



SENATE REPUBLICAN

POLICY COMMITTEE

Legislative Notice

No. 4

February 27, 2007

S. 184 - Surface Transportation and Rail Security Act of 2007

Calendar No. 26

*Reported by the Committee on Commerce, Science, and Transportation on February 15, 2007,
with an amendment in the nature of a substitute; no written report.*

Noteworthy

- *Note: This Legislative Notice contains only the provisions in S. 184, the Surface Transportation and Rail Security Act. At press time, a vote on cloture on the motion to proceed was set for 2:30 P.M. by unanimous consent. However, the Majority Leader has indicated he would prefer that the Senate instead turn to S. 4 as reported by the Homeland Security and Governmental Affairs Committee. If that occurs, RPC will issue a subsequent Legislative Notice that will address S. 4 and the anticipated substitute, which will include S. 184, S. 509 (Aviation Security), and provisions concerning public transportation from the Senate Banking Committee.*
- On Saturday, February 17, 2007, the Majority Leader asked for unanimous consent that on Tuesday, February 27, the Senate proceed to S. 184. After an objection was heard, the Majority Leader filed cloture on the motion to proceed to S. 184.
- S. 184 requires an assessment of both rail and truck security; provides grants and other funding for Amtrak and other freight and regional rail security projects; creates a rail security research and development program; requires railroads to create threat mitigation plans for high-hazard materials shipments; directs the Department of Transportation (DOT) to report on routing requirements for highway transportation of hazardous materials; and requires the development of a pipeline security and incident recovery protocols plan.

Highlights

Title I - Rail Security

- Title I is nearly identical to the rail security provisions contained in H.R. 4954, the SAFE Port Act (P.L. 109-347), as passed by the Senate on September 14, 2006, by 98 – 0, but later dropped during conference. The title contains updated language first included in S. 2273, the Rail Security Act of 2004, and S. 1379, the Rail Security Act of 2005, both approved by the Senate in the 108th and 109th Congresses, respectively.
 - S. 184 directs the Secretary of the Department of Homeland Security (DHS) to make prioritized recommendations to Congress regarding risk in freight and passenger rail transportation and to make grants available to Amtrak and other railroads to improve the security of the freight and passenger rail system.
 - S. 184 creates a new grant program within DHS to assist Amtrak, freight railroads and other entities in upgrading security across the rail system; provides funding approved by DHS through DOT for security enhancement to Amtrak railroad tunnels in New York, Washington, D.C., and Baltimore; creates and directs DHS to make grants available to a research and development program supporting improvement of freight and intercity passenger rail security; encourages the deployment of tracking equipment for high-hazard material rail shipments; requires railroads shipping high-hazard materials to create threat mitigation plans; requires DHS and DOT to clarify their roles for rail security and safety; requires the issuance of guidance for a rail worker security training program; and provides for whistleblower protection.
 - S. 184 authorizes \$201,500,000 in fiscal year 2008 and \$163,000,000 for fiscal years 2009 through 2010 for the Secretary of DHS for this title. For DOT, the bill authorizes \$121,500,000 for fiscal year 2008 and \$118,000,000 for fiscal years 2009 to 2011.

Title II - Motor Carrier, Bus, and Hazardous Material Security

- Title II contains the motor carrier, bus, pipeline, and hazardous material security provisions contained in H.R. 4954 (P.L. 109-347), but were later dropped during conference. S. 1052, the Transportation Security Improvement Act of 2005, contained nearly identical provisions.
 - S. 184 requires DOT to assess existing and proposed routes for hazardous materials transportation, and make recommendations regarding appropriate changes to routing requirements; propose security guidelines for truck rental and leasing operations; require the development of pipeline security incident recovery plans; and provide grants for improving over-the-road bus and bus terminal security.
 - Section 211 removes any statutory limitation on the number of employees in TSA to the extent such employees are responsible for carrying out provisions of the bill.

Background

The terrorist attacks of September 11, 2001 and subsequent bombings in 2004 and 2006 in Madrid, Spain, London, England, and Mumbai, India, have focused attention on the potential vulnerability of the passenger, freight, and metro rail systems in the United States. In 2005, intercity passenger trains carried more than 25 million passengers. Total passengers in 2005 on public transit and commuter rail services numbered approximately 3.5 billion.¹ Freight railroads in the United States transport more than 28 million carloads over 140,000 miles of track.²

Responsibility for surface transportation security rests with DHS. Title 1, Sec. 114 of the Aviation and Transportation Security Act (P.L. 107-71) designates TSA with responsibility for security across all modes of transportation.³ A significant portion of TSA's efforts, however, have been directed toward aviation security. TSA has worked to address non-aviation transportation security by partnering with the Federal Motor Carrier Safety Administration (FCMSA), the Federal Railroad Administration (FRA), and the Pipeline and Hazardous Materials Safety Administration (PHMSA).

Bill Provisions

Title I – Improved Rail Security

Section 101. Rail Transportation Security and Risk Assessment.

This section would require the establishment of a task force to complete a risk assessment of freight and passenger rail transportation. Based on the findings of the task force, within 180 days of enactment of this Act, DHS would be required to develop and report to Congress prioritized recommendations for improving rail security.

DHS would be required to include a plan for the federal government to provide increased security support at high threat levels of alert; a plan for coordinating existing and planned rail security initiatives undertaken by the public and private sectors; and a contingency plan developed in conjunction with the intercity and commuter passenger railroads to ensure the continued movement of freight and passengers in the event of an attack.

This section would authorize to be appropriated \$5,000,000 for fiscal year 2008 to carry out this section.

¹ See Senate Report 109-216; The Transportation Security Improvement Act of 2005.

² Senate Report 109-216.

³ Public Law 107-71, 107th Congress.

Section 102. Systemwide Amtrak Security Upgrades.

This section would authorize grants to Amtrak to secure major tunnel access points in New York, Baltimore, and Washington, D.C.; secure Amtrak trains and stations; obtain a watch list identification system and interoperable communication system; hire additional police and security officers; expand emergency preparedness efforts, and ensure that grants are distributed to areas outside of the Northeast Corridor, consistent with the highest security needs of the Amtrak system.

Section 103. Fire and Life-Safety Improvements.

This section would authorize grants to Amtrak for the purpose of making fire and life-safety improvements to Amtrak tunnels on the Northeast Corridor.

Section 104. Freight and Passenger Rail Security Upgrades.

This section would authorize grants to freight railroads, the Alaska Railroad, hazardous materials shippers, owners of rail cars used to transport hazardous materials, institutions of higher education, State and local governments, and Amtrak, for rail security upgrades.

Section 105. Rail Security Research and Development.

This section would require a research and development program for improving freight and intercity passenger rail security.

Section 106. Oversight and Grant Procedures.

This section would authorize the use of up to .5 percent of amounts made available under this Act to enter into contracts for the review of proposed capital projects and related program management plans and to oversee construction of such projects.

Section 107. Amtrak Plan to Assist Families of Passengers Involved in Rail Accidents.

This section would require Amtrak to submit a plan for addressing the needs of families of passengers involved in accidents resulting in loss of life.

Section 108. Northern Border Rail Passenger Report.

This section would require a report to Congress concerning the following aspects of cross-border cooperation with Canada: a description of the current system for screening passengers and baggage on rail service; an assessment of the current program to provide pre-clearance of airline passengers; an assessment of the current program to provide pre-clearance of freight railroad traffic; information on progress federal agencies have made toward finalizing a bilateral protocol providing for pre-clearance of passengers on trains; a description of certain barriers to providing pre-screened passenger lists for such passengers; a description of the Canadian position with respect to pre-clearance; a draft of any changes to federal law necessary to allow for pre-

screening; and a feasibility analysis of reinstating in-transit inspections onboard international Amtrak trains.

Section 109. Rail Worker Security Training Program.

This section would require DOT and DHS to develop detailed guidance for railroad worker security training programs and require railroad carriers to adopt parallel worker security training program.

Section 110. Whistleblower Protection Program.

This section would preclude rail carriers from discharging a railroad employee or otherwise discriminate against a railroad employee because the employee provided testimony pursuant to federal or state proceeding or refused to violate or assist in violation of any law or regulation related to rail security.

Section 111. High Hazard Material Security Threat Mitigation Plans.

This section would require rail carriers transporting a “high hazard” material to develop security plans to be implemented when the threat levels of the Homeland Security Advisory System are high or severe and specific intelligence of probable or imminent threat exists toward high-consequence rail targets or infrastructure. This section would also require submission of a list of routes used to transport high hazard materials, and the creation of a threat mitigation plan.

Section 112. Enforcement Authority.

This section Authorizes DHS and TSA to enforce regulations issued in all non-aviation transportation sectors and permits civil penalties for a violation or repeat violations.

Section 113. Rail Security Enhancements.

This section would expand the law enforcement authority of rail police officers to rail properties other than those owned or operated by a rail police officers’ employer.

Section 114. Public Awareness.

This section would require the Secretary of DHS, in consultation with the Secretary of DOT, to develop a national plan for improved public outreach and awareness of measures that will increase railroad system security.

Section 115. Railroad High Hazard Material Tracking.

This section would require the Secretary of DHS to develop a program to encourage the equipping of rail cars transporting high hazard materials with wireless terrestrial or satellite communications technology that provides information concerning car position, depressurization, and the release of hazardous materials.

Section 116. Authorization of Appropriations.

This section would authorize \$201,500,000 in funding for fiscal year 2008 and \$163,000,000 for fiscal years 2009 to 2010 for the Secretary of DHS for this title. This section also authorizes \$121,500,000 for fiscal year 2008 and \$118,000,000 for fiscal years 2009 to 2011 for the Secretary of DOT for this title.

Title II- Improved Motor Carrier, Bus, and Hazardous Material Security

Section 201. Hazardous Materials Highway Routing.

This section would require the documentation of existing and proposed routes for the transportation of radioactive and non-radioactive hazardous materials by motor carrier as well as the development of a framework utilizing routes in the National Hazardous Materials Route Registry. It would also require the identifying measurable criteria for selecting routes based on safety and security concerns. Finally, this section would require an analysis of route-related hazardous materials regulations in the United States, Canada, and Mexico and an identification of cross-border differences and conflicting regulations.

This section would require completion of an assessment of the safety and national security benefits achieved under existing requirements. Motor carriers would be required to have a hazardous material safety permit and to maintain, follow, and execute a route plan.

Section 202. Motor Carrier High Hazard Material Tracking.

This section would require a program to encourage the equipping of motor carriers transporting high hazard materials with wireless communications technology that provides continuous communications, vehicle position, location, and tracking capabilities, and an emergency broadcast capability.

Section 203. Memorandum of Agreement.

This section would require DHS and DOT to enter into an annex to their September 28, 2004, memorandum of agreement to delineate certain roles, resources, and commitments of DHS and DOT in addressing motor carrier transportation security matters, particularly addressing communications, efficiency, and non-duplication of efforts.

Section 204. Hazardous Materials Security Inspections and Enforcement.

This section would require a review of hazardous materials security plans. Failure by any covered person to comply would be punishable by a civil penalty.

This section also would require that a study be conducted to examine to what extent the insurance, security, and safety costs borne by carriers of hazardous materials are reflected in the rates paid by shippers of such commodities.

Section 205. Truck Security Assessment.

This section would require a report on security issues related to the trucking industry.

Section 206. National Public Sector Response System.

This section would require the development of a national public sector response system to receive security alerts.

This section would also require a report on the estimated public and private costs to establish and annually operate the system.

Section 207. Over-The-Road Bus Security Assistance.

This section would require the establishment of a program for making grants to private operators of over-the-road buses (characterized by an elevated passenger deck located over a baggage compartment) or over-the-road bus terminals for system-wide security improvements to their operations. This section would require the Federal share of the cost for which any grant is made to be 80 percent.

This section would require a preliminary report on bus security.

Section 208. Pipeline Security and Incident Recovery Plan.

This section would require DHS to develop a Pipeline Security and Incident Recovery Protocols Plan and report to Congress accordingly.

Section 209. Pipeline Security Inspections and Enforcement.

This section would require the establishment of a program to review pipeline operator adoption of recommendations in the September 5, 2002, DOT Research and Special Programs Administration Pipeline Security Information Circular.

This section also would require the transmission of recommendations for securing natural gas and hazardous liquid pipelines and pipeline facilities. Should the DOT Secretary deem regulations appropriate, the DOT Secretary would be authorized to promulgate such regulations and carry out necessary inspection and enforcement actions.

Section 210. Technical Corrections.

This section makes technical corrections to title 49, USC and title 46, USC.

Section 211. Certain Personnel Limitations Not to Apply.

This section removes any statutory limitation on the number of employees in the TSA before or after its transfer into the DHS, provided that these employees are responsible for implementing provisions of this Act.

Section 212. Maritime and Surface Transportation Security User Fee Study.

This section would require a study concerning the need and feasibility of establishing a system of maritime and surface transportation user fees.

Possible Amendments

At press time, it was anticipated that Majority Leader Reid would offer a substitute that, if accepted, would serve as the base bill for purposes of amendment. If that occurs, RPC will issue a subsequent Legislative Notice addressing the substitute and itemizing possible amendments.