

HR 534 IH

110th CONGRESS

1st Session

H. R. 534

To provide for the security and safety of rail and rail transit transportation systems, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

January 17, 2007

Mr. LYNCH introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for the security and safety of rail and rail transit transportation systems, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title- This Act may be cited as the 'Rail Transit Security and Safety Act of 2007'.

(b) Table of Contents- The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Rail transportation security risk assessment.

Sec. 3. Federal Rail Security Managers.

Sec. 4. Study of foreign rail transport security programs.

Sec. 5. Fire and life-safety improvements.

Sec. 6. Security assistance grants.

Sec. 7. Rail security research and development.

Sec. 8. Whistleblower protections for rail employees.

Sec. 9. Authorization of appropriations.

Sec. 10. Rail worker emergency training.

SEC. 2. RAIL TRANSPORTATION SECURITY RISK ASSESSMENT.

(a) In General-

(1) VULNERABILITY ASSESSMENT- The Under Secretary for Border and Transportation Security of the Department of Homeland Security, in consultation with the Secretary of Transportation, shall complete a vulnerability assessment of freight and passenger rail transportation (encompassing railroad carriers, as that term is defined in section 20102(2) of title 49, United States Code). The assessment shall include--

(A) identification and evaluation of critical assets and infrastructures;

(B) identification of threats to those assets and infrastructures;

(C) identification of vulnerabilities that are specific to the transportation of hazardous materials via railroad; and

(D) identification of security weaknesses in passenger and cargo

security, transportation infrastructure, protection systems, procedural policies, communications systems, employee training, emergency response planning, and any other area identified by the assessment.

(2) EXISTING PRIVATE AND PUBLIC SECTOR EFFORTS- The assessment shall take into account actions taken or planned by both public and private entities to address identified security issues and assess the effective integration of such actions.

(3) RECOMMENDATIONS- Based on the assessment conducted under paragraph (1), the Under Secretary, in consultation with the Secretary of Transportation, shall develop prioritized recommendations for improving rail security, including any recommendations the Under Secretary has for--

(A) improving the security of rail tunnels, rail bridges, rail switching areas, other rail infrastructure and facilities, information systems, and other areas identified by the Under Secretary as posing significant rail-related risks to public safety and the movement of interstate commerce, taking into account the impact that any proposed security measure might have on the provision of rail service;

(B) deploying weapon detection equipment;

(C) training employees in terrorism prevention, passenger evacuation, and response activities;

(D) conducting public outreach campaigns on passenger railroads;

(E) deploying surveillance equipment; and

(F) identifying the immediate and long-term economic impact of measures that may be required to address those risks.

(4) PLANS- The report required by subsection (c) shall include--

(A) a plan, developed in consultation with the freight and intercity passenger railroads, and State and local governments, for the Federal Government to provide increased security support at high or severe threat levels of alert; and

(B) a plan for coordinating rail security initiatives undertaken by the public and private sectors.

(b) Consultation- In carrying out the assessment required by subsection (a), the Under Secretary for Border and Transportation Security of the Department of Homeland Security shall consult with rail management, rail labor, owners or lessors of rail cars used to transport hazardous materials, shippers of hazardous materials, public safety officials (including those within other agencies and offices within the Department of Homeland Security) and other relevant parties.

(c) Report-

(1) CONTENTS- Within 90 days after the date of enactment of this Act, the Under Secretary shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report containing the assessment and prioritized recommendations required by subsection (a) and an estimate of the cost to implement such recommendations.

(2) FORMAT- The Under Secretary may submit the report in both classified and redacted formats if the Under Secretary determines that such action is appropriate or necessary.

(d) Allocations- The assessment required by subsection (a) shall be used as the basis for allocating grant funds under section 6, unless the Secretary of Homeland Security determines that an adjustment is necessary to respond to an urgent threat or other significant factors.

(e) 2-Year Updates- The Under Secretary, in consultation with the Secretary of Transportation, shall update the assessment and recommendations every 2 years and transmit a report, which may be submitted in both classified and redacted formats, to the Committees named in subsection (c)(1), containing the updated assessment and recommendations.

(f) Authorization of Appropriations- There are authorized to be appropriated to the Under Secretary for Border and Transportation Security of the Department of Homeland Security \$5,000,000 for fiscal year 2008 for the purpose of carrying out this section.

SEC. 3. FEDERAL RAIL SECURITY MANAGERS.

(a) Establishment, Designation, and Stationing- The Under Secretary for Border and Transportation Security of the Department of Homeland Security shall establish the position of Federal Rail Security Manager within each of at least 8 regional areas, as divided on a geographical basis. The Under Secretary shall designate individuals as Managers for, and station those Managers within, those regions.

(b) Duties and Powers- The Manager within each region shall--

(1) receive intelligence information related to rail and mass transit security;

(2) ensure, and assist in, the implementation of a comprehensive rail security plan for the region described in section 2(a)(4);

(3) serve as the regional coordinator of the Under Secretary's response to terrorist incidents and threats to rail and rail assets within the region;

(4) coordinate efforts related to rail security with State and local law enforcement; and

(5) coordinate with other Managers.

SEC. 4. STUDY OF FOREIGN RAIL TRANSPORT SECURITY PROGRAMS.

(a) Requirement for Study- Within one year after the date of enactment of this Act, the Comptroller General shall complete a study of the rail passenger transportation security programs that are carried out for rail transportation systems in Japan, member nations of the European Union, and other foreign countries.

(b) Purpose- The purpose of this study shall be to identify effective rail transportation security measures that are in use in foreign rail transportation systems, including innovative measures and screening procedures determined effective.

(c) Report- The Comptroller General shall submit a report on the results of this study to the Senate Committee on Commerce, Science, and

Transportation and the House of Representatives Committee on Transportation and Infrastructure. The report shall include the Comptroller General's assessment regarding whether it is feasible to implement within the United States any of the same or similar security measures that are determined effective under the study.

(d) Authorization of Appropriations- There are authorized to be appropriated \$1,000,000 for fiscal year 2008 to carry out the provisions of this section, which shall remain available until expended.

SEC. 5. FIRE AND LIFE-SAFETY IMPROVEMENTS.

(a) Life-Safety Needs- The Secretary of Transportation is authorized to make grants to Amtrak for the purpose of making fire and life-safety improvements to tunnels on the Northeast Corridor in New York, New York, Baltimore, Maryland, Washington, District of Columbia, and Boston, Massachusetts.

(b) Authorization of Appropriations- There are authorized to be appropriated to the Secretary of Transportation for the purposes of carrying out subsection (a) the following amounts:

(1) For the 6 New York tunnels to provide ventilation, electrical, and fire safety technology upgrades, emergency communication and lighting systems, and emergency access and egress for passengers--

(A) \$100,000,000 for fiscal year 2008;

(B) \$100,000,000 for fiscal year 2009;

(C) \$100,000,000 for fiscal year 2010;

(D) \$100,000,000 for fiscal year 2011; and

(E) \$100,000,000 for fiscal year 2012.

(2) For the Baltimore & Potomac Tunnel and the Union tunnel, together, to provide adequate drainage, ventilation, communication, lighting, and passenger egress upgrades--

(A) \$10,000,000 for fiscal year 2008;

(B) \$10,000,000 for fiscal year 2009;

(C) \$10,000,000 for fiscal year 2010;

(D) \$10,000,000 for fiscal year 2011; and

(E) \$17,000,000 for fiscal year 2012.

(3) For the Washington, District of Columbia, Union Station tunnels to improve ventilation, communication, lighting, and passenger egress upgrades--

(A) \$8,000,000 for fiscal year 2008;

(B) \$8,000,000 for fiscal year 2009;

(C) \$8,000,000 for fiscal year 2010;

(D) \$8,000,000 for fiscal year 2011; and

(E) \$8,000,000 for fiscal year 2012.

(4) For the Boston, Massachusetts, Back Bay tunnels to improve ventilation, communication, lighting, and passenger egress upgrades--

(A) \$8,000,000 for fiscal year 2008;

(B) \$8,000,000 for fiscal year 2009;

(C) \$8,000,000 for fiscal year 2010;

(D) \$8,000,000 for fiscal year 2011; and

(E) \$8,000,000 for fiscal year 2012.

(c) Infrastructure Upgrades- There are authorized to be appropriated to the Secretary of Transportation for fiscal year 2008 \$3,000,000 for the preliminary design of options for a new tunnel on a different alignment to augment the capacity of the existing Baltimore tunnels.

(d) Availability of Appropriated Funds- Amounts appropriated pursuant to this section shall remain available until expended.

(e) Plan Required- The Secretary may not make amounts available to Amtrak for obligation or expenditure under subsection (a)--

(1) until Amtrak has submitted to the Secretary, and the Secretary has approved, an engineering and financial plan for such projects; and

(2) unless, for each project funded pursuant to this section, the Secretary has approved a project management plan prepared by Amtrak addressing project budget, construction schedule, recipient staff organization, document control and record keeping, change order procedure, quality control and assurance, periodic status reports, and such other matter the Secretary deems appropriate;

(f) Financial Contribution From Other Tunnel Users- The Secretary shall, taking into account the need for timely completion of all life-safety portions of the tunnel projects described in subsection (a)--

(1) consider the extent to which rail carriers other than Amtrak use the tunnels;

(2) consider the feasibility of seeking a financial contribution from those other rail carriers toward the costs of the projects; and

(3) seek financial contributions or commitments from such other rail carriers at levels reflecting the extent of their use of the tunnels.

SEC. 6. SECURITY ASSISTANCE GRANTS.

(a) Capital Assistance Program-

(1) IN GENERAL- The Secretary of Homeland Security shall award grants directly to public transportation agencies for allowable capital security improvements based on the recommendations established under section 2(a)(3).

(2) ALLOWABLE USE OF FUNDS- Grants awarded under paragraph (1) may be used for--

- (A) tunnel protection systems;
- (B) perimeter protection systems;
- (C) redundant critical operations control systems;
- (D) chemical, biological, radiological, or explosive detection systems;
- (E) surveillance equipment;
- (F) communications equipment;
- (G) emergency response equipment;
- (H) fire suppression and decontamination equipment;
- (I) global positioning or automated vehicle locator type system equipment;
- (J) evacuation improvements; and
- (K) other capital safety improvements.

(b) Operational Security Assistance Program-

(1) IN GENERAL- The Secretary of Homeland Security shall award grants directly to public transportation agencies for allowable operational security improvements based on the recommendations established under section 2(a)(3).

(2) ALLOWABLE USE OF FUNDS- Grants awarded under paragraph (1) may be used for--

- (A) security training for transit employees, including rail operators, mechanics, customer service, maintenance employees, transit police, and security personnel;
- (B) live or simulated drills;
- (C) public awareness campaigns for enhanced public transit

security;

(D) canine patrols for chemical, biological, or explosives detection;

(E) overtime reimbursement for enhanced security personnel during significant national and international public events; and

(F) other appropriate security improvements.

(c) Congressional Notification- Not later than 3 days before any grant is awarded under this section, the Secretary of Homeland Security shall notify the Committee on Transportation and Infrastructure of the House of Representatives of the intent to award such grant.

(d) Procedures for Grant Award- The Secretary shall prescribe procedures and schedules for the awarding of grants under this section, including application and qualification procedures, and a record of decision on applicant eligibility. The procedures shall include the execution of a grant agreement between the grant recipient and the Secretary. The Secretary shall issue a final rule establishing the procedures not later than 90 days after the date of enactment of this Act.

(e) Transit Agency Responsibilities- Each public transportation agency that receives a grant under this section shall--

(1) identify a security coordinator to coordinate security improvements;

(2) develop a comprehensive plan that demonstrates the agency's capacity for operating and maintaining the equipment purchased under this subsection;

(3) develop a comprehensive training plan that demonstrates the agency's capacity to train all employees in emergency response and security awareness; and

(4) report annually to the Department of Homeland Security on the use of grant funds received under this section.

(f) Return of Misspent Grant Funds- If the Secretary of Homeland Security determines that a grantee used any portion of the grant funds received under this section for a purpose other than allowable uses specified for that

grant under this section, the grantee shall return any amount so used to the Treasury of the United States.

SEC. 7. RAIL SECURITY RESEARCH AND DEVELOPMENT.

(a) Establishment of Research and Development Program- The Under Secretary for Border and Transportation Security of the Department of Homeland Security, in conjunction with the Secretary of Transportation, shall carry out a research and development program for the purpose of improving freight and intercity passenger rail security, including research and development projects to--

- (1) reduce the vulnerability of passenger trains, stations, infrastructure, and equipment to explosives;
- (2) test new emergency response techniques and technologies;
- (3) research chemical, biological, radiological, or explosive detection systems;
- (4) research imaging technologies;
- (5) research technologies for sealing rail cars; and
- (6) support enhanced security for transportation of hazardous materials by rail, including--

(A) technologies to detect a breach in a tank car and transit information about the integrity of tank cars to the train crew;

(B) research to improve tank car integrity, with a focus on tank cars that carry toxic-inhalation chemicals; and

(C) techniques to transfer hazardous materials from rail cars that are damaged or otherwise represent an unreasonable risk to human life or public safety.

(b) Research and Development Grants- The Under Secretary, in consultation with the Federal Transit Administration, shall award grants to public or private entities to conduct research into, and demonstration of, technologies and methods to reduce and deter terrorist threats or mitigate damages

resulting from terrorist attacks against public transportation systems, as described in subsection (a).

SEC. 8. WHISTLEBLOWER PROTECTIONS FOR RAIL EMPLOYEES.

(a) In General- No company involved in rail transportation (encompassing railroad carriers, as that term is defined in section 20102(2) of title 49, United States Code) or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, hold liable, or discriminate in any way against an employee because of any lawful act done by the employee--

(1) to provide information, to cause information to be provided, or otherwise assist in any investigation or proceeding regarding conduct that the employee believes reasonably contravenes the purposes, functions, or responsibilities of this Act, when that information or assistance is provided to or the investigation is conducted by--

(A) a Federal or State regulatory or law enforcement agency;

(B) any Member of Congress or any committee of Congress; or

(C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or

(2) to refuse to violate or assist in the violation of any rule, law, or regulation related to rail security.

(b) Enforcement Action-

(1) IN GENERAL- A person who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c) by--

(A) filing a complaint with the Secretary of Labor; or

(B) if the Secretary of Labor has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction

over such action without regard to the amount in controversy.

(2) PROCEDURE-

(A) IN GENERAL- An action brought under paragraph (1)(A) shall be governed by the rules and procedures set forth in section 42121(b)(1) of title 49, United States Code.

(B) EXCEPTION- Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the employer.

(C) BURDENS OF PROOF- An action under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

(D) STATUTE OF LIMITATIONS- An action brought under paragraph (1) shall be commenced not later than 90 days after the date on which the violation occurs.

(c) Remedies-

(1) IN GENERAL- An employee prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the employee whole.

(2) COMPENSATORY DAMAGES- Relief for any action under paragraph (1) shall include--

(A) reinstatement with the same seniority status that the employee would have had, but for the discrimination;

(B) the amount of back pay, with interest; and

(C) the compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.

(d) Rights Retained by Employee- Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law, or under any collective bargaining agreement.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

(a) Capital Security Assistance Program- There are authorized to be appropriated \$2,500,000,000 for fiscal year 2008 to carry out the provisions of section 6(a), which shall remain available until expended.

(b) Operational Security Assistance Program- There are authorized to be appropriated to carry out the provisions of section 6(b)--

(1) \$100,000,000 for fiscal year 2008;

(2) \$750,000,000 for fiscal year 2009; and

(3) \$500,000,000 for fiscal year 2010.

(c) Rail Security Research and Development- There are authorized to be appropriated \$50,000,000 for fiscal year 2008 to carry out the provisions of section 7(a), and \$50,000,000 for fiscal year 2008 to carry out the provisions of section 7(b), which shall remain available until expended.

SEC. 10. RAIL WORKER EMERGENCY TRAINING.

(a) Rail Worker Emergency Training Grants-

(1) RAIL WORKER EMERGENCY TRAINING GRANTS- The Secretary of Homeland Security, in coordination with the Secretary of Transportation, is authorized to make grants to railroad carriers for costs incurred in compliance with subsection (c).

(2) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to the Secretary of Homeland Security \$100,000,000 to carry out the purposes of this section. Amounts appropriated pursuant to this paragraph shall remain available until expended.

(b) Rail Worker Emergency Training Program-

(1) IN GENERAL- Not later than 90 days after the date of enactment of this Act, the Secretary of Homeland Security, in consultation with the Secretary of Transportation and appropriate rail entities, shall issue detailed guidelines for a rail worker emergency training program designed to enhance rail worker training in preparation for and

response to potential or actual terrorist attacks, natural disasters, and other emergencies.

(2) PROGRAM ELEMENTS- The guidelines developed under paragraph (1) shall require such a program to include, at a minimum, elements that comprehensively address the following:

- (A) Critical infrastructure and equipment security inspection.
- (B) Hazardous material storage, transport, and monitoring.
- (C) Evacuation procedures in the event of fire, explosion, natural disaster, and other emergencies.
- (D) Unauthorized rail yard access and rail yard security.
- (E) Procedure for reporting suspicious activity, critical infrastructure, rail yard, and equipment security breaches, hazardous material storage or transport safety breaches, and other security or safety breaches.
- (F) Notification of law enforcement, emergency response, and other appropriate officials in the event of a terrorist attack, natural disaster, hazardous material explosion, and other emergencies.
- (G) Rail worker notification and training on railroad security plans, including a railroad carrier's threat level identification system, employee notification when such levels change, employee roles and responsibilities regarding the security plan, and lines of communication and coordination in the event of an emergency.
- (H) Passenger communication and coordination in the event of an emergency.
- (I) Live situational training exercises regarding various emergency scenarios, including terrorist attacks, natural disasters, and hazardous material explosions.
- (J) Protective equipment and device use.

(K) Locomotive cab securement.

(L) Background, skills, and 'fitness for duty' checks for railroad contractors, subcontractors, and their employees equal to those applicable to railroad employees.

(M) Distress codes for use by train crews, bridge tenders, and others as the Secretary of Homeland Security considers appropriate.

(N) Appropriate responses to defend oneself.

(O) Any other subject the Secretary of Homeland Security considers appropriate.

(3) RAILROAD CARRIER PROGRAMS- Not later than 90 days after the Secretary of Homeland Security issues guidelines under paragraph (1) in final form, each railroad carrier shall develop a rail worker emergency training program in accordance with those guidelines and submit it to the Secretary of Homeland Security for approval. Not later than 60 days after receiving a railroad carrier's program under this paragraph, the Secretary shall review the program and approve it or require the railroad carrier to make any revisions the Secretary considers necessary for the program to meet the guideline requirements.

(4) TRAINING- Not later than 1 year after the Secretary of Homeland Security approves the training program developed by a railroad carrier under this subsection, the railroad carrier shall complete the training of all rail workers in accordance with that program.

(5) UPDATES- The Secretary of Homeland Security shall update the training guidelines issued under paragraph (1) from time to time to reflect new or different security threats, and shall require railroad carriers to revise their programs accordingly and provide additional training to their rail workers. Not later than 60 days after the Secretary of Homeland Security notifies railroad carriers to revise their programs to reflect updated guidelines issued by the Secretary under this subsection, each railroad carrier shall make all required revisions and submit their revised emergency training program to the Secretary of Homeland Security for approval. Not later than 60 days after receiving a railroad carrier's revised program under this paragraph, the

Secretary shall review the program and approve it or require the railroad carrier to make any revisions the Secretary considers necessary for the program to meet updated guideline requirements. Not later than 180 days after the Secretary approves the revised training program developed by a railroad carrier under this paragraph, the railroad carrier shall complete the training of all rail workers in accordance with the Secretary's updated guidelines.

(c) Noncompliance- The Secretary of Homeland Security may issue a letter of noncompliance to any rail carrier that has failed to comply with the obligations imposed by this section. Any such letters issued shall be transmitted to Congress and published in the Federal Register.

(d) Definitions- For purposes of this section:

(1) APPROPRIATE RAIL ENTITIES- The term `appropriate rail entities' means freight and passenger railroad carriers, nonprofit employee organizations representing rail workers, nonprofit employee organizations representing emergency responders, owners or lessors of rail cars used to transport hazardous materials, shippers of hazardous materials, manufacturers of rail tank cars, State Departments of Transportation, public safety officials, and other relevant parties.

(2) RAILROAD- The term `railroad' has the meaning given that term in section 20102(1) of title 49, United States Code.

(3) RAILROAD CARRIER- The term `railroad carrier' has the meaning given that term in section 20102(2) of title 49, United States Code.

(4) RAIL WORKER- The term `rail worker' includes any employee of a railroad carrier, or of a railroad carrier contractor or subcontractor, who--

(A) inspects, tests, maintains, or repairs brakes, other mechanical systems or components, or safety appliances on railroad cars or locomotives;

(B) is engaged in the operation of any train, including an employee that performs the duties of a hostler;

(C) dispatches, reports, transmits, receives, or delivers orders

pertaining to train movements via telegraph, telephone, radio, or any other electrical or mechanical device;

(D) installs, repairs, tests, or maintains signal systems;

(E) inspects, constructs, or repairs railroad track, bridges, roadway, electrical traction systems, roadway facilities, or roadway maintenance machinery; or

(F) is otherwise considered appropriate by the Secretary of Transportation.

END