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(Original Signature of Member)

117TH CONGRESS
2D SESSION

H. R. _____

To create a fair market in freight rail and to reauthorize the Surface
Transportation Board, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. PAYNE introduced the following bill; which was referred to the Committee
on _____

A BILL

To create a fair market in freight rail and to reauthorize
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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Freight Rail Shipping Fair Market Act”.

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

Sec. 1. Short title; table of contents.

TITLE I—ADMINISTRATIVE PROVISIONS

1 “(b) SET-ASIDE FOR PASSENGER RAIL PROGRAM.—
2 From the amounts authorized in subsection (a), the Sur-
3 face Transportation Board shall set aside at least 5 per-
4 cent of such amounts for each fiscal year consistent with
5 the passenger rail program established under section
6 22309 of the Passenger Rail Expansion and Rail Safety
7 Act of 2021 (49 U.S.C. 1301 note).

8 “(c) SET-ASIDE FOR STUDIES.—From the amounts
9 authorized in subsection (a), the Surface Transportation
10 Board shall set aside up to \$1,000,000 for each of fiscal
11 years 2023 and 2024 for each study authorized in sections
12 105, 106, and 210.”.

13 **SEC. 102. RAILROAD-SHIPPER TRANSPORTATION ADVISORY**
14 **COUNCIL.**

15 Section 1325(a) of title 49, United States Code, is
16 amended—

17 (1) by striking “19 members, of which 15 mem-
18 bers” and inserting “24 members, of which 18 mem-
19 bers”; and

20 (2) in paragraph (3)—

21 (A) by striking “6 members” and inserting
22 “9 members”;

23 (B) in subparagraph (A) by striking “and”
24 at the end;

1 (C) in subparagraph (B) by striking the
2 period and inserting a semicolon; and

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

4 “(C) 1 shall be a representative of a non-
5 profit employee organization;

6 “(D) 1 shall be a representative of a rail
7 car lessor; and

8 “(E) 1 shall be a representative of a port
9 authority.”.

10 **SEC. 103. RAIL TRANSPORTATION POLICY.**

11 Section 10101 of title 49, United States Code, is
12 amended to read as follows:

13 **“§ 10101. Rail transportation policy**

14 “In regulating the freight and intercity passenger
15 railroad industry, it is the policy of the United States Gov-
16 ernment—

17 “(1) to allow, to the maximum extent possible,
18 competition and the demand for services to establish
19 reasonable rates for transportation by rail;

20 “(2) to minimize the need for Federal regu-
21 latory control over the rail transportation system
22 and to require fair and expeditious regulatory deci-
23 sions when regulation is required;

1 “(3) to promote a safe and efficient rail trans-
2 portation system by allowing rail carriers to earn
3 adequate revenues, as determined by the Board;

4 “(4) to ensure the development and continu-
5 ation of a sound freight and passenger rail transpor-
6 tation system with effective competition among rail
7 carriers and with other modes, to meet the needs of
8 the public and the national defense;

9 “(5) to preserve and improve passenger rail
10 service;

11 “(6) to foster sound economic conditions in
12 transportation and to ensure effective competition
13 and coordination between rail carriers and other
14 modes;

15 “(7) to maintain reasonable rates where there is
16 an absence of effective competition and where rail
17 rates provide revenues which exceed the amount nec-
18 essary to maintain the rail system and to attract
19 capital;

20 “(8) to reduce regulatory barriers to entry into
21 and exit from the industry;

22 “(9) to operate transportation facilities and
23 equipment without detriment to the public health
24 and safety;

1 “(10) to encourage honest and efficient man-
2 agement of railroads;

3 “(11) to require rail carriers, to the maximum
4 extent practicable, to rely on individual rate in-
5 creases, and to limit the use of increases of general
6 applicability;

7 “(12) to encourage fair wages and safe and
8 suitable working conditions in the railroad industry;

9 “(13) to prohibit predatory pricing and prac-
10 tices, to avoid undue concentrations of market
11 power, and to prohibit unlawful discrimination;

12 “(14) to ensure the availability of accurate cost
13 information in regulatory proceedings, while mini-
14 mizing the burden on rail carriers of developing and
15 maintaining the capability of providing such infor-
16 mation;

17 “(15) to encourage and promote energy con-
18 servation;

19 “(16) to provide for the expeditious handling
20 and resolution of all proceedings required or per-
21 mitted to be brought under this part; and

22 “(17) to promote freight and passenger rail
23 growth and to resolve conflicts between freight and
24 passenger rail.”.

1 **SEC. 104. GENERAL DEFINITIONS.**

2 Section 10102 of title 49, United States Code, is
3 amended—

4 (1) by redesignating paragraphs (4), (5), (6),
5 (7), (8), (9), and (10) as paragraphs (5), (6), (7),
6 (8), (9), (10), and (11), respectively;

7 (2) by inserting after paragraph (3) the fol-
8 lowing:

9 “(4) ‘essential commodities’ includes—

10 “(A) shipments to and from military in-
11 stallations;

12 “(B) materials necessary for clean water
13 treatment; and

14 “(C) energy commodities necessary for en-
15 ergy reliability;” and

16 (3) in paragraph (7), as so redesignated—

17 (A) in subparagraph (B) by striking “and”
18 at the end;

19 (B) in subparagraph (C) by striking the
20 semicolon and inserting “; and”; and

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

22 “(D) any form of nonhighway interstate
23 ground transportation that runs on rails or
24 electromagnetic guideways, including high speed
25 ground transportation systems that connect
26 metropolitan areas, without regard to whether

1 such systems use new technologies not associ-
2 ated with traditional railroads;”.

3 **SEC. 105. UPDATED STUDY ON COMPETITION IN THE**
4 **UNITED STATES FREIGHT RAILROAD INDUS-**
5 **TRY.**

6 (a) **UPDATED STUDY.**—The Surface Transportation
7 Board shall review and update the study included in the
8 final report published in January, 2010, titled “An Up-
9 date to the Study of Competition in the U.S. Freight Rail-
10 road Industry”.

11 (b) **SCOPE OF STUDY.**—In carrying out the review
12 under subsection (a), the Board shall refine the scope of
13 the updated study, as appropriate.

14 (c) **REPORT.**—Not later than 2 years after the date
15 of enactment of this Act, the Board shall submit to the
16 Committee on Transportation and Infrastructure of the
17 House of Representatives and the Committee on Com-
18 merce, Science, and Transportation of the Senate the
19 study required under subsection (a).

20 **SEC. 106. NAS STUDY ON ENVIRONMENTAL BENEFITS OF A**
21 **ROBUST RAIL SYSTEM.**

22 (a) **STUDY.**—The Surface Transportation Board
23 shall seek to enter into a contract with the National Acad-
24 emies to conduct a study that identifies and measures the
25 environmental benefits of moving freight and passengers

1 by rail compared to other modes of transportation and
2 identify ways the Board can incentivize the rail industry
3 to maximize such environmental benefits.

4 (b) REPORT.—Any agreement entered into under
5 subsection (a) shall require that the National Academies
6 not later than 2 years after the date of enactment of this
7 Act, submit to the Board, the Committee on Transpor-
8 tation and Infrastructure of the House of Representatives
9 and the Committee on Commerce, Science, and Transpor-
10 tation of the Senate a final report containing the study
11 conducted pursuant to subsection (a).

12 **TITLE II—SERVICE DELIVERY**

13 **SEC. 201. 10-YEAR REVIEW OF COMMODITY EXEMPTIONS.**

14 Section 10502 of title 49, United States Code, is
15 amended—

16 (1) in subsection (a) by striking “, to the max-
17 imum extent consistent with this part,”; and

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

19 “(h)(1) Beginning on the date that is 1 year after
20 the date of enactment of the Freight Rail Shipping Fair
21 Market Act, and at least once during every 10 year period
22 thereafter, the Board shall review all commodity exemp-
23 tions listed in the regulations of the Board under sections
24 1039 and 1090 of title 49, Code of Federal Regulations,
25 (or other commodity exemptions contained in any regula-

1 tion of the Board) issued under this subtitle, make a de-
2 termination whether the Board should revise or revoke
3 each such exemption, and based on such determination,
4 revise or revoke each exemption.

5 “(2) Not later than 180 days after the date on which
6 a determination to revise or revoke each exemption is
7 made, the Board shall submit to the Committee on Trans-
8 portation and Infrastructure of the House of Representa-
9 tives and the Committee on Commerce, Science and
10 Transportation of the Senate a report containing such de-
11 termination.”.

12 **SEC. 202. STREAMLINING RATE REVIEWS TO PROVIDE COM-**
13 **PETITIVE RAIL SERVICE.**

14 Section 10704(d) of title 49, United States Code, is
15 amended in paragraph (1) by adding at the end the fol-
16 lowing: “The Board shall review such procedures and iden-
17 tify revisions that could improve the timeliness of Board
18 decisions under this chapter taking into account due proc-
19 ess and differences in geography and, not later than 270
20 days after the date of enactment of the Freight Rail Ship-
21 ping Fair Market Act submit a report to the Committee
22 on Transportation and Infrastructure of the House of
23 Representatives and the Committee on Commerce, Science
24 and Transportation of the Senate summarizing the find-
25 ings of such review.”.

1 **SEC. 203. SERVICE DELIVERY STANDARDS IN CONTRACTS.**

2 Section 10709 of title 49, United States Code, is
3 amended—

4 (1) by redesignating subsections (d) through (g)
5 as subsections (e) through (h), respectively;

6 (2) by inserting after subsection (c) the fol-
7 lowing:

8 “(d) Notwithstanding subsection (c), a contract en-
9 tered into under this section shall include service delivery
10 standards and appropriate remedies as a result of a failure
11 to meet service delivery standards. Such service delivery
12 standards and remedies may not be superseded by any
13 other contractual clause.”; and

14 (3) in subsection (e)(1), as redesignated by
15 paragraph (1), by inserting “, including any service
16 delivery standards and requisite remedies,” before
17 “for the transportation of agricultural products”.

18 **SEC. 204. LEVELING THE PLAYING FIELD ON DEMURRAGE**
19 **CHARGES.**

20 (a) IN GENERAL.—Section 10746 of title 49, United
21 States Code, is amended—

22 (1) by striking “A rail carrier providing” and
23 inserting the following:

24 “(a) COMPUTATION OF RAIL CARRIER DEMURRAGE
25 CHARGES.—A rail carrier providing”; and

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

1 “(b) COMPUTATION OF PRIVATE RAIL CAR OWNER
2 OR LESSEE DEMURRAGE CHARGES.—A private rail car
3 owner or lessee that transports goods, including agricul-
4 tural commodities and other essential commodities—

5 “(1) shall compute demurrage charges, and es-
6 tablish rules related to those charges, in a way that
7 fulfills the national needs related to—

8 “(A) freight car use and distribution; and

9 “(B) the efficient use of private freight
10 cars provided to rail carriers for transportation
11 of property; and

12 “(2) notwithstanding section 10501, shall be
13 subject to the jurisdiction of the Board if such pri-
14 vate rail car owner or lessee has provided a rail car
15 to a rail carrier and assessed demurrage charges
16 upon the rail carrier.

17 “(c) REPORTING REQUIREMENT.— Class I railroad
18 carriers, private car owners, and rail car lessees shall elec-
19 tronically, in a format prescribed by the Board, report de-
20 murrage charges assessed under this section to the Board
21 on a quarterly basis and the Board shall make any infor-
22 mation reported under this subsection publicly available.”.

23 (b) RULEMAKING DEADLINE FOR DEMURRAGE.—

24 (1) RULEMAKING.—Not later than 2 years after
25 the date of enactment of this Act, the Surface

1 Transportation Board shall complete a rulemaking
2 to implement section 10746 of title 49, United
3 States Code, as amended by this section.

4 (2) CONSULTATION.—In carrying out the rule-
5 making under subsection (a), the Board shall con-
6 sult with the Federal Energy Regulatory Commis-
7 sion, the Secretary of Agriculture, the Administrator
8 of the Environmental Protection Agency, and the
9 heads of other applicable Federal agencies to deter-
10 mine essential commodities.

11 (c) APPLICABILITY.—The amendments made by this
12 section shall apply to any demurrage occurring after the
13 effective date of the rulemaking completed under sub-
14 section (b).

15 **SEC. 205. MINIMUM SERVICE DELIVERY STANDARDS FOR**
16 **COMMON CARRIER TRANSPORTATION, SERV-**
17 **ICE, AND RATES.**

18 Section 11101 of title 49, United States Code, is
19 amended—

20 (1) in subsection (a)—

21 (A) by striking “A rail carrier” and insert-
22 ing the following:(1) A rail carrier”;

23 (B) by inserting “, in a manner that pro-
24 vides timely, efficient, and reliable rail service

1 that fulfills the shipper’s reasonable service re-
2 quirements” after “on reasonable request”; and

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

4 “(2) In determining whether a rail carrier has
5 met the obligations of this section with respect to
6 the provision of transportation or services on reason-
7 able request, the Board shall consider—

8 “(A) the effects of changes in the fre-
9 quency of transportation or service, and the
10 availability and maintenance of reasonable local
11 service schedules and delivery windows, on the
12 provision of reasonable transportation service to
13 the person requesting service;

14 “(B) the effects of reduction in employ-
15 ment levels, including—

16 “(i) clerical, customer service, mainte-
17 nance, dispatch, yard, and train and en-
18 gine service employees;

19 “(ii) changes in train or yard crew
20 availability; and

21 “(iii) the consolidation or shifting of
22 crews across or within service territories;

23 “(C) the effects of rail carrier reduction in
24 equipment and the availability of equipment,
25 maintenance of equipment, or railroad infra-

1 structure, lines and yards, or shifting of equip-
2 ment across or within service territories or cus-
3 tomer and commodity groups to the person re-
4 questing transportation or service;

5 “(D) whether the service reasonably meets
6 the local operational and service needs of the
7 person requesting transportation or service;

8 “(E) the provision of rail infrastructure,
9 rail equipment, or other rail related resources
10 by the person requesting transportation or serv-
11 ice to support the transportation or service;

12 “(F) whether any conditions imposed by
13 the rail carrier as requirements for service are
14 required to meet the local service requirements
15 of the person requesting service or permit the
16 rail carrier to recover variable costs of providing
17 the requested transportation or service; and

18 “(G) how the carrier is handling equip-
19 ment owned or leased by the person requesting
20 transportation or service.”;

21 (2) in subsection (b)—

22 (A) in the matter preceding paragraph (1)
23 by striking “shall be” and inserting “shall”;

24 (B) in paragraph (1)—

1 (i) by inserting “be” before “in writ-
2 ing”; and

3 (ii) by striking “receipt of the request;
4 or” and inserting “receipt of the request,
5 or be promptly made available in electronic
6 form;”; and

7 (C) by striking paragraph (2) and insert-
8 ing the following:

9 “(2) include timely, efficient, and reliable serv-
10 ice delivery standards;

11 “(3) include remedies for when such service de-
12 livery standards are not met; and

13 “(4) include reasonable transit or cycle times
14 consistent with the reasonable needs of the person
15 on whose behalf the request is made for the timely,
16 efficient and reliable receipt, transportation, and de-
17 livery of property.”;

18 (3) in subsection (f) by inserting “, including
19 defining minimum service delivery standards. The
20 Board may establish such standards by commodity”
21 after “implement this section”; and

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

23 “(g) Any proceeding initiated under this section—

24 “(1) in order to consider an alleged violation of
25 this section by a rail carrier, shall be expedited by

1 the Board, and completed not later than 180 days
2 after the initiation of such proceeding or, upon the
3 request of a party when necessary to develop a
4 record for the decision of the Board, not later than
5 the end of a reasonable extension granted by the
6 Board; and

7 “(2) in order to obtain service terms required
8 under subsection (b), shall be completed not later
9 than 45 days after the initiation of such proceeding.

10 “(h) In addition to the remedies provided under sec-
11 tion 11701, if the Board determines that a rail carrier
12 has not met the obligations of this section by failing to
13 provide transportation or services on a reasonable request,
14 the Board may prescribe reasonable transit or cycle times
15 to be established for equipment owned or leased by the
16 person making the request.”.

17 **SEC. 206. UPDATING STB EMERGENCY POWERS.**

18 Section 11123(a) of title 49, United States Code, is
19 amended—

20 (1) in paragraph (4)(C) by striking “or” at the
21 end;

22 (2) in paragraph (5) by striking the period at
23 the end and inserting “; or”; and

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

25 “(6) require—

1 “(A) the acquisition or return to service of
2 locomotives, freight cars, or other vehicles;

3 “(B) additional capacity on property
4 owned by the rail carrier, including sidings to
5 reduce congestion; and

6 “(C) returning furloughed employees to
7 service.”.

8 **SEC. 207. SUPPORT FOR FREIGHT CAR GPS AND OTHER TE-**
9 **LEMETRY SYSTEMS.**

10 (a) **POLICY.**—It is the policy of the Federal Govern-
11 ment to support private freight rail efficiency and the un-
12 derstanding of the shipper using such private rail of the
13 location of the rail freight of such shipper by collaborating
14 with private freight rail demonstration projects to resolve
15 safety and other regulatory challenges and opportunities
16 of GPS and other telemetry technology on freight rail
17 cars.

18 (b) **REPORT.**—Not later than 1 year after the date
19 of enactment of this Act, the Surface Transportation
20 Board and the Administrator of the Federal Railroad Ad-
21 ministration, in consultation with the Secretary of Home-
22 land Security, shall submit to the Committee on Transpor-
23 tation and Infrastructure of the House of Representatives
24 and the Committee on Commerce, Science, and Transpor-
25 tation of the Senate a report summarizing the collabora-

1 tion under subsection (a) on the safety and other regu-
2 latory challenges and opportunities that could impact the
3 development and installation of GPS and other telemetry
4 technology on freight rail cars.

5 **SEC. 208. STUDY ON SHORT LINE RAILROAD ACCESS TO**
6 **MULTIPLE CLASS I RAILROADS.**

7 (a) STUDY.—The Comptroller General of the United
8 States shall conduct a study on any existing contract lan-
9 guage that prohibits or discourages additional interchange
10 agreements or additional interchange traffic between Class
11 I railroad carriers and Class II and III carriers.

12 (b) CONTENTS.—The study shall include—

13 (1) information solicited from railroad carriers
14 on the types and frequency of contract language that
15 services to either prohibit or discourage new inter-
16 change agreements between a Class II or III rail-
17 road and a second Class I railroad or discourage rail
18 traffic from interchanging with a second railroad, in-
19 cluding how many Class II and Class III railroad
20 carriers are prohibited or discouraged from devel-
21 oping new interchange agreements (or interchanging
22 new or additional traffic outside of such agreements)
23 with Class I railroad carriers with which such Class
24 II and Class III railroad carriers do not interchange
25 traffic; and

1 chokepoints are most prominent in the United States sup-
2 ply chain, what common shipping data is created with each
3 hand-off of a container through such supply chain, how
4 such data with respect to such supply chain is stored and
5 shared, and an analysis of existing and potential impedi-
6 ments to the free flow of supply chain information.

7 (c) INFORMATION COLLECTION.—In conducting the
8 study pursuant to subsection (a), the National Academies
9 shall collect information from railroad carriers, vessel op-
10 erating common carriers and non-vessel operating common
11 carriers, marine terminal operators, commercial motor ve-
12 hicle operators, chassis providers, ocean transportation
13 intermediaries, custom brokers, freight forwarders, ship-
14 pers and cargo owners, and relevant government agencies,
15 including the Board, the Federal Maritime Commission,
16 and Customs and Border Protection.

17 (d) REPORT.—Any agreement entered into under
18 subsection (a) shall require that, not later than 2 years
19 after the date of enactment of this Act, the National Acad-
20 emies submit to the Committee on Transportation and In-
21 frastructure of the House of Representatives and the Com-
22 mittee on Commerce, Science, and Transportation of the
23 Senate, and make available on a publicly accessible
24 website, a report containing—

1 (1) findings of the study carried out pursuant
2 to subsection (a); and

3 (2) any recommendations for common data
4 standards and policies to implement information
5 sharing across the United States supply chain.

6 **SEC. 210. RATE PROTECTION DURING EMERGENCIES.**

7 (a) SITUATIONS REQUIRING IMMEDIATE ACTION TO
8 SERVE THE PUBLIC.—Section 11123 of title 49, United
9 States Code, is amended—

10 (1) by redesignating subsections (e) and (f) as
11 subsections (f) and (g), respectively; and

12 (2) by inserting after subsection (d), the fol-
13 lowing:

14 “(e) Notwithstanding any other provision of this sub-
15 title, a Class I rail carrier subject to a Board order under
16 this section, except for a Class I carrier that is serving
17 as an alternative carrier as part of a Board remedy, may
18 not increase rates on persons covered by such order during
19 the period beginning on the date on which the Board de-
20 termines under subsection (a) that a transportation emer-
21 gency exists and ending on the date on which such emer-
22 gency expires under this section.”.

23 (b) GENERAL CIVIL PENALTIES.—Section 11901 of
24 title 49, United States Code, is amended—

1 (1) by redesignating subsections (b) through (f)
2 as subsections (c) through (g), respectively; and

3 (2) by inserting after subsection (a) the fol-
4 lowing:

5 “(b) Any Class I rail carrier providing transportation
6 subject to the jurisdiction of the Board under this part
7 that increases rates during a transportation emergency in
8 violation of section 11123(e) is liable to the United States
9 Government for a civil penalty equal to 3 times the
10 amount by which each such rate was increased.”.

11 **SEC. 211. UPDATED FINES.**

12 (a) ANALYSIS OF CIVIL PENALTIES AND FINES.—

13 (1) IN GENERAL.—Not later than 180 days
14 after the date of enactment of this Act, the Comp-
15 troller General of the United States shall conduct an
16 analysis of the civil penalties and fines assessed
17 under chapter 119 of title 49, United States Code,
18 that includes—

19 (A) a comparison of such civil penalties
20 and fines to other civil penalties and fines as-
21 sessed by Federal agencies with economic regu-
22 latory oversight over the railroad industry and
23 other industries; and

24 (B) an analysis of the amount of a civil
25 penalty or fine that is necessary to provide the

1 appropriate financial incentive for rail carrier
2 compliance.

3 (2) REPORT.—Upon completion of the analysis
4 conducted under paragraph (1), the Comptroller
5 General shall submit to the Surface Transportation
6 Board, the Committee on Transportation and Infra-
7 structure of the House of Representatives, and the
8 Committee on Commerce, Science, and Transpor-
9 tation of the Senate a report that describes such
10 analysis and includes any recommendations for
11 changes to the amounts of the civil penalties or fines
12 assessed under chapter 119 of title 49, United
13 States Code, including minimum and maximum
14 fines, per day fines, and per violation fines.

15 (b) RULEMAKING.—Notwithstanding the amount of
16 civil penalties and fines assessed under chapter 119 of title
17 49, United States Code, and not later than 180 days after
18 the date on which the Comptroller General submits the
19 report under subsection (a)(2), the Board shall issue such
20 regulations as are necessary to revise the amount of each
21 such civil penalty or fine assessed under such chapter in
22 accordance with the recommendations of the Comptroller
23 General contained in such report, including establishing
24 minimum and maximum penalties or fines and per day
25 and per violation penalties or fines.

1 (c) CONFORMING AMENDMENT.—

2 (1) IN GENERAL.—Chapter 119 of title 49,
3 United States Code, is amended by adding at the
4 end the following:

5 **“§ 11909. Treatment of civil penalties and fines**

6 “Upon the issuance of a final regulation to revise an
7 amount of a civil penalty or fine assessed under this chap-
8 ter pursuant to section 212 of the Freight Rail Shipping
9 Fair Market Act, the amount of such civil penalty or fine
10 assessed shall be treated as the revised amount in such
11 regulation.”.

12 (2) CLERICAL AMENDMENT.—The analysis for
13 chapter 119 of title 49, United States Code, is
14 amended by adding at the end the following:

“11909. Treatment of civil penalties and fines.”.

15 **TITLE III—PASSENGER RAIL**

16 **SEC. 301. PASSENGER-FREIGHT RAIL TRANSPORTATION**

17 **ADVISORY COUNCIL.**

18 (a) IN GENERAL.—Chapter 13 of title 49, United
19 States Code, is amended—

20 (1) by redesignating section 1326 as section
21 1327; and

22 (2) by inserting after section 1325 the fol-
23 lowing:

1 **“§ 1326. Passenger-Freight Rail Transportation Advi-**
2 **sory Council**

3 “(a) ESTABLISHMENT; MEMBERSHIP.—There is es-
4 tablished the Passenger-Freight Rail Transportation Advi-
5 sory Council (in this section referred to as the ‘Council’)
6 to be composed of 18 members, of which 12 members shall
7 be appointed by the Chairman of the Board, after rec-
8 ommendation from rail carriers providing passenger rail
9 transportation, subject to the jurisdiction of the Board,
10 and rail carriers providing freight rail transportation, not
11 later than 60 days after the date of enactment of the
12 Freight Rail Shipping Fair Market Act. The 12 such
13 members of the Council shall be appointed as follows:

14 “(1) The members of the Council shall be ap-
15 pointed from among citizens of the United States
16 who are not regular, full-time employees of the
17 United States and shall be selected for appointment
18 so as to provide as nearly as practicable a broad rep-
19 resentation of the various segments of freight-rail-
20 road and passenger rail carriers.

21 “(2) 10 of the members shall be appointed from
22 senior executive officers of organizations engaged in
23 the freight railroad and passenger rail industries
24 and shall be the voting members of the Council.
25 Council action and Council positions shall be deter-
26 mined by a majority vote of the members present. A

1 majority of such voting members shall constitute a
2 quorum. Of such 10 voting members—

3 “(A) 4 shall be representatives of Class I
4 railroads;

5 “(B) 4 shall be representatives of an inter-
6 city passenger railroad that operates over a
7 host railroad, of whom at least 3 shall be rep-
8 resentatives of Amtrak;

9 “(C) 1 shall be a representative of com-
10 muter passenger railroads; and

11 “(D) 1 shall be a representative of States
12 which fund intercity passenger rail service.

13 “(3) The remaining 2 members of the Council
14 shall serve in a nonvoting advisory capacity only, but
15 shall be entitled to participate in Council delibera-
16 tions. Of the remaining members—

17 “(A) 1 shall be a representative of rail pas-
18 sengers; and

19 “(B) 1 shall be a representative of a non-
20 profit employee labor organization.

21 “(4) The Secretary of Transportation and the
22 members of the Board shall serve as ex officio, non-
23 voting members of the Council. The Council shall
24 not be subject to the Federal Advisory Committee
25 Act (5 U.S.C. App.). A list of the members ap-

1 pointed to the Council shall be forwarded to the
2 Chairmen and ranking members of the Committee
3 on Commerce, Science, and Transportation of the
4 Senate and the Committee on Transportation and
5 Infrastructure of the House of Representatives.

6 “(5) Each ex officio member of the Council may
7 designate an alternate, who shall serve as a member
8 of the Council whenever the ex officio member is un-
9 able to attend a meeting of the Council. Any such
10 designated alternate shall be selected from individ-
11 uals who exercise significant decision-making author-
12 ity in the Federal agency involved.

13 “(b) TERM OF OFFICE.—The members of the Council
14 shall be appointed for a term of office of 3 years, except
15 that of the members first appointed—

16 “(1) 4 members shall be appointed for terms of
17 1 year; and

18 “(2) 4 members shall be appointed for terms of
19 2 years, as designated by the Chairman at the time
20 of appointment. Any member appointed to fill a va-
21 cancy occurring before the expiration of the term for
22 which the member’s predecessor was appointed shall
23 be appointed only for the remainder of such term. A
24 member may serve after the expiration of his term
25 until his successor has taken office. Vacancies on the

1 Council shall be filled in the same manner in which
2 the original appointments were made. No member of
3 the Council shall be eligible to serve in excess of two
4 consecutive terms.

5 “(c) ELECTION AND DUTIES OF OFFICERS.—The
6 Council Chairman and Vice Chairman and other appro-
7 priate officers of the Council shall be elected by and from
8 the voting members of the Council. The Council Chairman
9 shall serve as the Council’s executive officer and shall di-
10 rect the administration of the Council, assign officer and
11 committee duties, and shall be responsible for issuing and
12 communicating the reports, policy positions and state-
13 ments of the Council. In the event that the Council Chair-
14 man is unable to serve, the Vice Chairman shall act as
15 Council Chairman.

16 “(d) EXPENSES.—

17 “(1) TRAVEL EXPENSES.—The members of the
18 Council shall receive no compensation for services,
19 but upon request by the Council Chairman, based on
20 a showing of significant economic burden, the Sec-
21 retary of Transportation or the Chairman of the
22 Board, to the extent provided in advance in appro-
23 priation Acts, may provide reasonable and necessary
24 travel expenses for such individual Council members

1 from Department or Board funding sources in order
2 to foster balanced representation on the Council.

3 “(2) REASONABLE AND NECESSARY EX-
4 PENSES.—Upon request by the Council Chairman,
5 the Secretary or Chairman of the Board, to the ex-
6 tent provided in advance in appropriations Acts, may
7 pay the reasonable and necessary expenses incurred
8 by the Council in connection with the coordination of
9 Council activities, announcement and reporting of
10 meetings, and preparation of such Council docu-
11 ments as are required or permitted by this section.

12 “(3) ADDITIONAL AUTHORITIES.—To enable
13 the Council to carry out activities—

14 “(A) the Council Chairman may request
15 directly from any Federal agency such per-
16 sonnel, information, services, or facilities, on a
17 compensated or uncompensated basis, as the
18 Council Chairman determines necessary to
19 carry out the functions of the Council;

20 “(B) each Federal agency may, in its dis-
21 cretion, furnish the Council with such informa-
22 tion, services, and facilities as the Council
23 Chairman may request to the extent permitted
24 by law and within the limits of available funds;
25 and

1 “(C) each Federal agency may, in its dis-
2 cretion, detail to temporary duty with the Coun-
3 cil, such personnel as the Council Chairman
4 may request for carrying out the functions of
5 the Council, each such detail to be without loss
6 of seniority, pay, or other employee status.

7 “(e) MEETINGS.—The Council shall meet at least
8 semi-annually and shall hold other meetings at the call
9 of the Council Chairman. Appropriate Federal facilities,
10 where available, may be used for such meetings. Whenever
11 the Council, or a committee of the Council, considers mat-
12 ters that affect the jurisdictional interests of Federal
13 agencies that are not represented on the Council, the
14 Council Chairman may invite the heads of such agencies,
15 or designees of such heads, to participate in the delibera-
16 tions of the Council.

17 “(f) FUNCTIONS AND DUTIES; ANNUAL REPORT.—

18 “(1) ADVICE.—The Council shall advise the
19 Secretary of Transportation, the Chairman of the
20 Board, the Committee on Transportation and Infra-
21 structure of the House of Representatives, and the
22 Committee on Commerce, Science, and Transpor-
23 tation of the Senate with respect to rail transpor-
24 tation policy issues it considers significant, with par-
25 ticular attention to issues of importance to rail pas-

1 sengers, including on time performance of intercity
2 passenger rail on freight-rail hosted routes and Am-
3 trak access to the track and facilities of host rail-
4 roads, including access for additional trains.

5 “(2) ANNUAL REPORT.—

6 “(A) IN GENERAL.—Not later than 90
7 days after the last date of each fiscal year, the
8 Council shall submit to the Secretary of Trans-
9 portation and Chairman of the Board an an-
10 nual report that—

11 “(i) describes the activities of the
12 Council;

13 “(ii) describes the results of the ef-
14 forts of the Council to resolve freight rail-
15 passenger rail conflicts; and

16 “(iii) proposes any regulatory or legis-
17 lative relief the Council considers appro-
18 priate.

19 “(B) CONTENTS.—The Council shall in-
20 clude in the annual report—

21 “(i) such recommendations as the
22 Council considers appropriate with respect
23 to the performance of the Secretary of
24 Transportation and Chairman of the
25 Board under this chapter;

1 “(ii) recommendations with respect to
2 the operation and effectiveness of meet-
3 ings, industry and passenger rail develop-
4 ments relating to the Council’s efforts, and
5 such other information as the Council con-
6 siders appropriate; and

7 “(iii) such other information as the
8 Council considers appropriate.

9 “(C) REVIEW.—Annual reports prepared
10 under this paragraph shall—

11 “(i) be reviewed by the Secretary of
12 Transportation and Chairman of the
13 Board; and

14 “(ii) include such Secretary’s and
15 Chairman’s views or comments relating to
16 the accuracy of information therein relat-
17 ing to—

18 “(I) the efforts of the Council
19 and the reasonableness of the posi-
20 tions and actions of the Council; and

21 “(II) any other aspects of the
22 work of the Council as the Secretary
23 and Chairman may consider appro-
24 priate.

1 “(3) ADDITIONAL REPORTS OR POLICY STATE-
2 MENTS.—The Council may prepare other reports or
3 develop policy statements as the Council considers
4 appropriate. Other such reports and statements may
5 be submitted as the Council considers appropriate.”.

6 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

7 (1) CLERICAL AMENDMENT.—The analysis for
8 chapter 13 of title 49, United States Code, is
9 amended by striking the item relating to section
10 1326 and inserting the following:

“1326. Passenger-Freight Rail Transportation Advisory Council.

“1327. Authority of the Inspector General.”.

11 (2) TECHNICAL CORRECTION.—The analysis for
12 chapter 13 of title 49, United States Code, is
13 amended—

14 (A) by striking “I—ESTABLISHMENT”
15 and inserting “SUBCHAPTER I—ESTAB-
16 LISHMENT”; and

17 (B) by striking “II—ADMINISTRA-
18 TIVE” and inserting “SUBCHAPTER II—
19 ADMINISTRATIVE”.

20 **SEC. 302. PASSENGER RAIL CONSIDERATIONS IN TRANS-**
21 **ACTIONS INVOLVING RAIL CARRIERS.**

22 (a) IN GENERAL.—Chapter 113 of title 49, United
23 States Code, is amended—

1 (1) by redesignating the items relating to sec-
2 tions 11327 and 11328 as items relating to sections
3 11328 and 11329, respectively; and

4 (2) by inserting after the item relating to sec-
5 tion 11326 the following:

“11327. Passenger rail considerations in transactions involving rail carriers.”.