



March 27, 2007

## **H.R. 1401 – Rail and Public Transportation Security Act of 2007**

### **Floor Situation**

H.R. 1401 is being considered on the floor under a rule providing for one hour and twenty minutes of general debate, with one hour equally divided and controlled by the Chairman and Ranking Minority Member of the Committee on Homeland Security and twenty minutes equally divided and controlled by the Chairman and Ranking Minority Member of the Committee on Transportation and Infrastructure.

### **The Rule:**

- Waives all points of order against the amendment in the nature of a substitute except for clauses 9 (earmarks) and 10 (PAYGO) of Rule XXI.
- Provides that the amendment in the nature of a substitute recommended by the Committee on Homeland Security shall be considered as an original bill for the purpose of amendment.
- Makes in order 8 amendments, each debatable for up to 10 minutes.
- Provides for one motion to recommit with instructions

This legislation was introduced by Representative Bennie Thompson (D-MS) on March 8, 2007, and was reported by voice vote, as amended, by the House Committee on Homeland Security on March 13, 2007, and was discharged by the House Committee on Transportation and Infrastructure on March 22, 2007.

H.R. 1401 is expected to be considered on the floor of the House on March 27, 2007.

### **Summary**

H.R. 1401:

#### National Strategy for Rail and Public Transportation Security

- Requires the Secretary of Homeland Security (DHS) to develop a modal plan for covered transportation within six months of passage of this legislation. The plan shall include:

*\*Note: "Covered transportation" is defined as: transportation provided by a railroad carrier, a provider of public transportation, or an over-the-road bus.*

- A description of Federal, state and local responsibilities
- A plan to address any gaps or overlaps in these responsibilities
- A methodology for how DHS and the Department of Transportation (DOT) will work with other governmental entities
- A process for expediting security clearances
- A description of the reviews made about past terrorist attacks
- Research and development strategy for securing covered transportation
- Goals and objectives for increasing security
- A description of educational initiatives and outreach to inform the public of ways to prevent and respond to a terrorist attack
- A process for coordinated security strategies and plans

*\*Note: 49 U.S.C. 114(t)(1)(B) requires the Secretary of DHS to create, prepare, implement and update transportation modal security plans*

#### Assignment of Providers of Covered Transportation to Risk-Based Tiers

- Requires the Secretary of DHS to assign providers of covered transportation to one of at least three risk-based tiers. The Secretary may gather information from the provider in order to make this determination and must inform the provider of the tier assigned to them within 60 days of being assigned a tier. This section also requires two of the tiers to be designated for high and medium risk providers.

#### Rail and Public Transportation Assessments and Plans

- Requires the Secretary of DHS to issue regulations (within one year) that:
  - (1) Requires a vulnerability assessment for each high or medium risk provider of covered transportation. This vulnerability assessment would include: threats to assets and infrastructure, identification of the security weaknesses, and identification of backup systems required to ensure continued operations in the event of a terrorist attack.
  - (2) Requires a security plan for each high or medium risk provider of covered transportation. This security plan would include: identification of security coordinator, plans for periodic security exercises, a list of needed improvements,

procedures to be implemented in the event of a terrorist attack, enhanced security measures to be taken during a heightened security risk, plans for a backup system to ensure continued operations in the event of a terrorist attack, and plans for locating shipments of railroad cars transporting hazardous materials or nuclear waste.

*\*Note: The Secretary of DHS may provide assistance in developing these plans as well as relevant threat information. Additionally, the provider must include a review of their security plan and vulnerability assessment three years after they are submitted and at least every five years thereafter.*

- Allows the Secretary of DHS (after a hearing) to impose penalties of no more than \$100,000 for failing to comply with the requirements to develop security plans and vulnerability assessments. Additionally, the matter can be brought to a civil court and the court may impose a penalty of up to \$75,000 for each day on which a violation occurs or a failure to comply continues. Furthermore, a provider of covered transportation that intentionally violates the requirements can be fined up to \$50,000 and imprisoned for up to 2 years.

#### Strategic Information Sharing Plan

- Requires the Secretary of DHS to develop an information sharing plan to develop tactical and strategic intelligence products pertaining to the threats and vulnerabilities to covered transportation (which includes coordination efforts between intelligence analysts at the TSA and other agencies, deadlines for organizational changes and a description of resources). This plan shall be submitted to the appropriate Congressional committees.

#### Rail Security Assistance

- Requires the establishment of a rail security grant program for governmental entities (State, local and tribal), infrastructure owners, private entities and public-private entities to assist with security improvements. 80% of the grant will be funded by the Federal government, unless the cost of the project is less than \$25,000 or a grant is needed to respond to an urgent threat (in those cases the Federal government will fund 100% of the grant). Recipients of the grant are required to provide annual reports on the use of the funds.

*\*Note: A list of uses for the grant is in Section 7 of the legislation.*

#### Public Transportation Security Assistance

- Requires the establishment of public transportation security grants for public transportation agencies and governmental entities (state, local and tribal) that provide security and counterterrorism services to public transportation. These grants are for security improvements. Recipients of the grant are required to provide annual reports on the use of the funds.

- Authorizes the following amounts for this grant program:

\$775,000,000 for Fiscal Year 2008

\$825,000,000 for Fiscal Year 2009

\$880,000,000 for Fiscal Year 2010

\$880,000,000 for Fiscal Year 2011

*\*Note: A list of uses for the grant is in Section 8 of the legislation.*

#### Over-the-Road Bus Security Assistance

- Requires the establishment of over-the-road bus security grants for private operators that provide transportation by an over-the-road bus and governmental entities (state, local and tribal) that provide security and counterterrorism services to over-the-road bus agencies. These grants are for security improvements. Recipients of the grant are required to provide annual reports on the use of the funds.
- Authorizes the following amounts for this grant program:

\$12,000,000 for Fiscal Year 2008

\$25,000,000 for Fiscal Years 2009 through 2011

*\*Note: A list of uses for the grant is in Section 9 of the legislation.*

#### Fire and Life Safety Improvements

- Authorizes the following appropriations for the National Railroad Passenger Corporation (AMTRAK) to make fire and life safety improvements to AMTRAK tunnels:

- Six tunnels in New York City (ventilation and fire safety technology, emergency communication and lighting systems, and emergency access and egress for passengers)

\$25,000,000 for each Fiscal Year from FY 2008 to FY 2011

- Baltimore and Potomac Tunnel / Union Tunnel in Baltimore, MD (drainage and ventilation, communication, lighting, standpipe, and passenger egress improvements)

\$5,000,000 for each Fiscal Year from FY 2008 to FY 2011

- Union State tunnels in the District of Columbia (improvements to ventilation, communication, lighting, and passenger egress)

\$5,000,000 for each Fiscal Year from FY 2008 to FY 2011

### Security Training Program

- Requires the Secretary of DHS (within 90 days) to develop security training programs to prepare the appropriate workers for potential threat conditions. These programs shall include: determination of the seriousness of a threat, communication among crew and passengers, nonlethal self defense, evacuation procedures, situational training exercises, recognition and reporting of dangerous substances and packages, security incident procedures, operation and maintenance of security equipment, and other subjects determined by the Secretary.

Providers of covered transportation are required to submit a plan (following the Secretary's guidelines) within 60 days. The Secretary must review the program within 60 days. Within one year of the approval, the provider must complete the training of all workers.

*\*Note: The training program is not required for any ferry that is already required to participate in drills under 46 U.S.C. 70103.*

### Security Exercises

- Requires the Secretary of DHS to develop a program for security exercises in order to prepare for responding to terrorist attacks. The program shall: consolidate existing security exercises, be tailored to specific facilities, be live and as realistic as possible, be coordinated with the appropriate officials from covered transportation providers, and be consistent with the National Incident Management System, the National Response Plan, the National Infrastructure Protection Plan, the National Preparedness Guidance, the National Preparedness Goal, and other such national initiatives. Additionally, the program shall include individuals from surrounding neighborhoods and include facilities near borders.

*\*Note: The exercise program is not required for any ferry that is already required to participate in drills under 46 U.S.C. 70103*

### Research and Development

- Establishes a research and development program for improving security of covered transportation. Requires coordination with other research and development security initiatives. Projects may include those that:
  - *reduce the vulnerability of passenger trains, stations, and equipment to explosives and hazardous chemical, biological, and radioactive substances including the*

*development of technology to screen passengers in large numbers at peak commuting times with minimal interference and disruption*

- *test new emergency response and recovery techniques and technologies, including those used at international borders*
  - *develop improved freight railroad technologies*
  - *test wayside detectors that can detect tampering*
  - *support enhanced security for the transportation of security sensitive materials by railroad;*
  - *mitigate damages in the event of a cyberattack; and*
  - *address other vulnerabilities and risks identified by the Secretary*
- Authorizes \$50 million from Fiscal Year 2008 to 2011 (a total of \$200 million).

#### Whistleblower Protections

- Prohibits an individual from being discharged, demoted, suspended, threatened, harassed, reprimanded, investigated or discriminated against for:
- 1) Providing information to a Member of Congress, a supervisor or a law enforcement agency in order to assist with an investigation regarding a violation of the law, threat to transportation or constitutes waste, fraud and abuse.
  - 2) Filing, testifying or assisting in a proceeding or action filed relating to an alleged violation of any law, rule or regulation relating to security of covered transportation
  - 3) Refusing to violate or assist in the violation of any law, rule or regulation relating to security of covered transportation
- Employees of DHS or DOT may seek relief by filing a complaint with the Merit Systems Protection Board; Contractors and subcontractors may seek relief by filing a complaint with the Inspector General; All other individuals may seek relief by filing a complaint with the Secretary of Labor

Any individual that prevails is entitled to: reinstatement of seniority, back pay (with interest), compensation for special damages (including litigation costs, expert witness fees, and attorney fees) and punitive damages not to exceed 3 times the amount of compensatory damages or \$5 million.

*\*Note: According to Committee Republicans, the punitive damages section is “a disturbing proposal that would actually subject taxpayers to paying for whistleblower retaliation claims.”*

- Provides individuals with civil remedies and allows for a trial by jury at the request of any party
- Mandates a verdict in favor of the plaintiff in any case where the state secrets privilege is asserted in court

*\*Note: According to Committee Republicans: “this will force the government to choose between disclosing sensitive information and reinstating an employee who was legitimately fired due to security risks.”*

- Provides criminal penalties (fines under title 18, U.S.C. and imprisonment for no more than one year) for any person that willfully terminates or retaliates against an individual who makes a claim. Also requires the Attorney General to submit an annual report to the appropriate Congressional committees on the enforcement of this section.

*\*Note: Committee Republicans are “concerned that the criminal penalties provision will unfairly subject managers, including Federal, State and local civil servants, to potential criminal prosecution for performing routine personnel actions.”*

*\*\*Note: Representatives Dan Lungren (R-CA) and Tom Davis (R-VA) offered amendments in the Committee mark-up that would have been consistent with the Whistleblower Protection Enhancement Act of 2007 (HR 985). These amendments were opposed by Democrats and failed.*

### Security Inspectors

- Increases the total number of positions for full-time surface transportation security inspectors to at least 600 by December 31, 2010

*\*Note: The Transportation Security Administration has deployed 100 surface transportation inspectors*

### National Domestic Preparedness Consortium

- Authorizes such sums as may be necessary for the DHS' National Domestic Preparedness Consortium to maintain FY2007 funding levels and to increase funding at least three percent each year for the next five years

### Authorization of Visible Intermodal Protection Response Teams

- Authorizes the Secretary of DHS to develop Visible Intermodal Protection Response (VIPR) teams to supplement the security at any mode of transportation, and authorizes

the Secretary to use any assets at DHS (including Federal Air Marshals, Surface Transportation Security Inspectors, Canine Detection Teams, Etc.) to form a VIPR team

#### National Transportation Security Center of Excellence

- Requires the Secretary of DHS to establish a National Transportation Security Center of Excellence at an institution of higher education to:
  - 1) Conduct research and education activities
  - 2) Develop or provide professional security training, including the training of rail and public transportation employees
- Outlines specific criteria for the Secretary of DHS to use in determining which colleges and universities will make up the consortium that will comprise the Center
- Authorizes such funding as is necessary to carry out this section

#### TSA Personnel Limitations

- Exempts Transportation Security Administration (TSA) employees that are carrying out this Act from any statutory limitations on the number of employees at the TSA.

#### Homeland Security Grants

- Establishes the Secretary of DHS as the lead federal official to administer all grants distributed for security-related purposes pursuant to this act and directs the Secretary to administer the grants on the basis of risk.

#### Threat Assessment Screening

- Requires the Secretary of DHS to implement a threat assessment screening program that includes:
  - Name based checks against terrorist watch lists
  - Immigration status checks for all employees of covered transportation

*\*Note: The threat assessment screening program is to be designed the same as the Coast Guard's screening program for port facility employees.*

#### Background Checks for Covered Individuals

- Requires covered transportation providers that conduct background checks on their employees and contractors provide a redress system that includes: an appeals process, a waivers process, and an independent third party review of the decision.



### Taskforce on Disqualifying Crimes

- Requires the Secretary of DHS to establish a task force to review the lists of crimes that disqualify certain individuals from certain transportation-related employment under current regulations of the TSA and to assess whether those crimes are accurate indicators of a terrorism security risk.

The task force is to be composed of representatives from the industry, Federal agencies, and non-profit employee labor organizations, and is directed to report to Congress within 180 days of the enactment of this Act the results of the review including recommendations.

### Penalties

- Sets civil penalties and enforcement regulations for violations of this Act including:
  - Up to \$10,000 for violations by an individual
  - Each day that a violation continues will be considered a separate, additional violation
- U.S. district courts have exclusive jurisdiction over civil violations in the following types of cases:
  - Where “the amount in controversy” is more than \$50,000 and the violation was committed by an individual or small business concern, the penalty may be up to \$50,000
  - Where “the amount in controversy” is more than \$400,000 and the violation was not committed by an individual or small business concern, the penalty may be up to \$400,000

### School Bus Transportation Security

- Requires the Secretary of DHS to complete a comprehensive threat assessment of the threat of a terrorist attack on the Nation’s school bus transportation system and submit the assessment to Congress within one year of enactment of this Act.

### Enhanced Security Measures for Shipments of Security Sensitive Materials

- Requires the Secretaries of DHS and Transportation to develop new regulations to enhance security measures for shipments of security sensitive materials.

Security Sensitive materials are defined as: materials designated by the Secretary of DHS that when transported in commerce in a particular amount or form pose a significant risk to national security due to the potential use of the material in an act of terrorism.

- Requires rail carriers transporting security sensitive materials to annually compile a list of the routes and storage facilities used in transportation of security sensitive materials and submit a written analysis of the security risks to those routes and facilities and submit the analysis to DHS.

The analysis submitted to DHS is to include at least one practical alternative route that avoids any areas of security concerns (as defined by the Secretary of DHS), and the rail carrier must evaluate which route is more secure, and then must use the most secure route.

#### Technology Standards and Clearinghouse to Improve Security of Covered Transportation

- Requires the Secretary of DHS to develop national voluntary consensus standards for technologies that will improve the security of covered transportation.
- Requires the Secretary to increase the scope of the existing technology clearinghouse to include technologies to increase the security of surface transportation systems.

*\*Note: The technology clearinghouse was created in the Homeland Security Act of 2002 (6 U.S.C. 193) to encourage technological innovation to facilitate the mission of the Department of Homeland Security. The clearinghouse was designed to gather information relating to technologies that would “further the mission of DHS for dissemination, as appropriate, to Federal, State, and local government and private sector entities for additional review, purchase, or use.”*

#### Rail Tank Car Security Testing

- Requires the Secretary of DHS to physically test the vulnerabilities of rail tank cars that carry toxic-inhalation-hazard (TIH) materials to determine the most likely successful means of attack and submit the analysis to Congress.
- Requires the Secretary of DHS to conduct plume modeling analysis of a release of a tank car of TIH materials in a realistic environment.

#### Rail Radiological and Nuclear Detection

- Requires the Domestic Nuclear Detection Office (DNDO) to conduct tests of prototype systems to detect nuclear or radiological materials in rail security venues, including spectroscopic technologies, and to submit a report to Congress by September 30, 2008 detailing their progress.
- Requires DNDO to work with Customs and Border Protection, as well as the TSA to ensure that appropriate training, operations, and response protocols are established, and to submit a report to Congress by September 30, 2008 detailing their progress.

### Requirement to Provide Preference to Qualified Anti-Terrorism Technologies & Promoting Liability Protections for Providers of Covered Transportation and Related Technologies

- Requires the Secretary of DHS to work with covered transportation agencies to identify technologies that qualify as antiterrorism technologies under the SAFTEY Act of 2002, and for recipients of grant funds under this Act to, when practicable, give preference to those technologies.

### International Rail Security Program

- Requires the Secretary of DHS to deploy non-intrusive inspection imaging equipment at rail junctions along the international border to screen for undeclared passengers and contraband including terrorists or weapons of mass destruction.

### Terrorist Watch list and Immigration Status Review at High-Risk Transportation Sites

- Requires the Secretary of DHS to ensure that all providers of covered transportation, including contractors and subcontractors working in high risk areas check their employees against available terrorist watch lists and immigration status databases.

### Increasing the Number of Canine Detection Teams for Transportation Security

- Requires the Secretary of DHS to increase the number of trained canine detection teams deployed at the Nation's high-risk rail and mass transit systems by not less than 10 percent each fiscal year for 2008 – 2012. Each canine detection team shall be trained to detect explosives and, to the greatest extent possible, chemical and biological weapons.

### National Explosives Detection Canine Team & TSA Breeding Program Increase

- Authorizes necessary funds to (1) train up to an additional one hundred canine detection teams per year through 2012 to be deployed across the country to strengthen the security of covered transportation systems; and (2) the TSA "Puppy Program" to increase the number of domestically bred canines to help meet the increase in demand for canine detection teams.
- Requires the Administrator of TSA to submit to Congress a report on the personnel and resource needs to (1) train and deploy the canine detection teams, and (2) enhance the "Puppy Program" to increase canine breeding for detection teams.

### Amendments Made in Order Pursuant to the Rule

**#1 Rep. Bennie Thompson (D-MS) Manager's Amendment:** Makes technical and clerical changes to H.R. 1401, as reported by the Committee on Homeland Security. It also clarifies the relationship between the Department of Homeland Security and Transportation in carrying out

certain portions of the bill, and modifies the whistleblower protections for federal employees and contractors to make them more similar to those granted in H.R. 985.

**#2 Rep. Michael Arcuri (D-NY)** Requires the Secretary of Homeland Security, in coordination with the Secretary of Transportation, to conduct an assessment of the safety and security vulnerabilities of placing high voltage direct current electric transmission lines along active railroad rights-of-way. The Amendment requires the Secretary to report the findings of this assessment to Congress within 6 months of enactment of the Act.

**#3 Rep. Steve Cohen (D-TN)** Establishes a program to coordinate with state and local governments to enable minimize the need for transportation of toxic inhalation hazardous materials by rail.

**#4 Rep. Michael Castle (R-DE)** Requires the Secretary of Homeland Security to study foreign rail security practices that are not currently used in the U.S. and submit a report on recommendations for implementing such practices.

**#5 Rep. Pete Sessions (R-TX)** Prohibits funds in this act, except those noted in Section 108, from being used by Amtrak for any of the Top 10 worst revenue losing long-distance routes as noted by its September 2006 monthly performance report. This amendment provides a waiver from this provision should the Secretary deem a route or a portion of a route as critical to homeland security.

**#6 Rep. Jeff Flake (R-AZ)** Strikes section 203, "Transportation Security Administration Breeding Program Increase" which authorizes an increase in the number of domestically bred canines under the Transportation Security Administration's Puppy Program.

**#7 Rep. Jeff Flake (R-AZ)** Strikes the section of the bill that provides a new Homeland Security grant program, "Over-The-Road Bus Security Assistance."

**#8 Rep. Stephen Lynch (D-MA)** Provides that not later than 1 year after the Secretary issues the detailed worker training guidance required under Section 109, the Secretary must submit a report to Congress on the progress of providers of covered transportation in meeting the Section's worker training requirements. The report must include the results of a survey, conducted by the Secretary, of covered workers regarding the effectiveness and adequacy of the training programs.

## **Background**

During the 109<sup>th</sup> Congress, comprehensive rail and mass transit security provisions were included in The Department of Homeland Security Act of 2007 (H.R. 5814), which was introduced by Representative Peter King on July 17, 2006 and was reported by the Committee on Homeland Security by voice vote on July 19, 2006. H.R. 5814 was not considered on the floor of the House of Representatives. H.R. 1401 builds upon the framework of the rail and mass transit security provisions that were included in H.R. 5814.

Busses and trains have been shown to be highly vulnerable to terrorist attack as evidenced in the bombings in recent years in places such as London, Madrid, and Mumbai. Public transportation systems in the United States are designed for accessibility and efficiency, characteristics that leave them potentially vulnerable to terrorist attack.

### **Cost**

The Congressional Budget Office (CBO) estimates: “that H.R. 1401 would authorize the appropriation of \$7.3 billion over the 2008-2012 period for security related programs. Assuming the appropriation of the amounts authorized and estimated to be necessary, CBO estimates that implementing the bill would cost about \$500 million in 2008 and about \$6 billion over the 2008-2012 period.

Enacting H.R. 1401 could increase both direct spending and revenues, but CBO estimates that any such increases would be negligible.

H.R. 1401 contains intergovernmental mandates as defined by the Unfunded Mandates Reform Act (UMRA) 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 bill would also be subject to new projections for ‘whistleblower’ employees, and the bill would preempt state laws covering such employees. While CBO cannot precisely estimate the aggregate costs of those mandates, based on information from industry and government sources, we estimate that the costs to state, local, and tribal governments would substantially exceed the threshold established in UMRA (\$66 million in 2007, adjusted annually for inflation) in one of the first five years after enactment. The bill would authorize appropriations of funds to cover most of those costs.

H.R. 1401 contains several private-sector mandates as defines in UMRA because it would require central 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.”

### **Staff Contact**

For questions or further information contact Matt Lakin at (202) 226-2302.