



Legislative Bulletin.....March 27, 2007

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H.R. 1401— Rail and Public Transportation Security Act

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: At least 5

Total Cost of Discretionary Authorizations: \$7.3 billion over five years

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: Numerous

Total New Private Sector Mandates: Numerous

Number of Bills Without Committee Reports: 0

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 1401— Rail and Public Transportation Security Act (*Thompson, D-MS*)

Order of Business: The bill is scheduled to be considered on Tuesday, March 27th, subject to a (likely) structured rule. Summaries of amendments made in order under the rule will be provided in a separate RSC document.

Summary: H.R. 1401 would create a variety of new programs, enforce a multitude of new intergovernmental and private-sector mandates, and increase authorizations for rail and public transportation (including over-the-road bus) security. Highlights of the legislation by title are as follows:

[Title I: Rail and Public Transportation Security](#)

- Requires the Secretary of Homeland Security, in consultation with the Secretary of Transportation, to develop a comprehensive modal plan (the National Strategy for Rail and Public Transportation Security) for covered transportation (transportation provided by a railroad carrier, a provider of public transportation, or an over-the-road bus—i.e. a bus with a baggage compartment underneath the passenger portion). The plan, with required information as detailed in the bill, would be due to Congress within six months of this legislation’s enactment.
- Directs the Secretary of Homeland Security (“the Secretary”) to assign each provider of covered transportation to one of no fewer than three risk-based tiers.
- Requires the Secretary of Homeland Security, in consultation with the Secretary of Transportation, to issue regulations, within a year of this bill’s enactment, that:
 - require high- and medium-risk providers to complete vulnerability assessments and implement security plans;
 - establish standards and guidelines for such assessments and plans; and
 - create a security program for providers of covered transportation not assigned to a high- or medium-risk tier.
- High- and medium-risk providers would have to submit their completed vulnerability assessments and security plans (which include the creation of a security coordinator for each provider) to the Secretary for review and approval (including information detailed in the legislation) within six months of the issuance of the applicable regulations.
- Within twelve months of regulations issuance, the Secretary, in consultation with the Secretary of Transportation, would have to review and approve the vulnerability assessments and security plans, and periodically review security plans upon resubmission by providers. During the review periods, providers would have to implement interim security measures.
- Requires covered providers to review and resubmit their vulnerability assessments and security plans three years after the initial submission, and every five years thereafter.
- Authorizes the Secretary, for failure to comply with these requirements above, to impose:
 - an administrative penalty of not more than \$100,000 total (after providing opportunity for a hearing to resolve the dispute);
 - civil penalties, including injunctive relief and a fine of not more than \$75,000 for each day on which a violation occurs; and
 - criminal penalties of not more than \$50,000 for each day of violation and/or imprisonment for not more than two years.
- Instructs the Secretary to report to Congress, within 180 days of this bill’s enactment, on the feasibility of name-based checks against terror watch lists for all National Railroad Passenger Corporation (“Amtrak”) passengers.

- Directs the Secretary to develop a plan, within 90 days of this bill's enactment, to improve tactical and strategic information sharing among covered transportation providers on their respective threats and vulnerabilities. Such information would be distributed to federal, state, and local agencies, tribal governments, and appropriate stakeholders.
- Authorizes **\$2.40 billion over four years** to create a **new federal grant program** for improving rail security, with 21 allowable uses listed in the bill (to be prioritized by the Secretary), including such matters as tunnel protection systems, cargo screening equipment, and global tracking equipment. Eligible grants recipients include state, local, and tribal governmental entities, Amtrak, and infrastructure owners, such as railroad carriers, private entities, and public-private entities. The federal share of a funded project would be 80%, except for projects costing \$25,000 or less (federal share would be 100%) and for projects responding to an urgent threat to national security (which, along with written notice to Congress, could be 100% federal share). No funds under this program could be used to supplant state or local funds or to pay the state or local share of a project under any other law.
- Authorizes **\$3.36 billion over four years** to create a new federal grant program for improving the security of public transportation systems, with 17 allowable uses listed in the bill (to be prioritized by the Secretary), including many of the same items as listed for the new rail security program just described. Eligible grants recipients include public transportation agencies, and state, local, and tribal governmental entities that provide security or counterterrorism-related services for public transportation. No federal share information is provided. No funds under this program could be used to supplant state or local funds or to pay the state or local share of a project under any other law.
- Authorizes **\$87.0 million over four years** to create a **new federal grant program** for improving the security of over-the-road bus systems, with 13 allowable uses listed in the bill (to be prioritized by the Secretary), including video surveillance equipment on buses, public awareness campaigns, and overtime reimbursement for security personnel. Eligible grants recipients include over-the-road bus providers, and state, local, and tribal governmental entities that provide security or counterterrorism-related services for over-the-road bus providers. No federal share information is provided. No funds under this program could be used to supplant state or local funds or to pay the state or local share of a project under any other law.
- Authorizes appropriations over four years as follows for the Secretary of Transportation to make grants to Amtrak to carry out fire and life safety improvements to Amtrak tunnels on the Northeast Corridor:
 - \$100.0 million** for the six tunnels in New York City;
 - \$20.0 million** for the two tunnels in Baltimore; and
 - \$20.0 million** for the Union Station tunnels in Washington, DC.

- Instructs the Secretary, in consultation with the Secretary of Transportation within 90 days of this bill's enactment, to develop security training programs for railroad, public transportation, and over-the-road bus workers (including "front-line employees").
- Instructs the Secretary, on consultation with the Secretary of Transportation, to establish a program for conducting security exercises for covered transportation to assess and improve the capabilities of certain entities to prevent, prepare for, mitigate against, respond to, and recover from acts of terrorism (these entities include federal, state, local, and tribal governmental entities; employees and managers of transportation providers; governmental and nongovernmental emergency responders; and law enforcement personnel, including rail and transit police). This program would have to consolidate all existing security exercises for covered transportation administered by the two federal departments and would have to be evaluated against clear and consistent performance measures.
- **Authorizes \$200.0 million over four years** to create a **new federal research and development program** for rail, public transportation, and over-the-road bus security. This section outlines allowable uses and requires that activities under this program be coordinated with existing research initiatives and entities.
- Provides whistleblower protections for employees of the Department of Homeland Security and the Department of Transportation, contractors or subcontractors of those two departments, and employees of covered transportation providers. That is, no individual covered by this provision could be discharged, demoted, suspended, threatened, harassed, reprimanded, investigated, or in any other manner discriminated against (including by a denial, suspension, or revocation of a security clearance or by any other security access determination), if such discrimination is due, in whole or in part, to any lawful act done, perceived to have been done, or intended to be done on the part of the whistleblower. The protections, which would be enforceable by civil and criminal code remedies, would not pre-empt any existing federal or state protections for such individuals. Whistleblowers prevailing in any action would be given the right to all relief necessary to make them whole, including damages, back-pay plus interest, reinstatement with prior seniority status, attorneys fees, witness fees, and other such items. Punitive damages would be capped at either three times the compensatory damages or \$5 million.
- Authorizes "such sums as may be necessary" to increase the current number of Surface Transportation Security Inspectors (STSIs) to 600 by the end of 2010 and outlines certain qualifications for individuals hired as STSIs.
- Establishes the National Domestic Preparedness Consortium within the Department of Homeland Security to identify, develop, test, and deliver training to state and local emergency responders; provide onsite and mobile training at the performance, management, and planning levels; and facilitate the delivery of awareness level training. The following institutions would be original members of the Consortium:
 - the Center for Domestic Preparedness in Anniston, Alabama;

- the Energetic Materials Research and Testing Center at the New Mexico Institute of Mining and Technology;
- the National Center for Biomedical Research and Training and the Academy of Counter-Terrorist Education at Louisiana State University;
- the National Emergency Response and Rescue Training Center at Texas A&M University;
- the National Center for Exercise Excellence at the Nevada Test Site; and
- the Transportation Technology Center in Pueblo, CO.

- Ensures that FY2007 funding levels for the original members of the Consortium in existence prior to this legislation are not reduced as a result of adding the Transportation Technology Center to the Consortium. In addition, this section would authorize funding levels for all members of the Consortium for FY2008-2011 to ensure yearly increases of not less than 3% of the amount for the preceding fiscal year.
- **NOTE:** The language regarding this Consortium (Section 114 of the underlying bill) could be seen as earmarks as defined in House Rules. See the earmarks discussion below.
- Authorizes TSA to develop Visible Intermodal Protection Response (VIPR) teams, designed to augment security for any mode of transportation at any location within the United States. The Secretary would have the discretion to determine, consistent with ongoing security threats, when a VIPR team should be deployed and for what duration (in coordination with local law enforcement). VIPR teams could be activated and supported using any DHS asset, including federal air marshals, STSIs, canine detection teams, and advanced screening technology.
- Creates a new National Transportation Security Center of Excellence at an institution of higher education (as defined in U.S. Code) to conduct research and education activities, and to develop or provide professional security training. Activities would include training rail and public transportation employees and related professionals, with an emphasis on utilization of “intelligent transportation systems, technologies, and architectures” (undefined). The bill lists certain selection criteria be met when designating the Center at the appropriate higher education institution. :
- Establishes a consortium (to work in conjunction with the Center) which must include:
 - higher education institutions that have existing transportation programs;
 - at least two institutions that is are either a historically black college or university, a Hispanic serving institution, or a tribal university (even if the primary institution is one of the aforementioned higher education institutions); and
 - at least one institution that has an established degree and an advanced degree program in transportation studies.
- Stipulates that any statutory limitation that exists on the number of TSA employees does not apply to employees carrying out this Act.

- Provides that all grants distributed pursuant to this legislation for security-related purposes would have to be administered on the basis of risk by the Secretary of Homeland Security as the lead federal official on transportation security.
- Directs the Secretary to implement a threat assessment screening program for all employees of covered transportation providers (within 180 days of enactment), including a name-based check for all employees against terrorist watch lists and immigration status lists, that mirrors the Coast Guard's threat assessment program for maritime facility employees and longshoremen.
- Creates a redress process for employees who are found to be a security risk by a required background check to argue that they indeed are not a security risk.
- Creates a task force to review the lists of crimes that disqualify individuals from certain transportation-related employment under the current Transportation Security Administration (TSA) regulations and to assess whether those lists are accurate indicators of terrorism security risk.
- Authorizes general civil penalties for violations of regulations and orders issued by the Homeland Security Secretary, including a fine of not more than \$10,000 for each day a violation of such a regulation or order continues (not to exceed \$50,000 for individuals and small businesses; not to exceed \$400,000 for everyone else).
- Instructs the Secretary to submit a report to Congress (including a classified report, if appropriate), within one year of this bill's enactment, containing a comprehensive threat assessment of the nation's school bus transportation system.
- Directs the Secretary, in consultation with the Secretary of Transportation within 90 days of this bill's enactment, to issue regulations requiring enhanced security measures for shipments of security-sensitive materials (such as explosives and radioactive materials that could be used in a terrorist attack).
- Rail carriers, within 90 days after the end of each calendar year, would have to compile commodity data by route and storage pattern. Rail carriers would also have to annually submit to DHS a written analysis of the security risks for each route and storage pattern, along with assessments and analysis of alternative routes and storage patterns for security-sensitive materials.
- Requires the Department of Homeland Security to establish a standards program to support development, promulgation, and updating of national voluntary consensus standards for performance, testing, use, and training with respect to technologies that will improve the security of covered transportation in order to meet the security plan requirements created earlier in this legislation. In establishing the consensus standards, the Secretary would be required to consult with relevant public- and private-sector groups, appropriate federal, state, and local government agencies, and the existing Technology Clearinghouse.

- Instructs the Secretary to assess likely methods of a deliberate attack on a rail tank car transporting toxic-inhalation-hazard materials and the degree to which such an attack could cause death, injury, or serious adverse affects to human health, the environment, critical infrastructure, national security, the national economy, and/or public welfare. The Secretary would have to consider the most current threat information in this assessment, along with other specified factors.
- Instructs the Domestic Nuclear Detection Office (DNDO) to begin testing and evaluating, within one year of this bill's enactment, prototype systems to detect nuclear or radiological materials in rail security venues, including spectroscopic technologies. DNDO would have to establish appropriate training, operations, and response protocols for the systems.
- Directs grant recipients under this legislation to give preference, to the extent practicable, to products, equipment, services, devices, and technologies that the Secretary has designated as qualified anti-terrorism technologies under the SAFETY Act (Subtitle G of Title VIII of the Homeland Security Act of 2002), if the grant recipient determines that such items meet or exceed the requirements of the applicable security plan. The Secretary would have to work with transportation providers to identify which such items provide the best liability protections under the SAFETY Act.
- Directs the Secretary to deploy, where practicable, non-intrusive inspection imaging equipment at locations where rail shipments cross an international border to enter the United States, or to implement alternative procedures to check such rail shipments at locations where the deployment of non-intrusive equipment is not practicable.
- Requires covered transportation providers, including contractors and subcontractors, assigned to a high-risk threat tier (established earlier in the bill) to conduct background checks of their employees against available terrorist watch-lists and immigration status databases.

Title II: Secure Transportation Through Increased Use of Canine Detection Teams

- Requires that the Secretary coordinate with owner and providers of covered transportation systems to ensure that canine detection teams are deployed at each high-risk system to provide continuous coverage “if the Secretary considers it necessary.”
- Directs the Secretary to coordinate with owners and providers of covered transportation systems to increase the number of trained canine teams deployed at high-risk rail and mass transit systems by not less than 10% each fiscal year for fiscal years 2008 through 2012. The canines would have to be trained to detect explosives and, to the greatest extent possible, chemical and biological weapons.
- Authorizes “such sums as may be necessary” for the Transportation Security Administration (TSA) to train up to 100 additional canine teams per year for the National

Explosives Detection Canine Team Program and *at least* the following number of additional teams:

- 50 for 2008;
- 55 for 2009;
- 60 for 2010;
- 66 for 2011; and
- 73 for 2012.

The additional teams would have to be deployed across the country to strengthen the security of covered transportation systems, including buses, subway systems, ferries, and passenger rail carriers.

- Authorizes “such sums as may be necessary” for the TSA’s “**Puppy Program**” to increase the number of domestically bred canines to help meet the increase in demand for canine detection teams by this Title, while preserving the current quality of canines provided training. See puppy photos here:

http://www.tsa.gov/lawenforcement/programs/editorial_multi_image_0009.shtm.

Additional Background: According to the Homeland Security Committee, the Aviation and Transportation Security Act of 2001 (ATSA) made the Transportation Security Administration (TSA) responsible for the security of all modes of transportation, including rail and mass transit. However, TSA has focused its resources and assets on aviation security. This bill is aimed at directing more resources to rail, public transportation, and over-the-road buses.

RSC Bonus Fact: In 2005, the existing Intercity Bus Security Grant Program distributed almost \$10 million to 25 private bus companies, including \$46,908.00 to the Hampton Jitney bus line, which shuttles people from New York City to the Hamptons. [*Special thanks to the Office of Rep. Jeff Flake (R-AZ) for this RSC Bonus Fact.*]

Committee Action: On March 8, 2007, the bill was referred to the Homeland Security Committee, as well as the Transportation & Infrastructure Committee. On March 13th, the Homeland Security Committee marked up the bill and ordered it reported to the full House by voice vote. On March 22nd, the Transportation & Infrastructure Committee discharged the bill without taking official action.

Possible Conservative Concerns: Although this bill is aimed at improving the security of vital transportation systems nationwide, some conservatives may be concerned about the creation of new programs and more bureaucracy at the Department of Homeland Security, a department that has been criticized for being too big and bloated. Furthermore, some conservatives may be concerned about the various costly intergovernmental and private-sector mandates in the bill (see mandates discussion below), as well as the increased funds available for Amtrak, an entity that many conservatives have sought to de-fund, at least in part.

Administration Position: A Statement of Administration Policy (SAP) was not available at press time.

Cost to Taxpayers: CBO estimates that H.R. 1401 would authorize \$1.701 billion in FY2008 and a total of \$7.296 billion over the FY2008-F2012 period. CBO also notes that fines from civil and criminal penalties in the bill might yield the federal government additional revenues. Collections of civil fines are recorded as revenues and deposited in the Treasury; collections of criminal fines are deposited in the Crime Victims Fund and later spent. CBO expects that any additional receipts and direct spending from enacting this bill would be “negligible.”

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill would create at least five new programs and expand civil and criminal penalties.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes.

Intergovernmental mandates: CBO writes that, “H.R. 1401 contains intergovernmental mandates as defined in UMRA [Unfunded Mandates Reform Act] because it would require certain public transportation agencies and public rail carriers to conduct vulnerability assessments, to create and implement security plans, to train all employees in security, to complete background checks of employees, and to submit additional information to DHS. Transportation entities covered by the provisions in the bill also would be subject to new projections for whistleblower employees, and the bill would preempt state laws covering such employees.” CBO expects the costs of these mandates to “substantially exceed the threshold established in UMRA.”

Private-sector mandates: CBO writes that, “H.R. 1401 contains several private-sector mandates as defined in UMRA because it would require certain rail and bus carriers to implement security programs and procedures. Those carriers also would be subject to new whistleblower protections for their employees. In addition, the bill would require certain rail carriers to implement enhanced security measures for shipments of materials determined to pose a risk to national security.” CBO expects the costs of these mandates to be “large” and to “likely exceed the annual threshold established by UMRA for private-sector mandates.”

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Although the Homeland Security Committee, in House Report 110-65, asserts that, “no congressional earmarks, limited tax benefits, or limited tariff benefits are included in H.R. 1401,” Section 114, which creates a National Domestic Preparedness Consortium, names specific universities to which funds are to be directed and details the increases for such funding each year.

House Rule XXI, Clause 9(d) defines “earmark” as “a provision or report language included primarily at the request of a Member, Delegate, Resident Commissioner, or Senator providing, authorizing or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.”

Constitutional Authority: The Homeland Security Committee, in House Report 110-65, cites constitutional authority in Article I, Section 8, Clause 1, which grants Congress the power to provide for the common defense of the United States.

RSC Staff Contact: Paul S. Teller, paul.teller@mail.house.gov, (202) 226-9718