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107TH CONGRESS *2d Session*	SENATE	REPORT 107–232

SAFE RAILS ACT OF 2001

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

on

S. 1871

AUGUST 1, 2002.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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SAFE RAILS ACT OF 2001

AUGUST 1, 2002.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

R E P O R T

[To accompany S. 1871]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1871) to direct the Secretary of Transportation to conduct a rail transportation security risk assessment, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

PURPOSE OF THE BILL

The purposes of the bill, as reported, are to direct the Secretary of Transportation to assess security needs associated with the transportation of hazardous materials by rail and to provide funding to reimburse freight railroads, eligible shippers and tank car owners for costs incurred to improve railroad security on or after September 11, 2001.

BACKGROUND AND NEEDS

The terrorist attacks of September 11, 2001, unquestionably have changed the paradigm for what constitutes safety in transportation. As a consequence, attention has shifted from mainly preventing accidents to protecting people and cargo from deliberate acts of terrorism. Moreover, as a result of the targeting of, and specific attacks on the World Trade Center and the Pentagon, several major steps have been taken to improve the nation's safety and security overall: a new Office of Homeland Security has been created; supplemental appropriations have been approved to fight the war on terrorism; and U.S. border points of entry have been staffed at higher levels. Congress is also considering legislation to establish

a Departmental agency dedicated to Homeland Security, and legislation to improve cargo security.

With respect to transportation specifically, the terrorist attacks of September 11, 2001, have clearly highlighted the need for increased security and vulnerability awareness of the nation's transportation infrastructure. While those attacks were directed at the aviation system, the nation's other transportation modes are also vulnerable. In a free and open society, surface transportation systems such as transit operations, railroad systems, seaports and vessels, bridges and tunnels, and vehicles transporting hazardous materials may become targets for terrorists. The terrorist attacks involving four commercial airliners demonstrate that security concerns involve not only passengers, but also the potential risk that parts of the national transportation system can be used as weapons. Additionally, because of the essential role of transportation systems in the movement of goods and people, terrorist actions have the potential to harm our economic well-being, as well as public safety. As these risks are weighed in the wake of last September's terrorist attacks, efforts to protect the country's transportation infrastructure and to reduce these vulnerabilities are essential to our national security interests.

Though perhaps a less obvious target than the nation's air-passenger system, freight transportation is critical to the movement of goods. It is generally recognized, however, that it is difficult to police the nation's rail transportation network given the miles of rail lines operated throughout the United States. As a result, the network could be a relatively easy target, penetrating the heart of major cities and tunneling beneath sites of national significance.

Possible industrial transportation targets include railroads, highways, and marine vessels, which carry 800,000 shipments of hazardous materials each day, and more than 4 billion tons per year. The tonnage transported over land is equally divided between truck and rail. Experts note that these shipments of hazardous materials present significant safety and security risks. Bridges and tunnels are also major points of vulnerability to attacks that might both take lives and disrupt transportation networks.

Since September 11, 2001, railroads have stepped up inspection of tracks, bridges, tunnels, terminals, fuel depots, freight cars, locomotives, and communication centers while railroad police guard critical facilities. In addition, the railroad industry through the Association of American Railroads (AAR) undertook a comprehensive evaluation of its security needs focusing on all aspects of rail transportation. The railroads have maintained a heightened state of alert since September 11, 2001, and have worked with national security offices to address shipments of sensitive materials during times of increased national security threats.

LEGISLATIVE HISTORY

On October 2, 2001, Senator Breaux chaired a hearing on rail and maritime security. At the hearing, Rear Admiral James W. Underwood, Director of the Office of Intelligence and Security of the Department of Transportation, and Mr. Edward R. Hamberger, President of the AAR, provided testimony on the security risks confronting the industry, actions taken by the railroad industry to ad-

dress security concerns, and newly identified needs facing the railroad industry in a post-September 11 environment.

Senator John D. Rockefeller IV introduced S. 1871 on December 20, 2001. It was read twice and referred to the Committee on Commerce, Science, and Transportation.

On April 18, 2002, the Committee on Commerce, Science, and Transportation ordered S. 1871 to be reported favorably with amendments. The amendments were offered by Senator Rockefeller to update the short title of the bill and adjust the fiscal years in which security funds would be authorized to be appropriated from 2002 and 2003 to 2003 and 2004; an amendment also corrected an incorrect section reference.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 13, 2002.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1871, the Safe Rails Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Julie Middleton.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

S. 1871—Safe Rails Act of 2002

Summary: S. 1871 would authorize the establishment of a Rail Security Fund that would be used to make grants to freight railroads, hazardous materials shippers, and the owners of tank cars used to transport hazardous materials for security costs incurred on or after September 11, 2001. In addition, the bill would authorize the Secretary of Transportation to perform a risk assessment and security needs analysis of hazardous materials transportation. Assuming appropriation of the authorized amounts, CBO estimates that enacting S. 1871 would cost $185 million over the 2003–2007 period, and an additional $105 million after 2007. S. 1871 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

S. 1871 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impacts of S. 1871 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—				
	2003	2004	2005	2006	2007
SPENDING SUBJECT TO APPROPRIATION					
Authorization Level	150	150	0	0	0
Estimated Outlays	7	24	40	51	63

Basis of estimate: For this estimate, CBO assumes that S. 1871 will be enacted early in fiscal year 2003 and the necessary funds will be appropriated for each year. The bill would authorize $150 million in both fiscal years 2003 and 2004 for the Rail Security Fund. Outlay estimates are based on information from the Department of Transportation, as well as historical spending patterns of similar programs.

In addition, the bill would require the Secretary of Transportation to report on risk assessment on security needs within six months of enactment. CBO expects that the report would cost less than $1 million, subject to the availability of appropriated funds.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: S. 1871 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Julie Middleton; Impact on State, Local, or Tribal Governments: Susan Sieg Tompkins; and Impact on the Private Sector: Cecil McPherson.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

Because S. 1871 does not create any new programs, the legislation will have no additional regulatory impact, and will result in no additional reporting requirements. The legislation will have no further effect on the number or types of individuals and businesses regulated, the economic impact of such regulation, or the personal privacy of affected individuals. Any impact on paperwork would be dependent on application procedures established by the Secretary of Transportation.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section would entitle the Bill as "The Safe Rails Act of 2002."

Section 2. Rail Transportation Security Risk Assessment

Subsection (a) would require the Secretary of Transportation to conduct a comprehensive vulnerability and security needs analysis of hazardous materials transportation by rail. The Secretary would be required to make recommendations for improving the security of rail infrastructure in areas identified as posing a significant risk to human health, public safety, and interstate commerce, and for dealing with the immediate and long-term economic impact of implementing the measures required to address those risks.

Subsection (b) would require that, in conducting the required assessments, the Secretary consult with and use materials prepared by the railroad, chemical, and tank car leasing industries, as well as any relevant security analyses or assessments prepared by Federal or State law enforcement, public safety, or regulatory agencies.

Subsection (c) would require that within 180 days of enactment of the Act, the Secretary issue a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure, without compromising national security. The report will include proposals the Secretary feels are appropriate for Federal financial, technological, or research and development assistance in securing rail infrastructure.

Subsection (d) would provide that, with the exceptions of the required report to Congress and instances when the limited disclosure of certain information is required to protect human health or public safety, the Secretary may keep the assessment and analysis confidential. Such confidential information will not be subject to disclosure under 5 U.S.C. 552 (the Freedom of Information Act).

Section 3. Rail Security Fund

Subsection (a) would require that the Secretary of the Treasury establish a Rail Security Fund account in the Treasury into which the Secretary of Transportation would deposit amounts appropriated for the Rail Security Fund.

Subsection (b) would authorize the Rail Security Fund to be appropriated $150,000,000 for each of fiscal years 2003 and 2004. Amounts would remain available until expended.

Subsection (c) would prohibit grants in excess of $100,000,000 to railroads annually unless the Secretary's risk assessment determines that critical rail transportation security needs require reimbursement above that amount.

Subsection (d) would provide that the fund is available for the Secretary of Transportation to make grants to freight railroads, hazardous materials shippers, or owners of tank cars used in the transportation of hazardous materials for full or partial reimbursement of the costs incurred on or after September 11, 2001, to prevent or respond to acts of terrorism, sabotage, or other security threats. Under this subsection, activities eligible for full or partial reimbursement would include: unanticipated rerouting or switching of trains carrying hazardous materials to different routes or locations; hiring additional manpower necessary for security; purchasing equipment or training needed to enhance hazardous materials emergency response operations; improvements in and securing of critical communications; developing and deploying secure global positioning satellite tracking systems on tank cars carrying hazardous materials; investments in physical hardening of rail infrastructure; tank car modifications; improved technology for sealing rail cars; and research and development supporting enhanced security.

Subsection (e) would require the Secretary of Transportation to adopt necessary procedures, including audits, to ensure that grants are used for their intended purposes.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

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