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PUBLIC TRANSPORTATION TERRORISM PREVENTION AND RESPONSE ACT OF 2004

OCTOBER 6, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. YOUNG of Alaska, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 5082]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 5082) to authorize the Secretary of Transportation to award grants to public transportation agencies and over-the-road bus operators to improve security, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Public Transportation Terrorism Prevention and Response Act of 2004".

TITLE I—PUBLIC TRANSPORTATION SECURITY

SEC. 101. FINDINGS; PURPOSE; PUBLIC TRANSPORTATION DEFINED.

(a) FINDINGS.—Congress finds that—

(1) throughout the world, public transportation systems have been a primary target of terrorist attacks, causing countless deaths and injuries;

(2) 6,000 public transportation agencies operate in the United States;

(3) 14,000,000 people in the United States ride public transportation each work day;

(4) safe and secure public transportation systems are essential to the Nation's economy and for significant national and international public events;

(5) the Federal Transit Administration has invested $68,700,000,000 since 1992 for construction and improvements to the Nation's public transportation systems;

(6) the Federal Government appropriately invested $11,000,000,000 in fiscal years 2002 and 2003 to protect our Nation's aviation system and its 1,800,000 daily passengers;

(7) the Federal Government invested $115,000,000 in fiscal years 2003 and 2004 to protect public transportation systems in the United States;

(8) the Federal Government has invested $9.16 in aviation security improvements per passenger, but only $0.006 in public transportation security improvements per passenger;

(9) the General Accounting Office, the Mineta International Institute for Surface Transportation Policy Studies, the American Public Transportation Association, and other experts have reported an urgent need for significant investment in transit security improvements;

(10) Federal financial assistance for transit security improvements should be separate from and supplementary to funding for longstanding Federal programs for investment in public transportation infrastructure;

(11) the Final Report of the National Commission on Terrorist Attacks Upon the United States (also known as the "9/11 Commission") found that the Federal Government should—

(A) identify and evaluate the transportation assets that need to be protected, set risk-based priorities for defending them, and select the most practical and cost-effective ways of doing so;

(B) develop a plan, a budget, and funding to implement the effort; and

(C) assign roles and missions to the relevant authorities (Federal, State, regional, and local) and to private stakeholders;

(12) the Final Report of the 9/11 Commission also found that homeland security assistance should be based strictly on an assessment of risks and vulnerabilities; and

(13) the Federal Government has a duty to deter and mitigate, to the greatest extent practicable, threats against the Nation's public transportation systems.

(b) PURPOSE.—The purpose of this title is to award grants to public transportation agencies and over-the-road bus operators to improve security in a manner consistent with the recommendations of the 9/11 Commission described in subsections (a)(11) and (a)(12).

(c) PUBLIC TRANSPORTATION DEFINED.—In this title, the term "public transportation" has the meaning given such term in section 5302(a) of title 49, United States Code.

SEC. 102. MEMORANDUM OF UNDERSTANDING.

(a) IN GENERAL.—Not later than 45 days after the date of enactment of this Act, the Secretary of Transportation shall enter into a memorandum of understanding with the Secretary of Homeland Security to define and clarify the respective public transportation security roles and responsibilities of the Department of Transportation and the Department of Homeland Security.

(b) CONTENTS.—The memorandum of understanding described in subsection (a) shall—

(1) establish a process to develop security standards for public transportation agencies;

(2) establish funding priorities for grants for security improvements from the Department of Transportation to public transportation agencies;

(3) create a method of direct coordination with public transportation agencies on security matters;

(4) address any other issues determined to be appropriate by the Secretary of Transportation and the Secretary of Homeland Security; and

(5) include a formal and permanent mechanism to ensure coordination and involvement by the Department of Transportation, as appropriate, in public transportation security.

SEC. 103. SECURITY ASSESSMENTS.

(a) PUBLIC TRANSPORTATION SECURITY ASSESSMENTS.—

(1) SUBMISSION.—The Federal Transit Administration of the Department of Transportation shall submit all public transportation security assessments conducted by the Federal Transit Administration and all other relevant information to the Department of Homeland Security.

(2) REVIEW.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of Transportation and the Secretary of Homeland

Security shall review and modify, as appropriate, the security assessments received under paragraph (1).

(B) COMPONENTS.—In conducting the reviews, the Secretaries shall ensure that the assessment of each public transportation system identifies—

(i) the critical assets of the system;

(ii) threats to those assets;

(iii) security weaknesses in the system and its assets;

(iv) redundant and backup systems required to ensure the continued operation of critical elements of the system in the event of an attack or other incident; and

(v) the extent to which public transportation employees, including bus and rail operators, mechanics, customer service personnel, maintenance employees, transit police, and security personnel, have received training in security awareness and public transportation system emergency response procedures.

(3) ALLOCATIONS.—

(A) IN GENERAL.—The Secretary of Transportation shall allocate grants under section 104 among public transportation agencies receiving an assessment referred to in paragraph (1) based on the results of the assessment, as modified under paragraph (2).

(B) RESPONSE TO URGENT THREATS.—After providing written notice to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, the Secretary of Transportation may adjust grant allocations under this paragraph if the Secretary determines that the adjustment is necessary to respond to an urgent threat or other significant factors.

(4) SECURITY IMPROVEMENT PRIORITIES.—The Secretary of Transportation shall establish security improvement priorities, in consultation with the management and employee representatives of each public transportation system receiving an assessment. Such priorities shall apply to funds provided to a public transportation agency under section 104.

(5) UPDATES.—The Secretary of Transportation and the Secretary of Homeland Security shall update the assessments referred to in this subsection at least once every 3 years and may conduct additional assessments of public transportation agencies considered to be at greatest risk of a terrorist attack.

(b) USE OF ASSESSMENT INFORMATION.—The Secretary of Transportation shall use the information collected under subsection (a)—

(1) to establish the process for developing security guidelines for public transportation security;

(2) to design a security improvement strategy that minimizes terrorist threats to public transportation systems; and

(3) to design a security improvement strategy that maximizes the efforts of public transportation systems to mitigate damage from terrorist attacks.

SEC. 104. SECURITY ASSISTANCE GRANTS.

(a) CAPITAL SECURITY ASSISTANCE PROGRAM.—

(1) IN GENERAL.—The Secretary of Transportation shall award grants directly to public transportation agencies for allowable capital security improvements.

(2) PRIORITIES.—A public transportation agency receiving a grant under this subsection shall use the grant to fund projects based on the priorities established under section 103(a)(4).

(3) 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) inspection technology;

(G) communications equipment;

(H) emergency response equipment;

(I) fire suppression and decontamination equipment;

(J) global positioning or automated vehicle locator type system equipment;

(K) evacuation improvements; and

(L) other capital security improvements.

(4) GOVERNMENT'S SHARE.—A grant for a capital security improvement project under this subsection shall be for 80 percent of the net project cost of the project. The recipient may provide additional local matching amounts.

(b) OPERATIONAL SECURITY ASSISTANCE PROGRAM.—

(1) IN GENERAL.—The Secretary of Transportation shall award grants directly to public transportation agencies for allowable operational security improvements.

(2) PRIORITIES.—A public transportation agency receiving a grant under this subsection shall use the grant to fund projects based on the priorities established under section 103(a)(4).

(3) ALLOWABLE USE OF FUNDS.—Grants awarded under paragraph (1) may be used for—

(A) security training for transit employees, including bus and rail operators, mechanics, customer service employees, maintenance employees, transit police, and security personnel;

(B) live or simulated drills;

(C) public awareness campaigns for enhanced public transportation security;

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

(E) overtime reimbursement for enhanced security personnel during significant national and international public events, consistent with the priorities established under section 103(a)(4); and

(F) other appropriate security improvements identified under section 103(a)(4), including hiring additional security personnel determined necessary under section 103(a)(4), but excluding routine, ongoing personnel costs.

(4) GOVERNMENT'S SHARE.—A grant for an operating security improvement project under this subsection may not exceed 50 percent of the net project cost of the project.

(c) 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 section; and

(3) report annually to the Department of Transportation on the use of grant funds received under this section.

(d) GRANT REQUIREMENTS.—Except as otherwise specifically provided in this Act, a grant provided under this section shall be subject to the terms and conditions applicable to grants made under section 5307 of title 49, United States Code, and to such other terms and conditions as are determined by the Secretary.

SEC. 105. INTELLIGENCE SHARING.

(a) INTELLIGENCE SHARING.—The Secretary of Homeland Security shall ensure that the Department of Transportation receives appropriate and timely notification of all credible terrorist threats against public transportation assets in the United States.

(b) INFORMATION SHARING ANALYSIS CENTER.—

(1) ESTABLISHMENT.—The Secretary of Transportation shall fund the reasonable costs of the Information Sharing and Analysis Center for Public Transportation (referred to in this subsection as the "ISAC") established pursuant to Presidential Directive 63 to protect critical infrastructure.

(2) PUBLIC TRANSPORTATION AGENCY PARTICIPATION.—The Secretary of Transportation—

(A) shall require those public transportation agencies that the Secretary determines to be at significant risk of terrorist attack to participate in the ISAC;

(B) shall encourage all other public transportation agencies to participate in the ISAC; and

(C) shall not charge any public transportation agency a fee for participation in the ISAC.

SEC. 106. REPORTING REQUIREMENT.

(a) IN GENERAL.—Not later than September 30, 2006, the Secretary of Transportation shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report that describes the implementation of sections 103 through 105. The Secretary may submit the report in classified and unclassified forms.

(b) CONTENTS.—Based on security assessments and updates conducted under section 103, the report shall include—

(1) a description of the state of public transportation security in the United States; and

(2) a description of actions taken by Federal, State, regional, and local governments and private stakeholders to address threats to, and security weaknesses in, the public transportation system and its assets.

SEC. 107. PUBLIC TRANSPORTATION EMPLOYEE SECURITY TRAINING PROGRAM.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary of Transportation, in consultation with the Secretary of Homeland Security, appropriate law enforcement, security, and terrorism experts, representatives of public transportation agencies, and representatives of public transportation employees, shall develop and issue guidelines for a public transportation employee security training program to prepare public transportation employees for potential threat conditions.

(b) PUBLIC TRANSPORTATION AGENCY PROGRAMS.—

(1) IN GENERAL.—Not later than 90 days after the date on which Secretary issues guidance under subsection (a) in final form, each public transportation agency that has received or is undergoing a security assessment under section 103 shall develop an employee training program in accordance with such guidance.

(2) REVIEW AND APPROVAL.—Each public transportation agency referred to in paragraph (1) shall submit its employee training program to the Secretary for review and approval or amendment.

(3) IMPLEMENTATION.—Not later than one year after the date on which the Secretary approves an employee training program of a public transportation agency under paragraph (2), the agency shall complete employee training in accordance with such program at least with respect to the employees of the agency identified in the agency's security assessment under section 103.

(c) REPORTING.—As part of the Secretary's report to Congress under section 106, the Secretary shall include an analysis of the extent to which public transportation agencies are successfully carrying out the employee training programs described in this section.

SEC. 108. AUTHORIZATION OF APPROPRIATIONS.

(a) CAPITAL SECURITY ASSISTANCE PROGRAM.—There is authorized to be appropriated to carry out section 104(a)—

(1) $775,000,000 for fiscal year 2005;

(2) $825,000,000 for fiscal year 2006; and

(3) $880,000,000 for fiscal year 2007.

(b) OPERATIONAL SECURITY ASSISTANCE PROGRAM.—There is authorized to be appropriated to carry out section 104(b)—

(1) $400,000,000 for fiscal year 2005;

(2) $300,000,000 for fiscal year 2006; and

(3) $200,000,000 for fiscal year 2007.

(c) INFORMATION SHARING AND ANALYSIS CENTER.—There is authorized to be appropriated to carry out section 105(b) $1,000,000 for each of fiscal years 2005 through 2007.

(d) PERIOD OF AVAILABILITY.—Sums appropriated pursuant to this section shall remain available until expended.

TITLE II—OVER-THE-ROAD BUS SECURITY ASSISTANCE

SEC. 201. EMERGENCY OVER-THE-ROAD BUS SECURITY ASSISTANCE.

(a) IN GENERAL.—The Secretary of Transportation, acting through the Administrator of the Federal Motor Carrier Safety Administration, shall establish a program for making grants to private operators of over-the-road buses for system-wide security improvements to their operations, including—

(1) constructing and modifying terminals, garages, facilities, or over-the-road buses to assure their security;

(2) protecting or isolating the driver;

(3) acquiring, upgrading, installing, or operating equipment, software, or accessorial services for collection, storage, or exchange of passenger and driver information through ticketing systems or otherwise, and information links with government agencies;

(4) training employees in recognizing and responding to security threats, evacuation procedures, passenger screening procedures, and baggage inspection;

(5) hiring and training security officers;

(6) installing cameras and video surveillance equipment on over-the-road buses and at terminals, garages, and over-the-road bus facilities;

(7) creating a program for employee identification or background investigation;

(8) establishing an emergency communications system linked to law enforcement and emergency personnel; and

(9) implementing and operating passenger screening programs at terminals and on over-the-road buses.

(b) REIMBURSEMENT.—

(1) IN GENERAL.—A grant under this section may be used to provide reimbursement to private operators of over-the-road buses for extraordinary security-related costs for improvements described in paragraphs (1) through (9) of subsection (a), determined by the Secretary to have been incurred by such operators since September 11, 2001.

(2) LIMITATION.—Not more than 20 percent of the amounts appropriated for a fiscal year to carry out this title may be used to provide reimbursements under this subsection.

(c) FEDERAL SHARE.—The Federal share of the cost for which any grant is made under this section shall be 80 percent.

(d) DUE CONSIDERATION.—In making grants under this section, the Secretary shall give due consideration to private operators of over-the-road buses that have taken measures to enhance bus transportation security from those in effect before September 11, 2001.

(e) GRANT REQUIREMENTS.—A grant under this section shall be subject to all the terms and conditions that a grant is subject to under section 3038(f) of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note; 112 Stat. 393).

(f) REPORT ON INDUSTRY PRIORITIES.—

(1) STUDY.—The Administrator of the Federal Motor Carrier Safety Administration shall conduct a study of—

(A) the critical assets and systems of the nationwide over-the-road bus industry;

(B) security threats to the assets and systems;

(C) security weaknesses in the assets and systems; and

(D) redundant and backup systems required to ensure the continued operation of critical elements of the assets and systems in the event of an attack or other incident.

(2) CONSULTATION.—In conducting the study, the Administrator shall consult with private over-the-road bus operators and their trade association representatives.

(3) REPORT.—Not later than 180 days after the date of enactment of this Act, the Administrator shall submit to the Secretary of Transportation and the Secretary of Homeland Security a report, based on the results of the study, detailing the critical assets, threats, and weaknesses in the over-the-road bus industry. The Administrator shall update the report on an annual basis.

(g) ALLOCATION OF GRANTS.—The Secretary of Transportation, in consultation with the Secretary of Homeland Security, shall establish priorities for the allocation of grants under this section based on the report required by subsection (f)(3) and shall make grants under this section in accordance with those priorities.

SEC. 202. PLAN REQUIREMENT.

(a) IN GENERAL.—The Secretary of Transportation may not make a grant under section 201 to a private operator of over-the-road buses until the operator has first submitted to the Secretary an application containing—

(1) a plan for making security improvements described in section 201 and the Secretary has approved the plan; and

(2) such additional information as the Secretary may require to ensure accountability for the obligation and expenditure of amounts made available to the operator under the grant.

(b) COORDINATION.—To the extent that an application for a grant submitted under this section proposes security improvements within a specific terminal owned and operated by an entity other than the applicant, the applicant shall demonstrate to the satisfaction of the Secretary that the applicant has coordinated the security improvements for the terminal with that entity.

(c) CONSULTATION WITH DHS.—In approving plans under subsection (a)(1), the Secretary may consult with the Secretary of Homeland Security.

SEC. 203. OVER-THE-ROAD BUS DEFINED.

In this title, the term "over-the-road bus" means a bus characterized by an elevated passenger deck located over a baggage compartment.

SEC. 204. BUS SECURITY ASSESSMENT.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of Transportation shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a preliminary report in accordance with the requirements of this section.

(b) CONTENTS OF PRELIMINARY REPORT.—The preliminary report shall include—

(1) an assessment of the over-the-road bus security grant program;

(2) an assessment of actions already taken to address identified security issues by both public and private entities and recommendations on whether additional safety and security enforcement actions are needed;

(3) an assessment of whether additional legislation is needed to provide for the security of Americans traveling on over-the-road buses;

(4) an assessment of the economic impact that security upgrades of buses and bus facilities may have on the over-the-road bus transportation industry and its employees;

(5) an assessment of ongoing research and the need for additional research on over-the-road bus security, including engine shut-off mechanisms, chemical and biological weapon detection technology, and the feasibility of compartmentalization of the driver; and

(6) an assessment of industry best practices to enhance security.

(c) CONSULTATION WITH INDUSTRY, LABOR, AND OTHER GROUPS.—In carrying out this section, the Secretary shall consult with over-the-road bus management and labor representatives, public safety and law enforcement officials, and the National Academy of Sciences.

SEC. 205. FUNDING.

There is authorized to be appropriated to the Secretary of Transportation to carry out this title $50,000,000 for each of fiscal years 2005 through 2007. Such sums shall remain available until expended.

PURPOSE OF THE LEGISLATION

H.R. 5082 authorizes the Secretary of Transportation to award grants to public transportation agencies and over-the-road bus operators to improve security, in a manner consistent with the recommendations of the Final Report of the National Commission on Terrorist Attacks upon the United States (the 9/11 Commission Report).

BACKGROUND AND NEED FOR THE LEGISLATION

Throughout the world, public transportation systems have been primary targets of terrorist attacks, causing thousands of deaths and injuries. On March 11, 2004, four separate bombs detonated on three commuter trains traveling toward Madrid, Spain, killing 198 people. Transit systems have been popular targets of terrorist attacks worldwide. From 1991 to 2001, 42 percent of all terrorist incidents were carried out on rail systems or buses. Transit systems have open access with frequent stops and transfer points and are thus difficult to protect. They also serve high concentrations of people in relatively crowded quarters, an environment with a high probability of death or injury.

In the U.S., there are 6,000 public transportation agencies that provide 9.4 billion transit trips annually. Every day, more than 14 million people use public transportation to get to and from work, as well as using transit to get to school, go shopping, visit medical facilities, or go out for an evening's entertainment. By comparison, the U.S. aviation industry serves 1.8 million daily passengers; Amtrak serves only about 63,000 passengers each day. Despite the fact that so many people use transit, there has been very little federal investment in improving the security of America's public transportation facilities and systems. Over two years (fiscal years 2002 and

2003), there was $11 billion spent on aviation security, an average of $9.16 was spent per passenger. In fiscal years 2003 and 2004, only $115 million was provided by the Department of Homeland Security for transit security grants, an average of 6/10 of one cent per passenger.

Publicly owned and operated transit systems represent a sizeable investment of highway trust funds and federal, state, and local general revenues. Since 1992, the Federal Transit Administration has provided $68.7 billion in federal funds for construction and improvements to transit systems throughout the country. This critical infrastructure and the safety of the traveling public must be protected from deliberate harm to the greatest extent possible, whether the threat is from international terrorists or domestic sources.

The purpose of the bill is to authorize grants to transit agencies and bus operators to improve security in a manner consistent with the recommendations of the Final Report of the National Commission on Terrorist Attacks upon the United States (the 9/11 Commission Report). Although the 9/11 Commission Report does not specifically address transit security issues, the chapter regarding how to protect against and prepare for terrorist attacks makes four recommendations that are directly applicable to improving security of our nation's public transportation systems:

1. Identify and evaluate transportation assets that need to be protected, and set risk-based priorities for defending them.
2. Develop a plan, budget, and funding to implement this effort.
3. Assign roles and missions to relevant Federal, State, regional, local and private stakeholders.
4. Provide transportation security assistance based strictly on assessments of risk and vulnerability.

The over-the-road bus industry transports 773 million passengers annually. These intercity buses are as vulnerable to terrorist attack as public transportation systems, for many of the same reasons. There has been a very small amount of federal funding appropriated for bus security grants, $35 million ($15 million in fiscal year 2002, $10 million in fiscal year 2003, and $10 million in fiscal year 2004). However, Congress has not successfully authorized the grants program to date, and a risk-based legislative framework is needed to ensure that funds provided for intercity bus security needs are allocated to projects that will best improve security.

For fiscal years 2005 through 2007, H.R. 5082 as reported authorizes $2,480,000,000 for capital security grants and $900,000,000 for operating security grants to public transportation providers. These funds are authorized out of non-defense discretionary general funds and are subject to appropriations. The bill also authorizes over the same three-year period $150,000,000 for grants to over-the-road bus operators for security improvements to their operations. These grants are to be allocated based on risk and vulnerability, consistent with the recommendations of the 9/11 Commission Report.

SUMMARY OF THE LEGISLATION

Section 1. Short title

This section states the bill title as the "Public Transportation Terrorism Prevention and Response Act of 2004."

TITLE I—PUBLIC TRANSPORTATION SECURITY

Section 101. Findings; purpose; public transportation defined

This section lists the findings of Congress regarding: the need for improvements to public transportation security; the inequity of federal financial assistance for aviation security improvements versus assistance for public transportation security; the need to make security funding supplemental to and separate from funding for capacity-based infrastructure improvements; and the activities that the Government should undertake in response to the findings of the 9/11 Commission Report. This section states that the purpose of the Act is to authorize grants to public transportation agencies and over-the-road bus operators to improve security in a manner consistent with the recommendations of the 9/11 Commission Report. The section also defines public transportation as having the same meaning such term is given in section 5302(a) of title 49, United States Code, as transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, or sightseeing transportation.

Section 102. Memorandum of understanding

This section directs that within 45 days of enactment of this Act, the Secretary of Transportation shall enter into a memorandum of understanding (MOU) with the Secretary of Homeland Security to define and clarify the public transportation security roles and responsibilities of the respective departments. The Department of Homeland Security (DHS) maintains authority over the Transportation Security Administration (TSA), which was vested in section 114(d) of the Aviation and Transportation Security Act (P.L. 107–71) with lead responsibility "for security in all modes of transportation, including * * * security responsibilities over other modes of transportation that are exercised by the Department of Transportation." However, the roles and responsibilities of TSA, other offices within DHS, and the Department of Transportation (DOT) regarding public transportation security implementation and oversight have not been clearly defined by the administration. As a result, there is a strong sense among the transit community and other stakeholder groups that there is not consistent, risk-based management of public transportation security issues, particularly in the allocation of security improvement grants funding.

It is the Committee's position that transportation grants programs must be authorized to the agency most capable of efficient and effective grants management. Thus, this grants authorization bill designates DOT as the lead department (acting through the Federal Transit Administration for public transportation grants and through the Federal Motor Carrier Safety Administration for over-the-road bus grants). However, the Committee recognizes that DHS has jurisdiction for security in all modes of transportation. So

it is necessary that the specific roles and responsibilities of DOT and DHS be formally established in a legal document, such as an MOU. This will be the basis for a more effective and functional relationship between the two departments in a manner that effectively improves public transportation and over-the-road bus security.

Section 103. Security assessments

In the months immediately following September 11, 2001, the Federal Transit Administration (FTA) deployed an aggressive, nationwide security program. The agency performed vulnerability assessments of the 37 largest transit systems. This section directs FTA to submit the original assessments, which are now more than two years old, to DHS. Using this base of the 37 largest transit systems, DHS and DOT are directed to jointly review and modify, as appropriate, these security assessments. Under section 103(a)(5), the two departments are authorized to conduct additional assessments of other public transportation agencies beyond the original group of systems, if they are considered to be at a high risk of terrorist attack. The assessments are to include identifications of: the critical assets of the system; threats to those assets; security weaknesses in the system; redundant and backup systems required to ensure continued operations; and the extent to which transit employees have received adequate security training. The Secretary of Transportation is directed to establish security improvement priorities for each agency receiving an assessment, based on the agency's specific security needs. On a national basis, the assessment information shall be used to establish a process for developing industry-wide security guidelines; and design security improvement strategies that minimize the threat of attacks and that mitigate damage from attacks. These assessments are to be updated at least once every three years.

The allocation of security grant funds is managed by the Secretary of Transportation. Only agencies that have received an assessment are eligible for grants, although allocations of funds may be adjusted if an urgent threat or other significant factors deem such adjustment necessary.

Section 104. Security assistance grants

This section authorizes two kinds of security assistance grants for public transportation agencies: capital and operating. Capital security grants require a 20 percent local or state match. They are available for a number of activities, including tunnel and perimeter protection; redundant and backup control systems; detection systems (for chemical, biological, radiological, or explosive weapons); surveillance equipment; inspection technologies (including verified visual inspection technologies using handheld readers and discs); communications equipment; emergency response equipment; fire suppression and decontamination equipment; vehicle locator equipment; evacuation improvements; and other capital security improvements. Operational security grants require a 50 percent local or state match. They are available for security training of transit employees; live or simulated drills; public awareness campaigns; canine patrols; overtime reimbursement for security personnel during significant national and international events; and other appro-

priate security improvements identified in the public transit agency's security assessment (which may include hiring additional security personnel determined necessary by such assessment), excluding routine and ongoing personnel costs. Grants shall be made directly to transit agencies and are subject to the terms and conditions applicable to grants under the Urbanized Area Formula Grants program (section 5307 of title 49, United States Code). Transit agencies are required to have a security coordinator and a comprehensive plan for operating and maintaining equipment purchased under this section. Agencies that receive security grants must also report to DOT annually on the use of grant funds received under this section.

Section 105. Intelligence sharing

This section requires the Secretary of Homeland Security to ensure that DOT receives appropriate and timely notification of all credible terrorist threats against public transportation assets in the United States. Pursuant to Presidential Directive 63, "Protecting America's Critical Infrastructures" (May 22, 1998), intelligence sharing and analysis centers have been established in different sectors of U.S. industry, such as telecommunications, banking and finance, energy, essential government services, and transportation. These centers manage intelligence information flow regarding potential terrorist threats and disseminate that information to the appropriate stakeholders. Currently, FTA funds the intelligence sharing and analysis center (ISAC) for transit, which is managed under contract by the American Public Transportation Association (APTA). This section directs the Secretary of Transportation to require transit agencies determined to be at significant risk of attack to participate in the ISAC and to encourage all other transit agencies to participate as well. No fee may be charged to a public transit agency for participation in the ISAC.

Section 106. Reporting requirement

In this section, the Secretary of Transportation is directed to submit a report by September 30, 2006 on the implementation of sections 103 through 105. Because some of the information regarding public transportation agency security assessments may be sensitive, the Secretary is authorized to submit the report in both classified and unclassified forms. The report must include a description of the state of public transportation security in the United States and a description of actions that have been and are being taken by Federal, State, regional and local governments to address security threats and public transportation system security weaknesses.

Section 107. Public transportation employee security training program

This section establishes a public transportation employee security training program, to be developed by DOT in consultation with DHS, appropriate law enforcement, security, and terrorism experts, and representatives of public transportation agencies and their employees. This new training program must be released with appropriate guidance within 90 days of enactment of this Act. All public transit agencies that have received or are undergoing security assessments under section 103 must develop individual employee

training programs in accordance with the DOT guidance within 90 days of such guidance being issued. The Secretary of Transportation must review and approve (or amend) the individual agencies' training programs. Within one year of the date of the Secretary's approval, each agency must complete training of the employees who were employed when the security assessment was performed, in accordance with the employee training program.

Section 108. Authorization of appropriations

This section lists the amounts authorized for the capital security assistance program, operational security assistance program, and the transit ISAC authorized in section 105 for fiscal years 2005, 2006 and 2007. Funds that are appropriated pursuant to this authorization shall remain available until expended.

TITLE II—OVER-THE-ROAD BUS SECURITY ASSISTANCE

Section 201. Emergency over-the-road bus security assistance

This section directs the Secretary of Transportation, acting through the Administrator of the Federal Motor Carrier Safety Administration (FMCSA), to establish a program for making grants to private operators of over-the-road buses for system-wide security improvements to their operations. Grants are eligible for: construction and modification of terminals, garages, and other facilities to improve security; protecting or isolating the bus driver; buying equipment that will help collect, store or exchange passenger manifests and provide informational links with government agencies; training employees; hiring and training security officers; installing surveillance equipment on buses and in bus facilities; creating programs for employee identification or background investigations; establishing emergency communications links to local law enforcement and emergency responders; and implementing passenger screening programs. Up to 20 percent of a grant amount may be used for reimbursement to private operators for extraordinary security improvement costs that have already been incurred by the operators since September 11, 2001. The Federal share of these grants is 80 percent; 20 percent of the grant amount must be paid by the bus operator or a state or local funding source. Grants are subject to the terms and conditions of the Rural Transportation Accessibility Incentive Program under section 3038 of the Transportation Equity Act for the 21st Century (TEA 21).

The FMCSA Administrator is directed to conduct a study of industry security priorities, including an assessment of critical assets and systems of the nationwide over-the-road bus industry; security threats to those assets and systems; security weaknesses in those assets and systems; and redundant and backup systems required to ensure continued operations. The report on this study shall be submitted to the Secretaries of Transportation and of Homeland Security, and shall update the report on an annual basis. The allocation of grants by DOT, in consultation with DHS, shall be based on priorities identified in this report.

Section 202. Plan requirement

Over-the-road bus operators are required to submit to the Secretary of Transportation a plan for making security improvements

authorized in section 201, and such plan must be approved by the Secretary before making a security improvement grant to an operator. When the Secretary approves security improvement plans for an over-the-road bus operator, he may consult with the Secretary of Homeland Security. In cases where terminals or facilities that are proposed for security improvements are owned and operated by a different entity, the applicant must demonstrate that such improvements have been coordinated with the entity that owns the facility.

Section 203. Over-the-road bus defined

This section defines an over-the-road bus as a bus characterized by an elevated passenger deck located over a baggage compartment. Although such buses are often operated by public transportation entities, especially for commuter bus services, the Committee does not expect such public operators to be eligible for grants authorized under this title. Such public transportation agencies are eligible for grants under title I of this bill, if they are assessed as being at risk for terrorist attack.

Section 204. Bus security assessment

This section requires a preliminary report by the Secretary of Transportation to Congress not later than 180 days after enactment of this Act on the status of the over-the-road security grant program, which shall include an assessment of actions that have been taken to address security issues and whether additional actions are still needed, and assessments of: whether additional legislation is needed, what the economic impact of security improvements to the over-the-road bus fleet have on that industry, what research has been undertaken on over-the-road bus security and whether more is needed, and what are the best practices of the industry to enhance security.

Section 205. Funding

This section authorizes $50 million a year for fiscal years 2005, 2006 and 2007 to be appropriated to carry out this title. Such sums shall remain available until expended.

LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

The Subcommittee on Highways, Transit and Pipelines held a hearing on public transportation security on June 22, 2004. The hearing involved witnesses from the Department of Transportation and the Department of Homeland Security, as well as other industry stakeholders (including the American Public Transportation Association and the American Bus Association).

The main text of title II of this bill has been previously introduced and reported by the Committee on Transportation and Infrastructure in the 108th Congress. H.R. 875 was reported by the Committee in March 2003, but was not scheduled for floor consideration. Because time has passed and the authorizations have become outdated, the bill has been updated to authorize funds for fiscal years 2005 through 2007, and makes the grants more risk-based to reflect the recommendations of the 9/11 Commission Report.

H.R. 5082 was introduced by Messrs. Young, Oberstar, Petri, Lipinski, Shuster, and Menendez on September 15, 2004. The bill was referred to the Committee on Transportation and Infrastructure. The Subcommittee on Highways, Transit and Pipelines reported H.R. 5082 to the full committee without amendment by voice vote on September 28, 2004. The Committee on Transportation and Infrastructure met in open markup session on September 29, 2004 and approved H.R. 5082 as amended by an amendment in the nature of a substitute offered by Mr. Petri. The bill was approved by voice vote.

ROLLCALL VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each roll call vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no roll call votes in subcommittee or full committee consideration of H.R. 5082.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

COST OF LEGISLATION

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of this legislation are for the Secretary of Transportation to award grants to public transportation agencies and over-the-road bus operators to improve security, in a manner consistent with the recommendations of the Final Report of the National Commission on Terrorist Attacks upon the United States (the 9/11 Commission Report).

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 5082 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 5, 2004.

Hon. DON YOUNG,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5082, the Public Transportation Terrorism Prevention and Response Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Rachel Milberg, who can be reached at 226–2860.

Sincerely,

ELIZABETH ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 5082—Public Transportation Terrorism Prevention and Response Act of 2004

Summary: H.R. 5082 would authorize the Secretary of Transportation to provide grants to transit agencies to improve the security of transit systems and grants to operators of over-the-road buses to improve the security of buses and bus terminals. (Over-the-road buses are characterized by an elevated passenger deck above a baggage compartment.) The bill also would authorize the Secretary to cover the costs of the Information Sharing and Analysis Center (ISAC) for Public Transportation. For these activities, H.R. 5082 would authorize the appropriation of $3.5 billion over the 2005–2007 period. Assuming appropriation of the authorized amounts, CBO estimates that implementing H.R. 5082 would cost almost $3 billion over the 2005–2009 period and about $500 million after 2009.

In addition to authorizing appropriations for grants and for the ISAC, the bill would require the Department of Transportation to assess the security of transit systems and over-the-road bus facilities, report to the Congress on the use of the grants for transit security, and issue guidelines for training transit employees to respond to threat conditions. Assuming appropriation of the necessary amounts, CBO estimates that implementing these provisions would cost about $1 million each year over the 2005–2007 period.

CBO estimates that enacting the legislation would not affect direct spending or revenues.

H.R. 5082 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), because it would require certain public transportation agencies to participate in an information clearinghouse and to conduct security training of employees. COB cannot estimate the aggregate costs of these requirements, but based on government and industry sources, we expect that they would exceed the threshold established in that act ($60 million in 2004, adjusted annually for inflation) in at least one of the first five years after enactment. The bill would authorized appropriations of funds to cover these costs. The legislation contains no private-sector mandates.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 5082 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in million of dollars—				
	2005	2006	2007	2008	2009
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	1,227	1,177	1,132	0	0
Estimated Outlays	272	633	877	760	443

Basis of estimate: H.R. 5082 would authorize the Secretary of Transportation to provide grants to transit agencies and operators of over-the-road buses for security-related activities. The bill also would authorize the Secretary to cover the costs of the ISAC for Public Transportation. Finally, the bill also would require the government to conduct security assessments, report on grant activities, and issue guidance for a training program.

For this estimate, CBO assumes H.R. 5082 will be enacted in early fiscal year 2005 and that the authorized amounts will be appropriated for each year. Estimates of spending are based on information from the Department of Transportation and historical spending patterns of similar programs.

Security grants

H.R. 5082 would authorize the appropriation of about $2.5 billion over the 2005–2007 period for grants to transit agencies for capital investments to improve the security of transit systems. The bill would authorize the appropriation of another $900 million over the same period for grants to transit agencies for operational improvements to security such as training, emergency drills, or public awareness campaigns. Finally, the bill would authorize the appropriation of $150 million over the same period for grants to operators of over-the-road buses for improvements to the security of their buses and bus terminals. Assuming appropriation of the authorized amounts, CBO estimates these provisions would cost almost $3 billion over the 2005–2009 period and about $500 million after 2009.

ISAC for public transportation

The ISAC for Public Transportation distributes information to public transit agencies on security threats and helps transit agencies share security-related information. H.R. 582 would authorize the appropriation of $1 million for each year over the 2005–2007 period for the Secretary of Transportation to cover the costs of the ISAC. Assuming appropriation of the authorized amounts, CBO estimates that implementing this provision would cost $3 million over the 2005–2007 period.

Assessments, reports, and guidance

H.R. 5082 would require the Department of Transportation to assess the security of transit systems and over-the-road bus facilities. The bill also would require the Department to report to the Congress on the use of the grants for transit security. Finally, the bill would require the department to issue guidelines for training transit employees to respond to threat conditions. Assuming appropria-

tion of the necessary amounts, CBO estimates that implementing these provisions would cost about $1 million each year over the 2005–2007 period.

Estimated impact on state, local, and tribal governments: Section 105 would require public transportation agencies that the Secretary of Homeland Security determines to be at significant risk of terrorist attack to participate in the Information Sharing and Analysis Center for Public Transportation. Section 107 would require public transportation agencies that are subject to security assessments to develop and train employees on security procedures. Those requirements are intergovernmental mandates as defined in UMRA. CBO cannot estimate the costs of meeting these requirements primarily because the security assessments have not been completed and it is not clear how many agencies would have to conduct employee training. Based on government and industry sources, however, we expect that those costs likely would exceed the threshold as defined in UMRA ($60 million in 2004, adjusted annually for inflation) in at least one of the first five years after enactment. The bill would authorize appropriations of funds to cover these costs.

Public transportation agencies also would benefit from grants to upgrade transit security; any requirements would be conditions of receiving federal assistance.

Estimated impact on the private sector: H.R. 5082 contains no private-sector mandates as defined in UMRA.

Previous CBO estimate: On May 27, 2004, CBO transmitted a cost estimate for the Public Transportation Terrorism Prevention Act of 2004 as ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on May 6, 2004. The Senate version of this bill would authorize the appropriation of $5.2 billion for grants to transit agencies to improve the security of their systems, but it would not authorize grants to operators of over-the-road buses. The cost estimates reflect these differences.

On May 22, 2003, CBO transmitted a cost estimate for S. 929, the Max Cleland Over-the-Road Bus Security and Safety Act of 2003, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on May 1, 2003. S. 929 would authorize the appropriation of $124 million for grants to operators of over-the-road buses to improve the security of their facilities, but it would not authorize grants to transit agencies. The cost estimates reflect these differences.

On May 10, 2003, CBO transmitted a cost estimate for H.R. 875, the Over-the-Road Bus Security and Safety Act of 2003, as ordered reported by the House Committee on Transportation and Infrastructure on Febuary 26, 2003. H.R. 875 would authorize the appropriation of $99 million for grants to operators of over-the-road buses to improve the security of their facilities, but it would not authorize grants to transit agencies. The cost estimates reflect these differences.

Estimate prepared by: Federal Costs: Rachel Milberg; Impact on State, Local, and Tribal Governments: Greg Waring; and Impact on the Private Sector: Jean Talarico.

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

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (3)(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act. (Public Law 104–4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that H.R. 5082 does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act. (Public Law 104–1).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 5082 makes no changes in existing law.

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