

OVER-THE-ROAD BUS TRANSPORTATION ACCESSIBILITY ACT OF 2007

NOVEMBER 15, 2007.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. OBERSTAR, from the Committee on Transportation and
Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 3985]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 3985) to amend title 49, United States Code, to direct the Secretary of Transportation to register a person providing transportation by an over-the-road bus as a motor carrier of passengers only if the person is willing and able to comply with certain accessibility requirements in addition to other existing requirements, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE LEGISLATION

H.R. 3985, the “Over-the-Road Bus Transportation Accessibility Act of 2007”, strengthens the ability of the Federal Motor Carrier Safety Administration (“FMCSA”) to monitor and enforce compliance with the Department of Transportation’s over-the-road bus accessibility regulations.

BACKGROUND AND NEED FOR LEGISLATION

Congress passed the Americans with Disabilities Act (“ADA”) in 1990 to expand and enhance opportunities for individuals with disabilities. Among its provisions, the ADA required the Department of Transportation (“DOT”) to promulgate regulations to ensure the accessibility of public transportation, passenger rail, and motor-coach transportation.

DOT published a final rule in 1998 requiring vehicle modifications to intercity, charter, and tour buses to accommodate individuals with disabilities. These regulations apply to all private entities that provide transportation with an over-the-road bus (“OTRB”). The regulations required each large, fixed-route OTRB operator to ensure that 50 percent of the vehicles in its fleet consisted of accessible buses by October 2006, and the entire fleet consists of accessible buses by October 2012. Until the fleet of an OTRB operator becomes fully accessible, the operator must provide accessible service to passengers with disabilities on a 48-hour, advanced notice basis. The final rule also requires that each large, “demand responsive” OTRB operator, such as a charter or tour bus operator, provide service in an accessible motorcoach to passengers with disabilities on a 48-hour, advanced notice basis. Small, fixed-route and demand responsive OTRB operators are subject to less stringent requirements, and must provide service on a 48-hour, advanced notice basis or provide “equivalent service”, such as by passenger van.

The Federal Motor Carrier Safety Administration (“FMCSA”) is the modal agency responsible for ensuring that the over-the-road bus industry complies with DOT regulations. However, the agency interprets the motor carrier registration statute in a way that limits the agency’s authority to enforce the OTRB accessibility regulations promulgated by DOT.

On December 19, 2006, the United States Court of Appeals for the D.C. Circuit rejected FMCSA’s assertion that the agency does not have discretion to interpret the law to allow FMCSA to consider compliance with ADA regulations in determining whether a bus company is fit to operate in interstate commerce. *Peter Pan Bus Lines, Inc. v. Federal Motor Carrier Safety Administration*, 471 F.3d 1350, 1354–55 (D.C. Cir. 2006). The case was remanded to FMCSA in February 2007, and the Court of Appeals directed the agency to reexamine its authority under the statute.

On October 11, 2007, Chairman Oberstar and Highways and Transit Subcommittee Chairman DeFazio sent a letter to FMCSA Administrator John Hill expressing their intent to legislate a solution to the problem if the agency did not respond with its plans to make changes administratively to ensure that ADA requirements were being met by the over-the-road bus operators that FMCSA registers. FMCSA has not responded to the Chairmen’s letter.

On October 26, 2007, FMCSA issued a decision on remand defending its original position that the underlying statute does not provide FMCSA with the authority to consider compliance with ADA when granting operating authority to over-the-road bus operators. FMCSA further states that the agency has no role in taking action with respect to ADA violations by over-the-road bus operators because the Department of Justice (“DOJ”) has enforcement authority under the ADA to investigate all alleged violations and commence a civil action in court, including authority over transportation providers.

A recent Government Accountability Office (“GAO”) report, entitled “Transportation Accessibility: Lack of Data and Limited Enforcement Options Limit Federal Oversight”, found that FMCSA maintains that if the agency identifies a violation, the violation is sent to DOJ for investigation. However, the report found that FMCSA lacks a formal mechanism for coordinating with DOJ. Fur-

ther, DOT has only referred two cases to DOJ for investigation across all modes of transportation subject to the regulations, although GAO found many conflicts are resolved informally. GAO also identified FMCSA's lack of authority to issue penalties for violations of ADA as a barrier to effective enforcement by the agency.

In March 2006, the Subcommittee on Highways, Transit, and Pipelines held a hearing on "curbside" bus companies. "Curbside bus" operators are motor coach companies that operate fixed-route, intercity bus service, mainly between cities along the Northeast Corridor, picking up and dropping off passengers on the street rather than in bus terminals. Witness testimony included anecdotal evidence that many curbside operators do not provide accessible transportation to individuals with disabilities. Several newspaper articles have highlighted problems that individuals with disabilities have encountered in trying to ride curbside buses, including a March 2, 2006 Washington Post investigation, which revealed that 11 companies that operate in the Northeast corridor had violated ADA regulations.¹

SUMMARY OF THE LEGISLATION

Section 1. Short title

Section 1 denotes the short title of the bill as the "Over-the-Road Bus Transportation Accessibility Act of 2007".

Section 2. Registration of motor carriers of passengers

Section 2(a) amends section 13902 of title 49, United States Code, to direct the Secretary of Transportation to grant registration authority to a motor carrier providing transportation by an over-the-road bus only if the motor carrier is willing and able to comply with the accessibility regulations under subpart H of part 37, title 49, Code of Federal Regulations. This section clarifies that the Secretary must assess and consider a carrier's willingness and ability to comply with accessibility regulations in the same way the Secretary currently considers willingness and ability to comply with other regulations, such as safety and financial responsibility, prior to granting a motor carrier registration authority to operate in interstate commerce.

Section 2(b) amends sections 13902(a)(5) and 13905(d)(1)(A) of title 49, United States Code, to clarify that the Secretary may suspend, amend, or revoke a motor carrier's registration in the event of a willful failure to comply with regulations pursuant to the Americans with Disabilities Act; and may hear a complaint against a registrant for failure to comply with accessibility regulations. These conforming amendments are necessary to fully implement subsection (a).

The Committee believes that the Secretary of Transportation has the ability to monitor and assess compliance with all DOT regulations, including accessibility regulations under 49 CFR part 37, subpart H, even without this change. The Committee is disappointed that FMCSA has chosen not to exercise this option with respect to ADA requirements and, as a result, legislative action is needed to make this clear.

¹"Bus Lines Cited in Federal Probe; 11 Firms Accused of Violating ADA"; Washington Post, March 2, 2006; Financial; page D1.

The Committee further believes that amending section 13902 of title 49, United States Code, to add willingness and ability to comply with accessibility regulations as a condition of registration of a motor carrier of passengers, indirectly provides FMCSA with an additional enforcement tool. FMCSA has general civil penalty authority under section 14910 of title 49 to issue a civil penalty up to \$500 for each violation of a condition of registration, when another civil penalty is not specifically provided under Chapter 149 of title 49. The Committee expects that FMCSA will utilize all available tools to take necessary action against over-the-road bus operators that violate DOT's accessibility requirements pursuant to the ADA.

Section 3. Over-the-road bus defined

Section 3 defines the term “over-the-road bus” as a bus characterized by an elevated passenger deck located over a baggage compartment. This definition has not been previously codified in Chapter 131 of title 49, United States Code, but is widely used administratively by DOT.

Section 4. Deadline for implementation of registration requirements

Section 4 directs the Secretary of Transportation to implement the changes required by the amendment made by Section 2(a) not later than 30 days after the date of enactment. This section clarifies that the Committee requires FMCSA to take necessary steps to consider compliance with accessibility requirements immediately, rather than waiting for completion of the memorandum of understanding required by Section 5.

Section 5. Coordination with the Department of Justice

Section 5 requires the Department of Transportation and the Department of Justice to enter into a memorandum of understanding to ensure coordination between the two Departments and to delineate each Department's specific roles and responsibilities in enforcing the provisions of the ADA.

LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

On October 29, 2007, Subcommittee Chairman Peter A. DeFazio introduced H.R. 3985, the “Over-the-Road Bus Transportation Accessibility Act of 2007”.

On October 31, 2007, the Committee on Transportation and Infrastructure met in open session to consider H.R. 3985 and ordered the bill reported favorably to the House by voice vote.

RECORD 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 record 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 recorded votes taken in connection with ordering H.R. 3985 reported. A motion to order H.R. 3985 reported favorably to the House was agreed to by voice vote with a quorum present.

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 in the report.

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 to strengthen FMCSA's ability to monitor and enforce compliance with the over-the-road bus accessibility regulations.

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 enclosed cost estimate for H.R. 3985 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 9, 2007.

Hon. JAMES L. OBERSTAR,
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. 3985, the Over-the-Road Bus Transportation Accessibility Act of 2007.

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

Sincerely,

ROBERT A. SUNSHINE
(For Peter R. Orszag, Director).

Enclosure.

H.R. 3985—Over-the-Road Bus Transportation Accessibility Act of 2007

H.R. 3985 would require the Federal Motor Carrier Safety Administration (FMCSA) to ensure that operators of over-the-road busses comply with the Americans With Disabilities Act (ADA). (Generally, over-the-road busses are those that have elevated passenger decks located over baggage compartments.) Under H.R. 3985, the FMCSA would be required to review applications for li-

censes to operate such vehicles to ensure that the operators comply with federal accessibility regulations issued under the ADA. In addition to performing safety audits for new licensees, the agency also would include ADA requirements in the compliance reviews of bus operators that it undertakes in the future.

Based on information provided by the FMCSA, CBO estimates that developing and enforcing new regulations to implement H.R. 3985 would cost the agency about \$500,000 in fiscal year 2008 and less than \$300,000 each year thereafter. First-year costs include one-time systems upgrades and training expenses. Enacting the bill would not affect direct spending or revenues.

Section 4 of the Unfunded Mandates Reform Act excludes from the application of that act any legislative provision that establishes or enforces statutory rights that prohibit discrimination on the basis of disability. CBO has determined that the provisions of H.R. 3985 fall within that exclusion; therefore, we have not reviewed them for intergovernmental or private-sector mandates.

The CBO staff contact for this estimate is Deborah Reis. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH HOUSE RULE XXI

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 3985 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI of the Rules of the House of Representatives.

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. 3985 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

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

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SUBTITLE IV—INTERSTATE TRANSPORTATION

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PART B—MOTOR CARRIERS, WATER CARRIERS, BROKERS, AND FREIGHT FORWARDERS

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CHAPTER 131—GENERAL PROVISIONS

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§ 13102. Definitions

In this part, the following definitions shall apply:

(1) * * *

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(27) *OVER-THE-ROAD BUS.*—*The term “over-the-road bus” means a bus characterized by an elevated passenger deck located over a baggage compartment.*

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CHAPTER 139—REGISTRATION

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§ 13902. Registration of motor carriers

(a) MOTOR CARRIER GENERALLY.—

(1) IN GENERAL.—Except as provided in this section, the Secretary shall register a person to provide transportation subject to jurisdiction under subchapter I of chapter 135 of this title

as a motor carrier if the Secretary finds that the person is willing and able to comply with—

- (A) * * *
- (B)(i) * * *

* * * * *

(iii) the safety fitness requirements established by the Secretary under section 31144; **and**

(C) the accessibility requirements established by the Secretary under subpart H of part 37 of title 49, Code of Federal Regulations, or such successor regulations to those accessibility requirements as the Secretary may issue, for transportation provided by an over-the-road bus; and

[(C)] (D) the minimum financial responsibility requirements established by the Secretary pursuant to sections 13906 and 31138.

* * * * *

(5) LIMITATION ON COMPLAINTS.—The Secretary may hear a complaint from any person concerning a registration under this subsection only on the ground that the registrant fails or will fail to comply with this part, the applicable regulations of the Secretary and the Board *(including the accessibility requirements established by the Secretary under subpart H of part 37 of title 49, Code of Federal Regulations, or such successor regulations to those accessibility requirements as the Secretary may issue, for transportation provided by an over-the-road bus)*, the safety regulations of the Secretary, or the safety fitness or minimum financial responsibility requirements of paragraph (1) of this subsection. In the case of a registration for the transportation of household goods as a household goods motor carrier, the Secretary may also hear a complaint on the ground that the registrant fails or will fail to comply with the requirements of paragraph (2) of this subsection.

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§ 13905. Effective periods of registration

- (a) * * *

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- (d) SUSPENSION, AMENDMENTS, AND REVOCATIONS.—

(1) IN GENERAL.—On application of the registrant, the Secretary may amend or revoke a registration. On complaint or on the Secretary's own initiative and after notice and an opportunity for a proceeding, the Secretary may (A) suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder for willful failure to comply with this part, an applicable regulation or order of the Secretary or of the Board *(including the accessibility requirements established by the Secretary under subpart H of part 37 of title 49, Code of Federal Regulations, or such successor regulations to those accessibility requirements as the Secretary may issue, for transportation provided by an over-the-road bus)*, or a condition of its registration; and (B) suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder: (i) for failure to pay a civil penalty imposed under

chapter 5, 51, 149, or 311 of this title; or (ii) for failure to arrange and abide by an acceptable payment plan for such civil penalty, within 90 days of the time specified by order of the Secretary for the payment of such penalty. Subparagraph (B) shall not apply to any person who is unable to pay a civil penalty because such person is a debtor in a case under chapter 11 of title 11, United States Code.

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