



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

March 21, 2007

H.R. 1401

Rail and Public Transportation Security Act of 2007

As ordered reported by the House Committee on Homeland Security on March 13, 2007

SUMMARY

CBO estimates that H.R. 1401 would authorize the appropriation of \$7.3 billion over the 2008-2012 period for security-related programs carried out by the Department of Homeland Security (DHS) and the Department of Transportation (DOT) involving railroads, public transportation entities, buses, and trucks. Those amounts include funds for security grants to transportation entities, research activities, increased numbers of inspectors for rail security, a program to screen certain transportation workers, and for other DHS activities related to transportation security. Assuming 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 in 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 provisions in the bill also would 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 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. An estimate of the aggregate cost of those mandates cannot be determined because it depends on regulations to be developed by DHS under the bill. Based on information from industry and government sources, however, CBO expects that the cost of those mandates would be large and would likely exceed the annual threshold established by UMRA for private-sector mandates (\$131 million in 2007, adjusted annually for inflation) in at least one of the first five years the mandates are in effect. The bill would authorize an appropriation of funds for grant assistance to cover some of the costs of complying with mandates in the bill.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 1401 is shown in the following table. The costs of this legislation fall within budget functions 400 (transportation), 450 (community and regional development), and 750 (administration of justice).

	By Fiscal Year, in Millions of Dollars				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Grants for Public Transportation Security					
Authorization Level	775	825	880	880	0
Estimated Outlays	116	356	535	677	657
Grants for Rail Security					
Authorization Level	600	600	600	600	0
Estimated Outlays	150	420	600	600	450
Grants to Amtrak					
Authorization Level	35	35	35	35	0
Estimated Outlays	35	35	35	35	0
Grants for Over-the-Road Bus Security					
Authorization Level	12	25	25	25	0
Estimated Outlays	2	9	17	22	20
Research Activities					
Estimated Authorization Level	200	205	209	214	0
Estimated Outlays	153	189	209	214	50

Continued

	By Fiscal Year, in Millions of Dollars				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION (Continued)					
Rail Security Inspectors					
Estimated Authorization Level	30	45	60	60	60
Estimated Outlays	10	30	45	60	60
Threat Assessment Screening					
Estimated Authorization Level	25	25	15	10	1
Estimated Outlays	15	20	20	15	5
Other DHS Activities					
Estimated Authorization Level	24	24	30	33	39
Estimated Outlays	15	26	29	34	39
Total Proposed Changes					
Estimated Authorization Level	1,701	1,784	1,854	1,857	100
Estimated Outlays	497	1,086	1,489	1,657	1,281

BASIS OF ESTIMATE

CBO estimates that implementing H.R. 1401 would cost \$6 billion over the 2008-2012 period, assuming appropriation of amounts authorized and estimated to be necessary. Enacting H.R. 1401 also could increase both direct spending and revenues, but we estimate that any such increases would be negligible.

Spending Subject to Appropriation

H.R. 1401 would specifically authorize the appropriation of nearly \$6.2 billion over the 2008-2011 period, primarily for grants to support programs aimed at improving the security of rail and surface transportation through programs administered by DHS and DOT. In addition, CBO estimates that funding other activities authorized by the bill would require appropriations totaling \$1.1 billion over the next five years. That amount would be used to conduct research related to transportation security, hire additional rail security inspectors, establish a program to screen certain transportation workers, and carry out other activities related to transportation security. In total, CBO estimates that implementing H.R. 1401 would cost \$500 million in 2008 and \$6 billion over the 2008-2012 period, assuming appropriation of amounts authorized and estimated to be necessary.

Grants. The bill would authorize the appropriation of about \$6 billion in grants over the 2008-2011 period for security programs for public transit agencies, rail entities, certain buses, and Amtrak. In general, those amounts include funds for upgrading certain capital assets, security training, and new equipment for communications and for the detection of certain weapons. Grants to Amtrak would be to improve the security of certain tunnels in the Amtrak rail system. Specifically, the bill would authorize the appropriation of:

- Nearly \$3.4 billion for public transportation security grants over the 2008-2011 period;
- \$2.4 billion for grants to improve rail security over the next four years;
- \$140 million for grants to Amtrak to improve the security of certain train tunnels in New York, Maryland, and Washington, D.C.; and,
- \$87 million for grants for over-the-road bus security. (Over-the-road buses are characterized by an elevated passenger deck above a baggage compartment.)

Assuming appropriation of those specified amounts, CBO estimates that implementing those grant programs would cost \$303 million in 2008 and \$4.8 billion over the next five years, with spending of roughly \$1.2 billion occurring after 2012.

Research Activities. CBO estimates that implementing the research programs authorized in the bill would cost \$153 million in 2008 and \$815 million over the 2008-2012 period. Those amounts include \$134 million in 2008 and \$625 million over the 2008-2012 period to extend the authorization for the National Domestic Preparedness Consortium (NDPC). The NDPC identifies, develops, and tests security training methods and received appropriations totaling \$145 million in 2007.

Further, the research cost totals include \$18 million in 2008 and \$185 million over the 2008-2012 period for DHS to establish a program to research and develop methods to enhance the security of rail and public transportation systems. The bill also would require DHS to establish a Center for Excellence for Transportation Security at an institution of higher education. CBO estimates that this provision would cost \$5 million over the 2008-2012 period.

Rail Security Inspectors. H.R. 1401 would require DHS to increase the number of Surface Transportation Security Inspectors (STSIs) it employs from 100 to 600 inspectors by 2010. (STSIs perform inspections of certain facilities including stations and terminals for suspicious or unattended items, among other potential security threats.) Under the bill, the new inspectors would be responsible for assessing security plans submitted by certain transportation entities as required by the bill. Based on information from DHS, CBO

estimates that hiring an additional 500 inspectors would cost \$10 million in 2008 and \$205 million over the 2008-2012 period.

Threat Assessment Screening. H.R. 1401 would require DHS to establish a program to screen individuals employed by railroad or over-the-road bus carriers or entities that provide public transportation. Under the bill, DHS would review the immigration status of such individuals and check their names against terrorist watch lists.

Based on information from DHS about the cost of establishing similar screening programs, CBO estimates that the program would initially cost \$75 million over the next five years, assuming appropriation of the necessary amounts. That amount includes the agency's costs to establish the necessary infrastructure to collect and analyze information about workers to be screened. Once the system is in place, DHS would incur additional costs to screen transportation workers and adjudicate disputes. Under current law, DHS is authorized to charge fees to individuals to recover the costs of such activities. (Such fees are credited as discretionary offsetting collections.) For this estimate, CBO assumes that DHS would charge fees sufficient to cover spending for such costs, which would be subject to appropriation.

Other DHS Activities. Based on information from DHS, CBO estimates that implementing other programs authorized by the bill would require appropriations totaling \$150 million over the next five years. That amount includes:

- \$60 million to train and deploy additional canine detection teams, particularly to detect explosives at high-threat transportation systems;
- \$50 million for security training programs for railroad and public transportation employees;
- \$5 million for security training and exercises to test and evaluate the ability of transportation entities covered by the bill to prevent and respond to acts of terrorism;
- \$25 million to develop and implement a plan to improve information sharing among appropriate stakeholders about security threats and vulnerabilities of transportation systems; and
- \$7 million for various studies and reports.

Those estimates are based on information from DHS regarding costs of existing or similar programs. Based on historical spending patterns, CBO estimates that fully funding those activities would cost \$15 million in 2008 and \$143 million over the next five years, assuming appropriation of the necessary amounts.

Direct Spending and Revenues

H.R. 1401 would establish civil penalties for failing to comply with certain regulations established by DHS and criminal penalties for employers that violate whistle-blower protections established in the bill. Thus, the federal government might collect additional fines if the bill is enacted. 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 those provisions would be negligible.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 1401 contains intergovernmental mandates as defined in 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 provisions in the bill also would be subject to new projections for whistleblower employees, and the bill would preempt state laws covering such employees. While CBO cannot determine a precise estimate of 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.

Requirements on Public Transit and Rail Carriers

The requirements in the bill would affect more than 300 public transit and rail entities. Under current law, about one-third of affected agencies have already conducted vulnerability assessments and implemented security plans. Those entities likely would not be required to repeat that part of the process. However, they would be required to train all employees in security and complete background checks of certain employees.

Further, more than 200 transit and rail systems would be required to complete vulnerability assessments, to create and implement security plans, train all employees in security, and complete background checks of employees. Although the costs to individual systems would vary, based on information from industry and government sources, CBO estimates that the aggregate costs to transit and rail systems would exceed the threshold established in UMRA

in at least one of the first five years after enactment. The bill would authorize the appropriation of \$3.4 billion over the 2008–2012 period to cover those costs.

Whistleblower Protections

Section 112 would prohibit public transit and rail entities from discharging or discriminating against any employee who reports a perceived threat to security.

Under current law, employees are protected if they report any safety issues. Granting of additional whistleblower protections would impose an intergovernmental mandate, as defined in UMRA, on public transit and rail entities. Because compliance with those broader whistleblower protections likely would involve only a small adjustment in administrative procedures, however, CBO estimates that the provision would impose only minimal additional costs on those entities.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

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. An estimate of the aggregate cost of those mandates cannot be determined because it depends on regulations to be developed by DHS under the bill. Based on information from industry and government sources, however, CBO expects that the cost of those mandates would be large and would likely exceed the annual threshold established by UMRA for private-sector mandates (\$131 million in 2007, adjusted annually for inflation) in at least one of the first five years the mandates are in effect. The bill would authorize an appropriation of funds for grant assistance to cover some of the costs of complying with mandates in the bill.

Requirements on Rail and Bus Carriers

The bill contains several mandates on providers of covered transportation which, under the bill, include private rail carriers and over-the-road bus carriers, including passenger motor coaches. The bill would impose mandates by requiring those transportation providers to:

- Conduct vulnerability assessments and implement security plans;
- Provide security training for their employees;
- Implement an appeal process related to background checks for their employees and conduct additional checks for employees of high-risk providers; and
- Provide whistle-blower protections for their employees.

The bill would authorize an appropriation of \$612 million for fiscal year 2008 and \$625 million for each of fiscal years 2009 through 2011 to the Secretary of Homeland Security for grants to assist rail carriers and over-the-road buses with security programs.

Vulnerability Assessments and Security Plans. The bill would require the Secretary of Homeland Security to assign providers of covered transportation to one of three tiers based on risk. Providers of covered transportation would have to provide information necessary to determine their tier to the Secretary upon request. Section 103 would direct the Secretary, within one year of enactment, to issue regulations that require high- or medium-risk rail carriers and over-the-road bus providers to conduct vulnerability assessments and to prepare and implement security plans based on guidelines to be established by the Secretary. Additionally, this section would require those rail carriers and over-the-road bus providers to implement any necessary interim security measures to deter a transportation security incident. The Secretary also would establish a security program for lower-risk rail and bus carriers.

According to industry sources, some of the providers of covered transportation are currently engaged in activities similar to the assessment and planning that would be required under the bill. The direct cost of the mandates would depend on the regulations to be issued under the bill. The incremental costs for the industry to comply with the requirements of the bill could be substantial, depending on the guidelines established by DHS.

Security Training Program. Section 109 would impose a mandate by requiring providers of covered transportation to develop security training programs and submit them to the Secretary for approval. Once approved, providers would be required to complete training of all workers covered under the program within one year. Based on data from industry sources, roughly 300,000 rail and over-the-road bus employees may have to take the security training

required by the bill. The direct cost of the mandate could be large relative to UMRA's threshold for private-sector mandates depending on the guidance provided by the Secretary for such training.

Appeal Process for Background Checks and Additional Background Checks for High-Risk Employers. Section 120 would require providers of covered transportation who conduct background checks on their employees to provide a procedure for persons adversely impacted by a background check to appeal the adverse information. Because compliance with this requirement would involve an adjustment in existing administrative procedures, CBO estimates that the incremental costs of this provision would be small.

Section 132 contains a mandate on rail carriers and over-the-road bus providers assigned to the high-risk tier by requiring them to conduct checks of their employees against available terrorist watch lists and immigration status databases. Without information about the number of carriers and employees in the high-risk tier or information about how such checks would be implemented, CBO cannot determine the cost of complying with this mandate.

Whistleblower Protections. Section 112 would prohibit providers of covered transportation from discharging or discriminating against any employee who reports a perceived threat to security. Under current law, employees are protected if they report on issues related to safety. Requiring providers of covered transportation to provide additional whistle-blower protections would impose a private-sector mandate on those employers. Because compliance with the broader whistleblower protections likely would involve only a small adjustment in administrative procedures, however, CBO estimates that this provision would impose only minimal additional costs on rail and over-the-road bus carriers.

Enhanced Security Measures for Shipments of Security Sensitive Materials.

The bill would require DHS to issue regulations to require enhanced security measures for shipments of materials determined by the Secretary to pose a significant risk to national security. Section 124 would require rail carriers to compile commodity data by route and storage pattern, and to submit a written analysis annually of the security risks for each route and storage pattern. By the end of each year rail carriers would have to identify alternative routes and storage patterns that will avoid areas of concern identified by DHS for each of the transportation routes or facilities it used to ship or store materials determined to pose a significant risk through those areas of concern. Without information about the regulations to implement the program, CBO has no basis to determine the cost of complying with this mandate.

PREVIOUS CBO ESTIMATE

On February 22, 2007, CBO transmitted a cost estimate for S. 763, the Public Transportation Terrorism Prevention Act of 2007, as ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on February 8, 2007, and on February 28, 2007, CBO transmitted a cost estimate for S. 184, the Surface Transportation and Rail Security Act of 2007, as ordered reported by the Senate Committee Commerce, Science, and Transportation on February 15, 2007. Those two bills contain provisions similar to those in H.R. 1401, although S. 763 would authorize the appropriation of \$3.5 billion for security-related programs, and S. 184 would authorize the appropriation of \$1.1 billion for such programs. The differences among those bills are reflected in CBO's cost estimates.

S. 184 contains several private-sector mandates as defined in UMRA because it would require rail and motor carriers to comply with reporting requirements and certain security procedures. The bill would impose two mandates that are similar to mandates imposed in H.R. 1401. S. 184 contains a mandate on rail carriers by requiring them to provide security training for their front-line workers. That bill also would require rail carriers to provide whistle-blower protections to their employees. The aggregate cost of all the mandates in S. 184 would depend on future regulations, and CBO could not determine if those costs would exceed UMRA's annual threshold for private-sector mandates.

ESTIMATE PREPARED BY:

Federal Costs: Megan Carroll, Sarah Puro, Dan Hoople, and Mark Grabowicz
Impact on State, Local, and Tribal Governments: Sarah Puro
Impact on the Private Sector: Fatimot Ladipo

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis