

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 1401) TO IMPROVE
THE SECURITY OF RAILROADS, PUBLIC TRANSPORTATION, AND OVER-
THE-ROAD BUSES IN THE UNITED STATES, AND FOR OTHER PURPOSES

MARCH 26, 2007.—Referred to the House Calendar and ordered to be printed

Mr. HASTINGS of Florida, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 270]

The Committee on Rules, having had under consideration House Resolution 270, by a record vote of 7 to 4, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 1401 to improve the security of railroads, public transportation, and over-the-road buses in the United States. The resolution provides for one hour and twenty minutes of general debate, with one hour equally divided and controlled by the Chairman and Ranking Minority Member of the Committee on Homeland Security and twenty minutes equally divided and controlled by the Chairman and Ranking Minority Member of the Committee on Transportation and Infrastructure.

The resolution waives all points of order against consideration of the bill except those arising under clause 9 or 10 of rule XXI. The resolution makes in order the amendment in the nature of a substitute recommended by the Committee on Homeland Security as the original bill for the purpose of further amendment.

The resolution makes in order those amendments printed in this report. Finally, the resolution provides one motion to recommit with or without instructions.

EXPLANATION OF WAIVERS

The resolution includes a waiver of all points of order against consideration of the bill except for those arising under clauses 9 and 10 of rule XXI. Points of order for violating clause 9 of rule XXI (regarding earmark statements) or clause 10 of rule XXI (regarding direct spending increases) are not waived.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 97

Date: March 26, 2007.

Measure: H.R. 1401.

Motion by: Mr. Dreier.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Lungren (#10) of California to strike the \$5 million punitive damages and criminal penalties for employers who violate the section on whistleblower protections. This amendment also ensures that if the Government asserts the state secret privilege to protect sensitive or classified information, the Government will not be penalized for doing so. This amendment removes the contractors and subcontractors of non-Federal employers from the whistleblower section.

Results: Defeated 4–7.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea.

Rules Committee record vote No. 98

Date: March 26, 2007.

Measure: H.R. 1401.

Motion by: Mr. Diaz-Balart.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Mica (#5) of Florida to remove railroad employees from the whistleblower section of the bill. Expands the existing Title 49 whistleblower provision for railroad employees to include both safety and security.

Results: Defeated 4–7.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea.

Rules Committee record vote No. 99

Date: March 26, 2007.

Measure: H.R. 1401.

Motion by: Mr. Diaz-Balart.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Mica (#4) of Florida to require the development of a national security needs assessment to determine the total cost of needed capital and operations security improvements for the Nation's public transportation systems, freight railroads, intercity passenger railroads, and over-the-road bus companies.

Results: Defeated 4–7.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay;

Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea.

Rules Committee record vote No. 100

Date: March 26, 2007.

Measure: H.R. 1401.

Motion by: Mr. Hastings of Washington.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Dent (#11) of Pennsylvania to require carriers who provide covered transportation to individuals entering the United States to provide passenger information to Customs and Border Protection (CBP) prior to arrival at or departure from a port of entry, expanding the Advance Passenger Information System (APIS) currently used for aviation and maritime.

Results: Defeated 4–7.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea.

Rules Committee record vote No. 101

Date: March 26, 2007.

Measure: H.R. 1401.

Motion by: Mr. Hastings of Washington.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Brown-Waite (#2) to exclude security critical infrastructure information from disclosure under the Freedom of Information Act, including the criteria used by the Secretary to determine risk and create vulnerability assessments and security plans, among others.

Results: Defeated 4–7.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea.

Rules Committee record vote No. 102

Date: March 26, 2007.

Measure: H.R. 1401.

Motion by: Mr. Hastings of Florida.

Summary of motion: To report the rule.

Results: Adopted 7–4.

Vote by Members: McGovern—Yea; Hastings (FL)—Yea; Matsui—Yea; Welch—Yea; Castor—Yea; Arcuri—Yea; Sutton—Yea; Dreier—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Sessions—Nay.

SUMMARY OF AMENDMENTS MADE IN ORDER

1. Thompson, Bennie (MS): Manager's Amendment. The amendment makes technical and clerical changes to H.R. 1401, as reported by the Committee on Homeland Security. It also clarifies the relationship between the Department of Homeland Security and Transportation in carrying out certain portions of the bill, and modifies the whistleblower protections for federal employees and

contractors to make them more similar to those granted in H.R. 985. (10 minutes)

2. Arcuri (NY): The amendment requires the Secretary of Homeland Security, in coordination with the Secretary of Transportation, to conduct an assessment of the safety and security vulnerabilities of placing high voltage direct current electric transmission lines along active railroad rights-of-way. The Amendment requires the Secretary to report the findings of this assessment to Congress within 6 months of enactment of the Act. (10 minutes)

3. Cohen (TN): Establishes a program to coordinate with state and local governments to enable minimize the need for transportation of toxic inhalation hazardous materials by rail. (10 minutes)

4. Castle (DE): This amendment requires the Secretary of Homeland Security to study foreign rail security practices that are not currently used in the U.S. and submit a report on recommendations for implementing such practices. (10 minutes)

5. Sessions (TX): Prohibits funds in this act, except those noted in Section 108, from being used by Amtrak for any of the Top 10 worst revenue losing long-distance routes as noted by its September 2006 monthly performance report. This amendment provides a waiver from this provision should the Secretary deem a route or a portion of a route as critical to homeland security. (10 minutes)

6. Flake (AZ): This amendment would strike section 203, "Transportation Security Administration Breeding Program Increase" which authorizes an increase in the number of domestically bred canines under the Transportation Security Administration's Puppy Program. (10 minutes)

7. Flake (AZ): This amendment would strike the section of the bill that provides a new Homeland Security grant program, "Over-The-Road Bus Security Assistance." (10 minutes)

8. Lynch (MA): The Amendment provides that not later than 1 year after the Secretary issues the detailed worker training guidance required under Section 109, the Secretary must submit a report to Congress on the progress of providers of covered transportation in meeting the Section's worker training requirements. The report must include the results of a survey, conducted by the Secretary, of covered workers regarding the effectiveness and adequacy of the training programs. (10 minutes)

TEXT OF AMENDMENTS MADE IN ORDER UNDER THE RULE

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE THOMPSON OF MISSISSIPPI, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Section 2(2)(E), strike "railroad and transit cars" and insert "railroad cars, public transportation cars and buses, and over-the-road buses".

Section 2(6)(B), strike "the public transportation designated recipient providing the transportation" and insert "the designated recipient".

Section 2(14), strike the period after "over-the-road bus" and insert "—".

After section 2, insert the following:

SEC. 3. NO PREEMPTION OF STATE LAW.

(a) **NO PREEMPTION OF STATE LAW.**—Nothing in section 20106 of title 49, United States Code, preempts a State cause of action, or any damages recoverable in such an action, including negligence, recklessness, and intentional misconduct claims, unless compliance with State law would make compliance with Federal requirements impossible. Nothing in section 20106 of title 49, United States Code, confers Federal jurisdiction of a question for such a cause of action.

(b) **SECRETARIAL POWER.**—Section 20106 of title 49, United States Code, preempts only positive laws, regulations, or orders by executive or legislative branch officials that expressly address railroad safety or security. The Secretary and the Secretary of Transportation have the power to preempt such positive enactments by substantially subsuming the same subject matter, pursuant to proper administrative procedures.

Section 101(a), strike “, in consultation with the Secretary of Transportation,”.

Section 103, strike “, in consultation with the Secretary of Transportation,” each place it appears, except subsection (o).

Section 103(c)(1), strike “high-or” and insert “high- or”.

Section 103(e), strike “vulnerabilities and security plans” and insert “a vulnerability assessment and security plan”.

Section 103(k)(3)—

(1) strike “those submissions” and insert “such submission”; and

(2) strike “vulnerability assessments and security plans” and insert “the vulnerability assessment and security plan”.

Section 103(o), strike “, hereinafter referred to as ‘Amtrak’”.

Section 104(a), strike “, in consultation with the Secretary of Transportation,”.

Section 105(a), strike “, in consultation with the Secretary of Transportation,”.

Section 105(b)(2), strike “rail” and insert “railroad”.

Section 105(b)(3), strike “redevelopment and”.

Section 105(b)(4), insert “, including stations and other railroad transportation infrastructure owned by State or local governments” before the period.

Section 105(b)(12) insert “security” before “inspection” each places it appears.

Section 105(b)(16), strike “front-line railroad employees” and insert “railroad employees, including front-line employees”.

Strike section 105(c) and insert the following:

(c) **DEPARTMENT OF HOMELAND SECURITY RESPONSIBILITIES.**—In carrying out the responsibilities under subsection (a), the Secretary shall—

(1) determine the requirements for recipients of grants under this section, including application requirements;

(2) pursuant to subsection (f), determine who are the recipients of grants under this section;

(3) pursuant to subsection (b), determine the uses for which grant funds may be used under this section;

(4) establish priorities for uses of funds for grant recipients under this section; and

(5) not later than 5 business days after making determinations under paragraphs (1) through (4), transfer grant funds under this section to the Secretary of Transportation for distribution to the recipients of grants determined by the Secretary under paragraph (2).

Section 105—

(1) strike subsection (f);

(2) redesignate subsections (d) through (m) as subsections (g) through (o), respectively;

(3) insert after subsection (c), as amended, the following:

(d) DEPARTMENT OF TRANSPORTATION RESPONSIBILITIES.—The Secretary of Transportation shall distribute grant funds under this section to the recipients of grants determined by the Secretary under subsection (f).

(e) MONITORING AND AUDITING.—The Department of Homeland Security and the Department of Transportation jointly shall monitor and audit the use of funds under this section.

(f) ELIGIBILITY.—A railroad carrier is eligible for a grant under this section if the carrier has completed a vulnerability assessment and developed a security plan that the Secretary has approved under section 103. Grant funds may only be used for permissible uses under subsection (b) to further a rail security plan.

Section 105(j), as redesignated (relating to standards)—

(1) strike “The Secretary shall require a” and insert “A”;

(2) after “108” insert “shall be required”; and

(3) strike “Amtrak” and insert “the National Railroad Passenger Corporation”.

Section 105(m), as redesignated (relating to guidelines)—

(1) strike “, in consultation with the Secretary of Transportation,”; and

(2) strike “recipients of grants under this section” the first place it appears and insert “, to the extent that recipients of grants under this section use contractors or subcontractors, such recipients”.

Section 105 strike subsection (n), as redesignated.

Section 105, redesignate subsection (o), as redesignated, as subsection (n).

Section 106, strike “, in consultation with the Secretary of Transportation,” each place it appears.

Section 106(b)(2), insert “, including stations and other public transportation infrastructure owned by State or local governments” before the period.

Section 106(b)—

(1) redesignate paragraphs (10) through (17) as paragraphs (11) through (18), respectively; and

(2) after paragraph (9) insert the following:

(10) Purchase and placement of bomb-resistant trash cans throughout public transportation facilities, including subway exits, entrances, and tunnels.

Section 106(b)(15), as redesignated—

(1) strike “front-line” before “public”; and

(2) insert “, including front-line employees” after “employees”.

Section 106(b)(16), as redesignated, after “reimbursement” insert “, including reimbursement of State, local, and tribal governments for costs,”.

Section 106(b)(17), as redesignated, after “costs” insert “, including reimbursement of State, local, and tribal governments for costs”.

At the end of section 106(b), strike paragraph (18), as redesignated, and insert the following:

(18) Such other security improvements as the Secretary considers appropriate, including security improvements for newly completed public transportation systems that are not yet operable for passenger use.

Section 106—

(1) strike subsections (c) and (d);

(2) redesignate subsections (e) through (j) as subsections (g) through (l), respectively; and

(3) insert after subsection (b) the following:

(c) DEPARTMENT OF HOMELAND SECURITY RESPONSIBILITIES.—In carrying out the responsibilities under subsection (a), the Secretary shall—

(1) determine the requirements for recipients of grants under this section, including application requirements;

(2) pursuant to subsection (f), determine who are the recipients of grants under this section;

(3) pursuant to subsection (b), determine the uses for which grant funds may be used under this section;

(4) establish priorities for uses of funds for grant recipients under this section; and

(5) not later than 5 business days after making determinations under paragraphs (1) through (4), transfer grant funds under this section to the Secretary of Transportation for distribution to the recipients of grants determined by the Secretary under paragraph (2).

(d) DEPARTMENT OF TRANSPORTATION RESPONSIBILITIES.—The Secretary of Transportation shall distribute grant funds under this section to the recipients of grants determined by the Secretary under subsection (f).

(e) MONITORING AND AUDITING.—The Department of Homeland Security and the Department of Transportation shall jointly monitor and audit the use of funds under this section.

(f) ELIGIBILITY.—A designated recipient is eligible for a grant under this section if the recipient has completed a vulnerability assessment and developed a security plan that the Secretary has approved under section 103. Grant funds may only be used for permissible uses under subsection (b) to further a public transportation security plan.

Section 106, subsection (g), as redesignated (relating to terms and conditions), strike “under effect” and insert “as in effect”.

Section 106, subsection (j), as redesignated (relating to guidelines), strike “recipients of grants under this section” the first place it appears and insert “, to the extent that recipients of grants under this section use contractors or subcontractors, such recipients shall”.

Section 106, strike subsection (k), as redesignated (relating to monitoring).

Section 106, redesignate subsection (l), as redesignated (relating to authorization of appropriations), as subsection (k).

Section 107, strike “, in consultation with the Secretary of Transportation,” each place it appears.

Section 107(b)(1), insert: “, including terminals and other over-the-road bus facilities owned by State or local governments” before the period.

Section 107(b)(8) strike—

(1) strike “front-line” before “over-the-road”; and

(2) insert “, including front-line employees” after “employees”.

Section 107(b)(10), after “reimbursement” insert “including reimbursement of State, local, and tribal governments for costs,”.

Section 107(b)(12), after “costs” insert “, including reimbursement of State, local, and tribal governments for such costs.”.

Section 107—

(1) redesignate subsections (e) through (j) as subsections (g) through (l), respectively; and

(2) strike subsections (c) and (d) and insert the following:

(c) DEPARTMENT OF HOMELAND SECURITY RESPONSIBILITIES.—In carrying out the responsibilities under subsection (a), the Secretary shall—

(1) determine the requirements for recipients of grants under this section, including application requirements;

(2) pursuant to subsection (f), determine who are the recipients of grants under this section;

(3) pursuant to subsection (b), determine the uses for which grant funds may be used under this section;

(4) establish priorities for uses of funds for grant recipients under this section; and

(5) not later than 5 business days of making determinations under paragraphs (1) through (4), transfer grant funds under this section to the Secretary of Transportation for distribution to the recipients of grants determined by the Secretary under paragraph (2).

(d) DEPARTMENT OF TRANSPORTATION RESPONSIBILITIES.—The Secretary of Transportation shall distribute grant funds under this section to the recipients of grants determined by the Secretary under subsection (f).

(e) MONITORING AND AUDITING.—The Department of Homeland Security and the Department of Transportation shall jointly monitor and audit the use of funds under this section.

(f) ELIGIBILITY.—A private operator providing transportation by an over-the-road bus is eligible for a grant under this section if the operator has completed a vulnerability assessment and developed a security plan that the Secretary has approved under section 103. Grant funds may only be used for permissible uses under subsection (b) to further an over-the-road bus security plan.

Section 107, subsection (i), as redesignated (relating to annual reports), after “funds” insert a period.

Section 107, subsection (j), as redesignated (relating to guidelines), strike “recipients of grants under this section the first place it appears” and insert “to the extent that recipients of grants under this section use contractors or subcontractors, such recipients shall”.

Section 107, strike subsection (k) as redesignated (relating to monitoring).

Section 107, redesignate subsection (l), as redesignated (relating to authorization), as subsection (k).

Section 108(a), strike “Amtrak” the first place it appears and insert “the National Railroad Passenger Corporation”.

Section 108(c) strike “recipients of grants under this section” the first place it appears and insert “, to the extent that recipients of grants under this section use contractors or subcontractors, such recipients shall”.

Section 109(a), strike “, in consultation with the Secretary of Transportation,”.

Section 109(a)(1), insert a comma after “employees”.

Section 109(b)(3) strike “and fire fighter workers” and insert “or emergency response personnel”.

Section 109(c)(9), strike “Any other subject” and insert “Other security training activities that”.

Section 109(d)(1), strike “in final form”.

Section 109(d)(2), insert “proposal” after “training program”.

Section 109(d)(3), insert “proposal” after “training program”.

Section 109(d)(4), insert “as necessary” after “workers”.

Section 110(a), strike “, in consultation with the Secretary of Transportation,”.

Section 110(c), strike “, in consultation with the Secretary of Transportation,”.

Section 110(c)(1), insert “working jointly with the Secretary of Transportation,” before “consolidates”.

Section 111(b)(3) strike “freight”.

Section 111(b), strike “and” at the end of paragraph (6), redesignate paragraph (7) as paragraph (8), and insert the following after paragraph (6):

(7) to assess the vulnerabilities and risks associated with new rail and public transportation construction projects prior to their completion; and

Section 111(c)(2)(E)—

(1) strike “including,” and insert “, including”; and

(2) strike “Institution or Tribal University” and insert “Institutions or Tribal Universities”.

Strike section 112 of the bill and insert the following (and make all necessary technical and conforming changes):

SEC. 112. WHISTLEBLOWER PROTECTIONS.

(a) IN GENERAL.—No covered individual may be discharged, demoted, suspended, threatened, harassed, reprimanded, investigated, or in any other manner discriminated against, including by a denial, suspension, or revocation of a security clearance or by any other security access determination, if such discrimination is due, in whole or in part, to any lawful act done, perceived to have been done, or intended to be done by the covered individual—

(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the covered individual reasonably believes constitutes a violation of any law, rule, or regulation relating to rail, public transportation, or over-the-road-bus security, which the covered individual reasonably believes constitutes a threat to rail, public transportation, or over-the-road-bus security, or which

the covered individual reasonably believes constitutes fraud, waste, or mismanagement of Government funds intended to be used for rail, public transportation, or over-the-road-bus security, if the information or assistance is provided to or the investigation is conducted by—

- (A) by a Federal, State, or local regulatory or law enforcement agency (including an office of the Inspector General under the Inspector General Act of 1978 (5 U.S.C. App.; Public Law 95–452);
 - (B) any Member of Congress, any committee of Congress, or the Government Accountability Office; or
 - (C) a person with supervisory authority over the covered individual (or such other person who has the authority to investigate, discover, or terminate);
- (2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding or action filed or about to be filed relating to an alleged violation of any law, rule, or regulation relating to rail, public transportation, or over-the-road bus security; or
- (3) to refuse to violate or assist in the violation of any law, rule, or regulation relating to rail public transportation, or over-the-road bus security.

(b) ENFORCEMENT ACTION.—

(1) IN GENERAL.—A covered individual who alleges discharge or other discrimination by any person in violation of subsection (a) may—

(A) in the case of a covered individual who is employed by the Department or the Department of Transportation, seek relief in accordance with—

- (i) the provisions of title 5, United States Code, to the same extent and in the same manner as if such individual were seeking relief from a prohibited personnel practice described in section 2302(b)(8) of such title; and
- (ii) the amendments made by section 112A;

except that, if the disclosure involved consists in whole or in part of classified or sensitive information, clauses (i) and (ii) shall not apply, and such individual may seek relief in the same manner as provided by section 112B;

(B) in the case of a covered individual who is a contractor or subcontractor of the Department or the Department of Transportation, seek relief in accordance with section 112B; and

(C) in the case of any other covered individual, seek relief in accordance with the provisions of this section, with any petition or other request for relief under this section to be initiated by filing a complaint with the Secretary of Labor.

(2) PROCEDURE.—

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

(B) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made

to the person named in the complaint and to the person's employer.

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

(D) STATUTE OF LIMITATIONS.—An action under paragraph (1)(C) shall be commenced not later than 1 year after the date on which the violation occurs.

(3) DE NOVO REVIEW.—With respect to a complaint under paragraph (1)(C), if the Secretary of Labor has not issued a final decision within 180 days after the filing of the complaint (or, in the event that a final order or decision is issued by the Secretary of Labor, whether within the 180-day period or thereafter, then, not later than 90 days after such an order or decision is issued), the covered individual may bring an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

(c) REMEDIES.—

(1) IN GENERAL.—A covered individual prevailing in any action under subsection (b)(1)(C) shall be entitled to all relief necessary to make the covered individual whole.

(2) DAMAGES.—Relief in an action under subsection (b)(1)(C) (including an action described in subsection (b)(3)) shall include—

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

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

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

(3) POSSIBLE RELIEF.—Relief in an action under subsection (b)(1)(C) may include punitive damages in an amount not to exceed the greater of 3 times the amount of any compensatory damages awarded under this section or \$5,000,000.

(d) USE OF STATE SECRETS PRIVILEGE.—

(1) If, in any action for relief sought by a covered individual in accordance with the provisions of subsection (b)(1)(A), (B), or (C), the Government agency moves to withhold information from discovery based on a claim that disclosure would be inimical to national security by asserting the privilege commonly referred to as the “state secrets privilege”, and if the assertion of such privilege prevents the covered individual from establishing an element in support of the covered individual's claim, the court shall resolve the disputed issue of fact or law in favor of the covered individual, provided that, in an action brought by a covered individual in accordance with the provisions of subsection (b)(1)(A) or (B), an Inspector General investigation under section 112B has resulted in substantial confirmation of that element, or those elements, of the covered individual's claim.

(2) In any case in which the Government agency asserts the privilege commonly referred to as the “state secrets privilege”, whether or not an Inspector General has conducted an investigation with respect to the alleged discrimination, the head of the Government agency involved shall, at the same time it asserts the privilege, issue a report to authorized Members of Congress, accompanied by a classified annex if necessary, describing the reasons for the assertion, explaining why the court hearing the matter does not have the ability to maintain the protection of classified information related to the assertion, detailing the steps the agency has taken to arrive at a mutually agreeable settlement with the covered individual, setting forth the date on which the classified information at issue will be declassified, and providing all relevant information about the underlying substantive matter.

(e) CRIMINAL PENALTIES.—

(1) IN GENERAL.—It shall be unlawful for any person employing a covered individual described in subsection (b)(1)(C) to commit an act prohibited by subsection (a). Any person who willfully violates this section by terminating or retaliating against any such covered individual who makes a claim under this section shall be fined under title 18, United States Code, imprisoned not more than 1 year, or both.

(2) REPORTING REQUIREMENT.—

(A) IN GENERAL.—The Attorney General shall submit to the appropriate congressional committees an annual report on the enforcement of paragraph (1).

(B) CONTENTS.—Each such report shall—

- (i) identify each case in which formal charges under paragraph (1) were brought;
- (ii) describe the status or disposition of each such case; and
- (iii) in any actions under subsection (b)(1)(C) in which the covered individual was the prevailing party or the substantially prevailing party, indicate whether or not any formal charges under paragraph (1) have been brought and, if not, the reasons therefor.

(f) NO PREEMPTION.—Nothing in this section, section 112A, or section 112B preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law.

(g) RIGHTS RETAINED BY COVERED INDIVIDUAL.—Nothing in this section, section 112A, or section 112B shall be deemed to diminish the rights, privileges, or remedies of any covered individual under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section, section 112A and section 112B may not be waived by any agreement, policy, form, or condition of employment.

(h) DEFINITIONS.—In this section, section 112A and section 112B, the following definitions apply:

(1) COVERED INDIVIDUAL.—The term “covered individual” means an employee of—

- (A) the Department;
- (B) the Department of Transportation;

(C) a contractor or subcontractor; and

(D) an employer within the meaning of section 701(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(b)) and who is a provider of covered transportation.

(2) **LAWFUL.**—The term “lawful” means not specifically prohibited by law, except that, in the case of any information the disclosure of which is specifically prohibited by law or specifically required by Executive order to be kept classified in the interest of national defense or the conduct of foreign affairs, any disclosure of such information to any Member of Congress, committee of Congress, or other recipient authorized to receive such information, shall be deemed lawful.

(3) **CONTRACTOR.**—The term “contractor” means a person who has entered into a contract with the Department, the Department of Transportation, or a provider of covered transportation.

(4) **EMPLOYEE.**—The term “employee” means—

(A) with respect to an employer referred to in paragraph (1)(A) or (1)(B), an employee as defined by section 2105 of title 5, United States Code; and

(B) with respect to an employer referred to in paragraph (1)(C) or (1)(D), any officer, partner, employee, or agent.

(5) **SUBCONTRACTOR.**—The term “subcontractor”—

(A) means any person, other than the contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a contract with the Department, the Department of Transportation, or a provider of covered transportation; and

(B) includes any person who offers to furnish or furnishes general supplies to the contractor or a higher tier subcontractor.

(6) **PERSON.**—The term “person” means a corporation, partnership, State entity, business association of any kind, trust, joint-stock company, or individual.

Section 113(c), strike “the Secretary of Transportation and”.

Section 116(b), strike “designate the Center” and insert “select an institution of higher education to operate the National Transportation Security Center of Excellence”.

Section 116(c)—

(1) redesignate paragraphs (1) through (3) as paragraphs (2) through (4), respectively; and

(2) insert after the subsection heading the following:

(1) **CONSORTIUM.**—The institution of higher education selected under subsection (b) shall execute agreements with other institutions of higher education to develop a consortium to assist in accomplishing the goals of the Center.

Section 116(c)(3), as redesignated, insert “or” before “Tribal”.

Section 116, strike “Consortium” each place it appears and insert “consortium”.

Section 118, after “risk” strike all that follows through “security”.

Section 120(d)(1), strike “any rule” and all that follows through “an employer” and insert the following: “if an employer performs background checks to satisfy any rule, regulation, directive, or other guidance issued by the Secretary regarding background checks of covered individuals, the employer shall be prohibited”.

Section 123(a), strike “the Committee on Homeland Security and Government Affairs of the Senate and the Committee on Homeland Security of the House of Representatives” and insert “the appropriate congressional committees”.

Section 124, strike “railcar” and insert “railroad car” each place it appears.

Section 124(b)(1), strike subparagraph (B) and insert the following:

(B) More than 25 kilograms (55 pounds) of a division 1.1, 1.2, or 1.3 explosive, as defined in section 173.50 of title 49, Code of Federal Regulations, in a motor vehicle, rail car, or freight container.

Section 124(b)(3)(A), strike “railyards” and insert “railroad yards”.

Section 124 (f), insert “railroad” before “carrier”.

Section 125(d)—

- (1) redesignate paragraph (16) as paragraph (17);
- (2) in paragraph (15), strike “and” after the semicolon; and
- (3) after paragraph (15), insert the following:

(16) nonprofit employee labor organizations; and

Section 124(f), insert “railroad” before “carrier”.

Section 125 at the end, insert the following:

(f) SAVINGS PROVISION.—An action of the Secretary or the Secretary of Transportation under this Act is not an exercise, under section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), of statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

Section 126(a)(1), “The Secretary shall” and insert “The Secretary and the Secretary of Transportation shall jointly”.

Section 126(a)(2), strike “the Secretary shall” and insert “the Secretary and the Secretary of Transportation shall jointly”.

Section 126(a)(3), insert “and the Secretary of Transportation” after “Secretary”.

Section 126(b)(3), insert “and the Secretary of Transportation” after “Secretary”.

Section 128, strike “shall” and insert “should”.

Section 128, insert “(a) PREFERENCE.—” before “In”.

Section 128 at the end, insert the following:

(b) SAVINGS PROVISION.—Nothing in this section shall affect grant recipient requirements pursuant to section 5323(j) of title 49, United States Code, section 24305(f) of title 49, United States Code, and the Buy American Act (41 U.S.C. 10).

Section 130(a), strike “undeclared passengers or contraband, including”.

Section 130 at the end, insert the following:

(c) USE OF TRANSPORTATION DATA.—In carrying out this subsection, the Secretary shall make use of data collected and maintained by the Secretary of Transportation.

Section 131, strike the text and insert the following: “In carrying out section 119, the Secretary shall require each provider of covered transportation, including contractors and subcontractors, assigned to a high-risk tier under section 102 to submit the names of their employees to the Secretary to conduct checks of their employees against available terrorist watchlists and immigration status databases.”.

At the end of title I, insert the following (and conform the table of contents accordingly):

SEC. 132. REVIEW OF GRANT-MAKING EFFICIENCY.

(a) **ANNUAL STUDY.**—The Comptroller General of the United States shall conduct an annual study for each of the first 3 years after the enactment of this title regarding the administration and use of the grants awarded under sections 105, 106, and 107 of this title, including—

(1) the efficiency of the division of the grant-making process, including whether the Department of Transportation's role in distributing, auditing, and monitoring the grant funds produces efficiency compared to the consolidation of these responsibilities in the Department of Homeland Security;

(2) whether the roles of the Department of Homeland Security and the Department of Transportation in the administration of the grants permit the grants to be awarded and used in a timely and efficient manner and according to their intended purposes;

(3) the use of grant funds, including whether grant funds are used for authorized purposes.

(b) **REPORT.**—The Comptroller General of the United States shall submit an annual report to the appropriate congressional committees on the results of the study for each of the first 3 years after enactment of this title, including any recommendations for improving the administration and use of the grant funds awarded under sections 105, 106, and 107.

SEC. 133. ROLES OF THE DEPARTMENT OF HOMELAND SECURITY AND THE DEPARTMENT OF TRANSPORTATION.

The Secretary of Homeland Security is the principal Federal official responsible for transportation security. The roles and responsibilities of the Department of Homeland Security and the Department of Transportation in carrying out sections 101, 103, 104, 105, 106, 107, 109, 110, 111, 113, 123, 124, 125, 126, 127, 128, 129, 130, 131, and 201 of this Act are the roles and responsibilities of such Departments pursuant to the Aviation and Transportation Security Act (Public Law 107–71); the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458); the National Infrastructure Protection Plan required by Homeland Security Presidential Directive 7; Executive Order 13416: Strengthening Surface Transportation Security, dated December 5, 2006; the Memorandum of Understanding between the Department and the Department of Transportation on Roles and Responsibilities, dated September 28, 2004; the Annex to the Memorandum of Understanding between the Department and the Department of Transportation on Roles and Responsibilities concerning Railroad Security, dated September 28, 2006; the Annex to the Memorandum of Understanding between the Department and the Department of Transportation on Roles and Responsibilities concerning Public Transportation Security, dated September 8, 2005; and any subsequent agreements between the Department of Homeland Security and the Department of Transportation.

Section 201(a), strike “ensure that canine detection teams are deployed” and insert “encourage the deployment of canine detection teams”.

Section 201(b), strike “to increase” and insert “to encourage an increase in”.

Strike “rail carrier” and insert “railroad carrier” each place it appears in the bill.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE ARCURI OF NEW YORK, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of title I, insert the following (and conform the table of contents accordingly):

SEC. ____ . ASSESSMENT AND REPORT.

(a) **STUDY.**—The Secretary, in coordination with the Secretary of Transportation, shall assess the safety and security vulnerabilities of placing high voltage direct current electric transmission lines along active railroad rights-of-way. In conducting the assessment, the Secretary shall, at a minimum, evaluate the risks to local inhabitants and to consumers of electric power transmitted by those lines, associated with a train collision or derailment that damages such electric transmission lines.

(b) **REPORT.**—Not later than 6 months after the date of enactment of this Act, the Secretary shall transmit the results of the assessment in subsection (a) to the appropriate congressional committees as defined in this Act.

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE COHEN OF TENNESSEE, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of title I, add the following:

SEC. ____ . ALTERNATIVE MATERIAL SOURCES.

The Secretary of Transportation, in consultation with the Secretary, shall establish a program to coordinate with State and local governments to minimize the need for transportation of toxic inhalation hazardous materials by rail.

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CASTLE OF DELAWARE, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of title I, insert the following (and conform the table of contents accordingly):

SEC. ____ . STUDY OF FOREIGN RAIL SECURITY PRACTICES.

The Secretary shall—

(1) study select foreign rail security practices, and the cost and feasibility of implementing selected best practices that are not currently used in the United States, including—

(A) implementing covert testing processes to evaluate the effectiveness of rail system security personnel;

(B) implementing practices used by foreign rail operators that integrate security into infrastructure design;

(C) implementing random searches or screening of passengers and their baggage; and

(D) establishing and maintaining an information clearinghouse on existing and emergency security technologies

and security best practices used in the passenger rail industry both in the United States and abroad; and

(2) report the results of the study, together with any recommendations that the Secretary may have for implementing covert testing, practices for integrating security in infrastructure design, random searches or screenings, and an information clearinghouse to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Homeland Security of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives not later than 1 year after the date of enactment of this Act.

5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SESSIONS OF TEXAS, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of title I, insert the following new section:

SEC. 132. USE OF FUNDS BY AMTRAK.

None of the funds appropriated pursuant to this Act, except pursuant to section 108, may be used by Amtrak for any of the 10 long-distance routes of Amtrak that have the highest cost per seat/mile ratios according to the September 2006 Amtrak monthly performance report, unless the Secretary has transmitted to Congress a waiver of the requirement under this section with respect to a route or portion of a route that the Secretary considers to be critical to homeland security.

6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE FLAKE OF ARIZONA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike section 203.

7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE FLAKE OF ARIZONA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike section 107 and redesignate the succeeding sections accordingly and conform the table of contents.

8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE LYNCH OF MASSACHUSETTS, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of section 109, add the following:

(g) **REPORTING REQUIREMENTS.**—Not later than one year after the issuance of guidelines under subsection (a)(2), the Secretary shall conduct a survey regarding the satisfaction of workers regarding the effectiveness and adequacy of the training programs. In addition, the Secretary shall submit a report to the appropriate congressional committees regarding the results of the survey and the progress of providers of covered transportation in meeting the requirements of paragraphs (1) and (3) of subsection (d).