RATE REVIEW TIMELINES.

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

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

(2) by adding at the end the following:

“(2)(A) Except as provided under subparagraph (B), in a stand-alone cost rate challenge, the Board shall comply with the following timeline:
“(i) For discovery, completion not later than 150 days after the date that the challenge is initiated.

“(ii) For development of the evidentiary record, completion not later than 155 days after the date that discovery is complete under clause (i).

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

“(iv) For a final Board decision, issuance not later than 180 days after the date that the last closing brief is submitted under clause (iii).

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

SEC. 9. EFFECT OF RATE BUNDLING.

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

SEC. 10. REPORT ON RATE CASE METHODOLOGY.

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

(1) whether current methodologies are sufficient to address the complexity of large rate cases; and

(2) alternative methodologies that could streamline and expedite large rate cases.

SEC. 11. ARBITRATION OF CERTAIN RAIL RATES, PRACTICES, AND COMMON CARRIER SERVICE EXPECTATION DISPUTES.

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

§ 11709. Arbitration of certain rail rates, practices, and common carrier service disputes

“(a) IN GENERAL.—Not later than 1 year after the date of enactment of the Surface Transportation Board Reauthorization Act of 2014, the Board shall promulgate regulations to establish a binding arbitration process to
resolve rail rate, practice, and common carrier service expectation complaints subject to the jurisdiction of the Board.

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

“(1) shall apply to disputes involving rates, practices, and common carrier service expectations subject to the jurisdiction of the Board; and

“(2) shall not apply to—

“(A) disputes to obtain the grant, denial, stay, or revocation of any license, authorization, or exemption, or to prescribe for the future any conduct, rules, or results of general, industry-wide applicability, or to enforce a labor protective condition; and

“(B) disputes solely between 2 or more rail carriers.

“(c) ARBITRATION PROCEDURES.—

“(1) IN GENERAL.—The Board—

“(A) may make the binding arbitration process available only to the relevant parties—

“(i) after the filing of a formal complaint; or

“(ii) upon petition by a party at the conclusion of any informal dispute resolu-
tion process provided by the Board for a
complaint subject to this section;

“(B) with respect to rate disputes, may
make the binding arbitration process available
only to the relevant parties if the rail carrier
has market dominance, as determined under
section 10707 of this title; and

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

“(2) LIMITATION.—Initiation of the binding ar-
bitration process shall preclude the Board from sep-
arately reviewing a complaint or dispute related to
the same rail rate, practice, or common carrier serv-
ice expectation in a covered dispute involving the
same parties.

“(3) RATES.—In resolving a covered dispute in-
volving the reasonableness of a rail carrier’s rates,
the arbitrator or panel of arbitrators, as applicable,
shall consider the Board’s methodologies for setting
maximum lawful rates, giving due consideration to
the need for differential pricing to permit a rail car-
rrier to collect adequate revenues within the meaning
of section 10704(a)(2).
“(4) SERVICE EXPECTATIONS.—In resolving a dispute involving common carrier service expectations, the arbitrator or panel of arbitrators, as applicable, shall consider the rates and service terms, and any changes thereto, as published or otherwise made available under subsection (b), (c), or (d) of section 11101.

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

“(1) shall—

“(A) be consistent with subtitle IV;

“(B) be in writing;

“(C) contain findings of fact and conclusions; and

“(D) be binding upon the parties; and

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

“(e) TIMELINES.—

“(1) SELECTION.—An arbitrator or panel of arbitrators shall be selected not later than 14 days after the date of the Board’s decision to initiate arbitration.

“(2) EVIDENTIARY PROCESS.—The evidentiary process of the binding arbitration process shall be completed not later than 90 days after the date that
the arbitration process is initiated, unless a party requests an extension and the arbitrator or panel of arbitrators, as applicable, grants it.

“(3) DECISION.—The arbitrator or panel of arbitrators, as applicable, shall issue a decision not later than 30 days after the date that the evidentiary record is closed.

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

“(f) ARBITRATORS.—

“(1) IN GENERAL.—Arbitration under this section shall be conducted by an arbitrator, or a panel of arbitrators, selected from a roster, maintained by the Board, of persons with rail transportation, economic regulation, professional or business experience, including agriculture, in the private sector.

“(2) SELECTION.—

“(A) IN GENERAL.—If the parties cannot mutually agree on an arbitrator, or the lead arbitrator of a panel of arbitrators, the parties shall select the arbitrator or lead arbitrator from the roster by alternately striking names from the roster until only 1 name remains.
“(B) PANEL OF ARBITRATORS.—For purposes of this section, a panel of arbitrators shall be selected as follows:

“(i) Notwithstanding subparagraph (A), each party to a dispute shall select 1 arbitrator from the roster.

“(ii) The parties to a dispute may mutually select 1 arbitrator from the roster to serve as the lead arbitrator of the panel of arbitrators.

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

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

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

“(2) For rate disputes, the damage award, including any rate prescription, may not exceed $25,000,000, and any rate prescription shall be limited to not longer than 5 years from the date of the arbitral decision.
“(h) BOARD REVIEW.—If a party appeals a decision under this section to the Board, the Board may review the decision under this section to determine if—

“(1) the decision is consistent with subtitle IV as applied by the Board; or

“(2) the award limitation under subsection (g).”.

(b) CONFORMING AMENDMENT.—The table of contents for chapter 117 is amended by adding at the end the following:

“11709. Arbitration of certain rail rate, practice, and common carrier service disputes.”.

SEC. 12. COMPILATION OF COMPLAINTS AT SURFACE TRANSPORTATION BOARD.

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

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

“§ 704. Reports”;

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

(3) by adding at the end the following:

“(b) COMPLAINTS.—

“(1) IN GENERAL.—The Board shall establish and maintain a database of complaints received by the Board.
“(2) QUARTERLY REPORTS.—The Board shall
post a quarterly report of formal and informal serv-
ice complaints received by the Board during the pre-
vious quarter that includes—
“(A) a list of the type of each complaint;
“(B) the geographic region of each com-
plaint; and
“(C) the resolution of each complaint, if
appropriate.
“(3) WRITTEN CONSENT.—The quarterly report
may identify a complainant that submitted an infor-
mal complaint only upon the written consent of the
complainant.
“(4) WEBSITE POSTING.—Each quarterly re-
port shall be posted on the Board’s public website.”.
(b) CONFORMING AMENDMENT.—The table of con-
tents for chapter 7 is amended by striking the item relat-
ing to section 704 and inserting the following:
“704. Reports.”.

SEC. 13. QUARTERLY REPORTS.
Not later than 60 days after the date of enactment
of this Act, the Surface Transportation Board shall begin
providing quarterly reports to the Committee on Com-
merce, Science, and Transportation of the Senate and the
Committee on Transportation and Infrastructure of the
House of Representatives on the Surface Transportation
Board’s progress toward addressing the issues raised in each unfinished regulatory proceeding, regardless of whether the proceeding is subject to a statutory or regulatory deadline.

SEC. 14. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) as part of Docket No. EP 722, the Surface Transportation Board should consider the costs and benefits of the annual determinations of revenue adequacy for Class I railroads;

(2) the Surface Transportation Board should review the methodology employed to define the business cycle in its annual determination of revenue adequacy and consider undertaking, if necessary, a rulemaking to define the business cycle;

(3) as part of Docket No. EP 711, the Surface Transportation Board should consider if a rulemaking proceeding on mandatory competitive switching is needed to ensure a viable competitive national rail system; and

(4) if the Surface Transportation Board determines a rulemaking proceeding on mandatory competitive switching is needed, the Surface Transportation Board should ensure that such rulemaking is completed in as timely a manner as possible.
SEC. 15. AUTHORIZATION OF APPROPRIATIONS.

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

“(1) $33,000,000 for fiscal year 2015;
“(2) $35,000,000 for fiscal year 2016;
“(3) $35,500,000 for fiscal year 2017;
“(4) $35,500,000 for fiscal year 2018; and
“(5) $36,000,000 for fiscal year 2019.”.

SEC. 16. REPEAL OF EXPIRED AND OBSOLETE PROVISIONS.

(a) Expired Rail Service Contract Limitation.—Section 10709 is amended by striking subsection (h).

(b) Agent in the District of Columbia.—

(1) Designation of Agent and Service of Notice.—Section 72 is amended—

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

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

(2) Service of Process in Court Proceedings.—Section 724(a) is amended by striking “in the District of Columbia” each place it appears.

SEC. 17. CONSTRUCTION.

Nothing in this Act shall be construed to affect any suit commenced by or against the Surface Transportation Board, or any proceeding or challenge pending before the
Surface Transportation Board, prior to the date of enactment of this Act.