

# Calendar No. 536

108TH CONGRESS  
2D SESSION

# S. 2273

[Report No. 108-278]

To provide increased rail transportation security.

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## IN THE SENATE OF THE UNITED STATES

APRIL 1, 2004

Mr. McCAIN (for himself, Mr. HOLLINGS, Ms. SNOWE, Mr. KENNEDY, Mrs. CLINTON, Mr. ROCKEFELLER, Mr. BIDEN, Mr. CARPER, Mr. LAUTENBERG, Mrs. HUTCHISON, Mr. FITZGERALD, Mr. INOUE, Mr. BREAUX, Mr. DORGAN, Mr. SCHUMER, Mrs. BOXER, Ms. CANTWELL, Mr. CORZINE, and Mr. LIEBERMAN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

MAY 21, 2004

Reported by Mr. McCAIN, with amendments

[Omit the part struck through and insert the part printed in *italic*]

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## A BILL

To provide increased rail transportation security.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Rail Security Act of 2004”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.  
 Sec. 2. Rail transportation security risk assessment.  
 Sec. 3. Rail security.  
 Sec. 4. Study of foreign rail transport security programs.  
 Sec. 5. Passenger, baggage, and cargo screening.  
 Sec. 6. Certain personnel limitations not to apply.  
~~Sec. 7. Fire and life safety improvements.~~  
~~Sec. 8. Transportation security.~~  
 Sec. 7. *Fire and life-safety improvements.*  
 Sec. 8. *Memorandum of agreement.*  
 Sec. 9. Amtrak plan to assist families of passengers involved in rail passenger accidents.  
~~Sec. 10. System-wide Amtrak security upgrades.~~  
 Sec. 10. *Systemwide Amtrak security upgrades.*  
 Sec. 11. Freight and passenger rail security upgrades.  
~~Sec. 12. Department of Transportation oversight.~~  
 Sec. 12. *Oversight and grant procedures.*  
 Sec. 13. Rail security research and development.  
 Sec. 14. Welded rail and tank car safety improvements.  
 Sec. 15. Northern Border rail passenger report.  
 Sec. 16. *Report regarding impact on security of train travel in communities without grade separation.*  
 Sec. 17. *Whistleblower protection program.*

3 **SEC. 2. RAIL TRANSPORTATION SECURITY RISK ASSESS-**  
 4 **MENT.**

5 (a) IN GENERAL.—

6 (1) VULNERABILITY ASSESSMENT.—The Under  
 7 Secretary of Homeland Security for Border and  
 8 Transportation Security, in consultation with the  
 9 Secretary of Transportation, shall complete a vulner-  
 10 ability assessment of freight and passenger rail  
 11 transportation (encompassing ~~rail carriers~~, *railroads*,  
 12 as that term is defined in section 20102(1) of title  
 13 49, United States Code). The assessment shall in-  
 14 clude—

1 (A) identification and evaluation of critical  
2 assets and infrastructures;

3 (B) identification of threats to those assets  
4 and infrastructures;

5 (C) identification of vulnerabilities that are  
6 specific to the transportation of hazardous ma-  
7 terials via railroad; and

8 (D) identification of security weaknesses in  
9 passenger and cargo security, transportation in-  
10 frastructure, protection systems, procedural  
11 policies, communications systems, employee  
12 training, emergency response planning, and any  
13 other area identified by the assessment.

14 (2) EXISTING PRIVATE AND PUBLIC SECTOR  
15 EFFORTS.—The assessment shall take into account  
16 actions taken or planned by both public and private  
17 entities to address identified security issues and as-  
18 sess the effective integration of such actions.

19 (3) RECOMMENDATIONS.—Based on the assess-  
20 ment conducted under paragraph (1), the Under  
21 Secretary, in consultation with the Secretary of  
22 Transportation, shall develop prioritized rec-  
23 ommendations for improving rail security, including  
24 any recommendations the Under Secretary has for—

1 (A) improving the security of rail tunnels,  
2 rail bridges, rail switching *and car storage*  
3 areas, other rail infrastructure and facilities, in-  
4 formation systems, and other areas identified  
5 by the Under Secretary as posing significant  
6 rail-related risks to public safety and the move-  
7 ment of interstate commerce, taking into ac-  
8 count the impact that any proposed security  
9 measure might have on the provision of rail  
10 service;

11 (B) deploying ~~weapon detection equipment;~~  
12 *equipment to detect explosives and hazardous*  
13 *chemical, biological, and radioactive substances,*  
14 *and any appropriate countermeasures;*

15 (C) training employees in terrorism pre-  
16 vention, passenger evacuation, and response ac-  
17 tivities;

18 (D) conducting public outreach campaigns  
19 on passenger railroads;

20 (E) deploying surveillance equipment; and

21 (F) identifying the immediate and long-  
22 term ~~economic impact costs~~ of measures that  
23 may be required to address those risks.

24 (4) PLANS.—The report required by subsection  
25 (c) shall include—

1 (A) a plan, developed in consultation with  
2 the freight and intercity passenger railroads,  
3 and State and local governments, for the gov-  
4 ernment to provide increased security support  
5 at high or severe threat levels of alert; and

6 (B) a plan for coordinating rail security  
7 initiatives undertaken by the public and private  
8 sectors.

9 (b) CONSULTATION; USE OF EXISTING RE-  
10 SOURCES.—In carrying out the assessment required by  
11 subsection (a), the Under Secretary of Homeland Security  
12 for Border and Transportation Security shall consult with  
13 rail management, rail labor, owners or lessors of rail cars  
14 used to transport hazardous materials, *first responders*,  
15 shippers of hazardous materials, public safety officials (in-  
16 cluding those within other agencies and offices within the  
17 Department of Homeland ~~Security~~ *Security*), and other  
18 relevant parties.

19 (c) REPORT.—

20 (1) CONTENTS.—Within 180 days after the  
21 date of enactment of this Act, the Under Secretary  
22 shall transmit to the Senate Committee on Com-  
23 merce, Science, and Transportation and the House  
24 of Representatives Committee on Transportation  
25 and Infrastructure a report containing the assess-

1       ment and prioritized recommendations required by  
2       subsection (a) and an estimate of the cost to imple-  
3       ment such recommendations.

4           (2) **FORMAT.**—The Under Secretary may sub-  
5       mit the report in both classified and redacted for-  
6       mats if the Under Secretary determines that such  
7       action is appropriate or necessary.

8           (d) **2-YEAR UPDATES.**—The Under Secretary, in con-  
9       sultation with the Secretary of Transportation, shall up-  
10      date the assessment and recommendations every 2 years  
11      and transmit a report, which may be submitted in both  
12      classified and redacted formats, to the Committees named  
13      in subsection (c)(1), containing the updated assessment  
14      and recommendations.

15          (e) **AUTHORIZATION OF APPROPRIATIONS.**—There  
16      are authorized to be appropriated to the Under Secretary  
17      of Homeland Security for Border and Transportation Se-  
18      curity \$5,000,000 for fiscal year 2005 for the purpose of  
19      carrying out this section.

20      **SEC. 3. RAIL SECURITY.**

21          (a) **RAIL POLICE OFFICERS.**—Section 28101 of title  
22      49, United States Code, is amended by striking “the rail  
23      carrier” each place it appears and inserting “any rail car-  
24      rier”.

1 (b) REVIEW OF RAIL REGULATIONS.—Within 1 year  
2 after the date of enactment of this Act, the Secretary of  
3 Transportation, in consultation with the Under Secretary  
4 of Homeland Security for Border and Transportation Se-  
5 curity, shall review existing rail regulations of the Depart-  
6 ment of Transportation for the purpose of identifying  
7 areas in which those regulations need to be revised to im-  
8 prove rail security.

9 **SEC. 4. STUDY OF FOREIGN RAIL TRANSPORT SECURITY**  
10 **PROGRAMS.**

11 (a) REQUIREMENT FOR STUDY.—Within one year  
12 after the date of enactment of the Rail Security Act of  
13 2004, the Comptroller General shall complete a study of  
14 the rail passenger transportation security programs that  
15 are carried out for rail transportation systems in Japan,  
16 member nations of the European Union, and other foreign  
17 countries.

18 (b) PURPOSE.—The purpose of the study shall be to  
19 identify effective rail transportation security measures  
20 that are in use in foreign rail transportation systems, in-  
21 cluding innovative measures and screening procedures de-  
22 termined effective.

23 (c) REPORT.—The Comptroller General shall submit  
24 a report on the results of the study to the Senate Com-  
25 mittee on Commerce, Science, and Transportation and the

1 House of Representatives Committee on Transportation  
2 and Infrastructure. The report shall include the Comp-  
3 troller General's assessment regarding whether it is fea-  
4 sible to implement within the United States any of the  
5 same or similar security measures that are determined ef-  
6 fective under the study.

7 **SEC. 5. PASSENGER, BAGGAGE, AND CARGO SCREENING.**

8 (a) **REQUIREMENT FOR STUDY AND REPORT.**—The  
9 Under Secretary of Homeland Security for Border and  
10 Transportation Security, in cooperation with the Secretary  
11 of Transportation, shall—

12 (1) analyze the cost and feasibility of requiring  
13 security screening for passengers, baggage, and ~~mail~~  
14 *cargo* on passenger trains; and

15 (2) report the results of the study, together  
16 with any recommendations that the Under Secretary  
17 may have for implementing a rail security screening  
18 program to the Senate Committee on Commerce,  
19 Science, and Transportation and the House of Rep-  
20 resentatives Committee on Transportation and In-  
21 frastructure within 1 year after the date of enact-  
22 ment of this Act.

23 (b) **PILOT PROGRAM.**—As part of the study under  
24 subsection (a), the Under Secretary shall complete a pilot  
25 program of random security screening of passengers and

1 baggage at 5 passenger rail stations served by Amtrak se-  
2 lected by the Under Secretary. In conducting the pilot pro-  
3 gram, the Under Secretary shall—

4           (1) test a wide range of explosives detection  
5 technologies, devices and methods;

6           (2) require that intercity rail passengers  
7 produce government-issued photographic identifica-  
8 tion which matches the name on the passenger's  
9 tickets prior to boarding trains; and

10           (3) attempt to *give preference to locations at the*  
11 *highest risk of terrorist attack and* achieve a distribu-  
12 tion of participating train stations in terms of geo-  
13 graphic location, size, passenger volume, and wheth-  
14 er the station is used by commuter rail passengers  
15 as well as Amtrak passengers.

16       (c) AUTHORIZATION OF APPROPRIATIONS.—There  
17 are authorized to be appropriated to the Under Secretary  
18 of Homeland Security for Border and Transportation Se-  
19 curity to carry out this section \$5,000,000 for fiscal year  
20 2005.

21 **SEC. 6. CERTAIN PERSONNEL LIMITATIONS NOT TO APPLY.**

22       Any statutory limitation on the number of employees  
23 in the Transportation Security Administration of the De-  
24 partment of Transportation, before or after its transfer  
25 to the Department of Homeland Security, does not apply

1 to the extent that any such employees are responsible for  
 2 implementing the provisions of this Act.

3 **SEC. 7. FIRE AND LIFE SAFETY IMPROVEMENTS.**

4 **SEC. 7. FIRE AND LIFE-SAFETY IMPROVEMENTS.**

5 (a) ~~LIFE SAFETY~~ *LIFE-SAFETY* NEEDS.—The Sec-  
 6 retary of Transportation is authorized to make grants to  
 7 Amtrak for the purpose of making fire and life-safety im-  
 8 provements to *Amtrak* tunnels on the Northeast Corridor  
 9 in New York, NY, Baltimore, MD, and Washington, DC.

10 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
 11 are authorized to be appropriated to the Secretary of  
 12 Transportation for the purposes of carrying out subsection

13 (a) the following amounts:

14 (1) For the 6 New York tunnels to provide ven-  
 15 tilation, electrical, and fire safety technology up-  
 16 grades, emergency communication and lighting sys-  
 17 tems, and emergency access and egress for pas-  
 18 sengers—

19 (A) \$100,000,000 for fiscal year 2005;

20 (B) \$100,000,000 for fiscal year 2006;

21 (C) \$100,000,000 for fiscal year 2007;

22 (D) \$100,000,000 for fiscal year 2008;

23 and

24 (E) \$170,000,000 for fiscal year 2009.

1           (2) For the Baltimore & Potomac tunnel and  
2 the Union tunnel, together, to provide adequate  
3 drainage, ventilation, communication, lighting, and  
4 passenger egress upgrades—

5                   (A) \$10,000,000 for fiscal year 2005;

6                   (B) \$10,000,000 for fiscal year 2006;

7                   (C) \$10,000,000 for fiscal year 2007;

8                   (D) \$10,000,000 for fiscal year 2008; and

9                   (E) \$17,000,000 for fiscal year 2009.

10           (3) For the Washington, DC Union Station  
11 tunnels to improve ventilation, communication, light-  
12 ing, and passenger egress upgrades—

13                   (A) \$8,000,000 for fiscal year 2005;

14                   (B) \$8,000,000 for fiscal year 2006;

15                   (C) \$8,000,000 for fiscal year 2007;

16                   (D) \$8,000,000 for fiscal year 2008; and

17                   (E) \$8,000,000 for fiscal year 2009.

18           (c) INFRASTRUCTURE UPGRADES.—There are au-  
19 thorized to be appropriated to the Secretary of Transpor-  
20 tation for fiscal year 2005 \$3,000,000 for the preliminary  
21 design of options for a new tunnel on a different alignment  
22 to augment the capacity of the existing Baltimore tunnels.

23           (d) AVAILABILITY OF APPROPRIATED FUNDS.—  
24 Amounts appropriated pursuant to this section shall re-  
25 main available until expended.

1 (e) ~~PLAN~~ *PLANS* REQUIRED.—The Secretary may not  
 2 make amounts available to Amtrak for obligation or ex-  
 3 penditure under subsection (a)—

4 (1) until Amtrak has submitted to the Sec-  
 5 retary, and the Secretary has approved, an engineer-  
 6 ing and financial plan for such projects; and

7 (2) unless, for each project funded pursuant to  
 8 this section, the Secretary has approved a project  
 9 management plan prepared by Amtrak addressing  
 10 *appropriate* project budget, construction schedule,  
 11 recipient staff organization, document control and  
 12 record keeping, change order procedure, quality con-  
 13 trol and assurance, periodic plan updates, periodic  
 14 status reports, and such other ~~matter~~ *matters* the  
 15 Secretary deems ~~appropriate~~; *appropriate*.

16 (f) *REVIEW OF PLANS*.—*The Secretary of Transpor-*  
 17 *tation shall complete the review of the plans required by*  
 18 *paragraphs (1) and (2) of subsection (e) and approve or*  
 19 *disapprove the plans within 45 days after the date on which*  
 20 *each such plan is submitted by Amtrak. If the Secretary*  
 21 *determines that a plan is incomplete or deficient, the Sec-*  
 22 *retary shall notify Amtrak of the incomplete items or defi-*  
 23 *ciencies and Amtrak shall, within 30 days after receiving*  
 24 *the Secretary's notification, submit a modified plan for the*  
 25 *Secretary's review. Within 15 days after receiving addi-*

1 *tional information on items previously included in the*  
 2 *plan, and within 45 days after receiving items newly in-*  
 3 *cluded in a modified plan, the Secretary shall either ap-*  
 4 *prove the modified plan, or, if the Secretary finds the plan*  
 5 *is still incomplete or deficient, the Secretary shall identify*  
 6 *in writing to the Senate Committee on Commerce, Science,*  
 7 *and Transportation and the House of Representatives Com-*  
 8 *mittee on Transportation and Infrastructure the portions*  
 9 *of the plan the Secretary finds incomplete or deficient, ap-*  
 10 *prove all other portions of the plan, obligate the funds asso-*  
 11 *ciated with those other portions, and execute an agreement*  
 12 *with Amtrak within 15 days thereafter on a process for re-*  
 13 *solving the remaining portions of the plan.*

14       ~~(f)~~ (g) FINANCIAL CONTRIBUTION FROM OTHER  
 15 TUNNEL USERS.—The Secretary shall, taking into ac-  
 16 count the need for the timely completion of all ~~life safety~~  
 17 *portions* of the tunnel projects described in subsection  
 18 (a)—

19           (1) consider the extent to which rail carriers  
 20           other than Amtrak use the tunnels;

21           (2) consider the feasibility of seeking a financial  
 22           contribution from those other rail carriers toward  
 23           the costs of the projects; and

24           (3) ~~seek~~ *obtain* financial contributions or com-  
 25           mitments from such other rail carriers at levels re-

1 flecting the extent of their use of the ~~tunnels~~. *tun-*  
 2 *nels, if feasible.*

3 **SEC. 8. TRANSPORTATION SECURITY.**

4 **SEC. 8. MEMORANDUM OF AGREEMENT.**

5 (a) MEMORANDUM OF AGREEMENT.—Within 60 days  
 6 after the date of enactment of this Act, the Secretary of  
 7 Transportation and the ~~Under Secretary of Homeland Se-~~  
 8 ~~curity for Border and Transportation Security~~ *Secretary*  
 9 *of Homeland Security* shall execute a memorandum of  
 10 agreement governing the roles and responsibilities of the  
 11 Department of Transportation and the Department of  
 12 Homeland Security, respectively, in addressing railroad  
 13 transportation security matters, including the processes  
 14 the departments will follow to promote communications,  
 15 efficiency, and nonduplication of effort.

16 (b) RAIL SAFETY REGULATIONS.—Section 20103(a)  
 17 of title 49, United States Code, is amended by striking  
 18 “safety” the first place it appears, and inserting “safety,  
 19 including security,”.

20 **SEC. 9. AMTRAK PLAN TO ASSIST FAMILIES OF PAS-**  
 21 **SENGERS INVOLVED IN RAIL PASSENGER AC-**  
 22 **CIDENTS.**

23 (a) IN GENERAL.—Chapter 243 of title 49, United  
 24 States Code, is amended by adding at the end the fol-  
 25 lowing:

1 **“§ 24316. Plans to address needs of families of pas-**  
2 **sengers involved in rail passenger acci-**  
3 **dents**

4 “(a) SUBMISSION OF PLAN.—Not later than 6  
5 months after the date of the enactment of the Rail Secu-  
6 rity Act of 2004, Amtrak shall submit to the Chairman  
7 of the National Transportation Safety Board *and the Sec-*  
8 *retary of Transportation* a plan for addressing the needs  
9 of the families of passengers involved in any rail passenger  
10 accident involving an Amtrak intercity train and resulting  
11 in a loss of life.

12 “(b) CONTENTS OF PLANS.—The plan to be sub-  
13 mitted by Amtrak under subsection (a) shall include, at  
14 a minimum, the following:

15 “(1) A process by which Amtrak will maintain  
16 and provide to the National Transportation Safety  
17 ~~Board,~~ *Board and the Secretary of Transportation,*  
18 immediately upon request, a list (which is based on  
19 the best available information at the time of the re-  
20 quest) of the names of the passengers aboard the  
21 train (whether or not such names have been  
22 verified), and will periodically update the list. The  
23 plan shall include a procedure, with respect to unre-  
24 served trains and passengers not holding reserva-  
25 tions on other trains, for Amtrak to use reasonable

1 efforts to ascertain the number and names of pas-  
2 sengers aboard a train involved in an accident.

3 “(2) A plan for creating and publicizing a reli-  
4 able, toll-free telephone number within 4 hours after  
5 such an accident occurs, and for providing staff, to  
6 handle calls from the families of the passengers.

7 “(3) A process for notifying the families of the  
8 passengers, before providing any public notice of the  
9 names of the passengers, by suitably trained individ-  
10 uals.

11 “(4) A process for providing the notice de-  
12 scribed in paragraph (2) to the family of a pas-  
13 senger as soon as Amtrak has verified that the pas-  
14 senger was aboard the train (whether or not the  
15 names of all of the passengers have been verified).

16 “(5) A process by which the family of each pas-  
17 senger will be consulted about the disposition of all  
18 remains and personal effects of the passenger within  
19 Amtrak’s control; that any possession of the pas-  
20 senger within Amtrak’s control will be returned to  
21 the family unless the possession is needed for the ac-  
22 cident investigation or any criminal investigation;  
23 and that any unclaimed possession of a passenger  
24 within Amtrak’s control will be retained by the rail  
25 passenger carrier for at least 18 months.

1           “(6) A process by which the treatment of the  
2 families of nonrevenue passengers will be the same  
3 as the treatment of the families of revenue pas-  
4 sengers.

5           “(7) An assurance that Amtrak will provide  
6 adequate training to its employees and agents to  
7 meet the needs of survivors and family members fol-  
8 lowing an accident.

9           “(c) USE OF INFORMATION.—The National Trans-  
10 portation Safety ~~Board and Amtrak Board~~, *the Secretary*  
11 *of Transportation, and Amtrak* may not release to any per-  
12 son information on a list obtained under subsection (b)(1)  
13 but may provide information on the list about a passenger  
14 to the family of the passenger to the extent that the Board  
15 or Amtrak considers appropriate.

16           “(d) LIMITATION ON LIABILITY.—Amtrak shall not  
17 be liable for damages in any action brought in a Federal  
18 or State court arising out of the performance of Amtrak  
19 in preparing or providing a passenger list, or in providing  
20 information concerning a train reservation, pursuant to a  
21 plan submitted by Amtrak under subsection (b), unless  
22 such liability was caused by Amtrak’s conduct.

23           “(e) LIMITATION ON STATUTORY CONSTRUCTION.—  
24 Nothing in this section may be construed as limiting the  
25 actions that Amtrak may take, or the obligations that Am-

1 trak may have, in providing assistance to the families of  
2 passengers involved in a rail passenger accident.

3 “(f) AUTHORIZATION OF APPROPRIATIONS.—There  
4 are authorized to be appropriated to the Secretary of  
5 Transportation for the use of Amtrak \$500,000 for fiscal  
6 year 2005 to carry out this section. Amounts appropriated  
7 pursuant to this subsection shall remain available until ex-  
8 pended.”.

9 (b) CONFORMING AMENDMENT.—The chapter anal-  
10 ysis for chapter 243 of title 49, United States Code, is  
11 amended by adding at the end the following:

“Sec.

“24316. Plan to assist families of passengers involved in rail passenger acci-  
dents.”.

12 **SEC. 10. SYSTEM-WIDE AMTRAK SECURITY UPGRADES.**

13 **SEC. 10. SYSTEMWIDE AMTRAK SECURITY UPGRADES.**

14 (a) IN GENERAL—Subject to subsection (c), the  
15 Under Secretary of Homeland Security for Border and  
16 Transportation Security is authorized to make grants,  
17 through the Secretary of Transportation, to Amtrak—

18 (1) to secure major tunnel access points and en-  
19 sure tunnel integrity in New York, Baltimore, and  
20 Washington, DC;

21 (2) to secure Amtrak trains;

22 (3) to secure Amtrak stations;

23 (4) to obtain a watch list identification system  
24 approved by the Under Secretary;

1           (5) to obtain train tracking and *interoperable*  
2           communications systems that are coordinated to the  
3           maximum extent possible;

4           (6) to hire additional police and security offi-  
5           cers, including canine units; and

6           (7) to expand emergency preparedness efforts.

7           (b) CONDITIONS.—The Secretary of Transportation  
8           may not disburse funds to Amtrak under subsection (a)  
9           unless the projects are contained in a systemwide security  
10          plan approved by the Under Secretary, in consultation  
11          with the Secretary of Transportation, ~~and~~ *and, for capital*  
12          *projects, meet the requirements of section 7(e)(2). The*  
13          *plan shall include appropriate measures to address security*  
14          *awareness, emergency response, and passenger evacuation*  
15          *training.*

16          (c) EQUITABLE GEOGRAPHIC ALLOCATION.—The  
17          ~~Secretary~~ *Under Secretary* shall ensure that, subject to  
18          meeting the highest security needs on Amtrak’s entire sys-  
19          tem, stations and facilities located outside of the North-  
20          east Corridor receive an equitable share of the security  
21          funds authorized by this section.

22          (d) AVAILABILITY OF FUNDS.—There are authorized  
23          to be appropriated to the Under Secretary of Homeland  
24          Security for Border and Transportation Security  
25          ~~\$62,500,000~~ *\$63,500,000* for fiscal year 2005 for the pur-

1 poses of carrying out this section. Amounts appropriated  
2 pursuant to this subsection shall remain available until ex-  
3 pended.

4 **SEC. 11. FREIGHT AND PASSENGER RAIL SECURITY UP-**  
5 **GRADES.**

6 (a) SECURITY IMPROVEMENT GRANTS.—The Under  
7 Secretary of Homeland Security for Border and Transpor-  
8 tation Security is authorized to make grants to freight  
9 railroads, the Alaska Railroad, hazardous materials ship-  
10 pers, owners of rail cars used in the transportation of haz-  
11 ardous materials, *universities, colleges and research centers,*  
12 *State and local governments (for passenger facilities and*  
13 *infrastructure not owned by Amtrak),* and, through the  
14 Secretary of Transportation, to Amtrak, for full or partial  
15 reimbursement of costs incurred in the conduct of activi-  
16 ties to prevent or respond to acts of terrorism, sabotage,  
17 or other intercity passenger rail and freight rail security  
18 threats, including—

19 (1) security and redundancy for critical commu-  
20 nications, computer, and train control systems essen-  
21 tial for secure rail operations;

22 (2) accommodation of cargo or passenger  
23 screening equipment at the United States-Mexico  
24 border or the United States-Canada border;

1           (3) the security of hazardous material transpor-  
2           tation by rail;

3           (4) secure intercity passenger rail stations,  
4           trains, and infrastructure;

5           (5) structural modification or replacement of  
6           ~~pressurized tank cars~~ *rail cars transporting high*  
7           *hazard materials* to improve their resistance to acts  
8           of terrorism;

9           (6) employee security awareness, preparedness,  
10          passenger evacuation, and emergency response train-  
11          ing;

12          (7) public security awareness campaigns for  
13          passenger train operations; ~~and~~

14          (8) *the sharing of intelligence and information*  
15          *about security threats;*

16          (9) *to obtain train tracking and interoperable*  
17          *communications systems that are coordinated to the*  
18          *maximum extent possible;*

19          (10) *to hire additional police and security offi-*  
20          *cers, including canine units; and*

21          ~~(8)~~ (11) other improvements recommended by  
22          the report required by section 2, including infra-  
23          structure, facilities, and equipment upgrades.

24          (b) ACCOUNTABILITY.—The Under Secretary shall  
25          adopt necessary procedures, including audits, to ensure

1 that grants made under this section are expended in ac-  
 2 cordance with the purposes of this Act and the priorities  
 3 and other criteria developed by the Under Secretary.

4       (c) *EQUITABLE ALLOCATION.*—*The Under Secretary*  
 5 *shall equitably distribute the funds authorized by this sec-*  
 6 *tion, taking into account geographic location, and shall en-*  
 7 *courage non-Federal financial participation in awarding*  
 8 *grants. With respect to grants for passenger rail security,*  
 9 *the Under Secretary shall also take into account passenger*  
 10 *volume and whether a station is used by commuter rail pas-*  
 11 *sengers as well as intercity rail passengers.*

12       ~~(c)~~ (d) *CONDITIONS.*—The Secretary of Transpor-  
 13 tation may not disburse funds to Amtrak under subsection  
 14 (a) unless Amtrak meets the conditions set forth in section  
 15 10(b) of this Act.

16       ~~(d)~~ *TANK CAR REPLACEMENT INCENTIVE.*—A grant  
 17 under subsection ~~(a)(5)~~ may be for up to 15 percent of  
 18 the cost of the modification or replacement of a pressur-  
 19 ized tank car.

20       (e) *ALLOCATION BETWEEN RAILROADS AND OTH-*  
 21 *ERS.*—Unless as a result of the assessment required by  
 22 section 2 the Under Secretary of Homeland Security for  
 23 Border and Transportation Security determines that crit-  
 24 ical rail transportation security needs require reimburse-

1 ment in greater amounts to any eligible entity, no grants  
2 under this section may be made—

3 (1) in excess of \$65,000,000 to Amtrak; or

4 (2) in excess of \$100,000,000 for the purposes  
5 described in paragraphs (3) and ~~(4)~~ (5) of sub-  
6 section (a).

7 ~~(f) PROCEDURES FOR GRANT AWARD.—The Under~~  
8 ~~Secretary shall prescribe procedures and schedules for the~~  
9 ~~awarding of grants under this title, including application~~  
10 ~~and qualification procedures (including a requirement that~~  
11 ~~the applicant have a security plan); and a record of deci-~~  
12 ~~sion on applicant eligibility. The procedures shall include~~  
13 ~~the execution of a grant agreement between the grant re-~~  
14 ~~ipient and the Under Secretary. The Under Secretary~~  
15 ~~shall issue a final rule establishing the procedures not~~  
16 ~~later than 90 days after the date of enactment of this Act.~~

17 ~~(g)~~ (f) AUTHORIZATION OF APPROPRIATIONS.—  
18 There are authorized to be appropriated to the Under Sec-  
19 retary of Homeland Security for Border and Transpor-  
20 tation Security ~~\$250,000,000~~ \$350,000,000 for fiscal year  
21 2005 to carry out the purposes of this section. Amounts  
22 appropriated pursuant to this subsection shall remain  
23 available until expended.

24 (g) HIGH HAZARD MATERIALS DEFINED.—*In this sec-*  
25 *tion, the term “high hazard materials” means poison inha-*

1 *lation hazard materials, Class 2.3 gases, Class 6.1 mate-*  
2 *rials, and anhydrous ammonia.*

3 **SEC. 12. DEPARTMENT OF TRANSPORTATION OVERSIGHT.**

4 **SEC. 12. OVERSIGHT AND GRANT PROCEDURES.**

5 (a) SECRETARIAL OVERSIGHT.—The Secretary of  
6 Transportation may use up to 0.5 percent of amounts  
7 made available to Amtrak for capital projects under the  
8 Rail Security Act of 2004 to enter into contracts for the  
9 review of proposed capital projects and related program  
10 management plans and to oversee construction of such  
11 projects.

12 (b) USE OF FUNDS.—The Secretary may use  
13 amounts available under subsection (a) of this subsection  
14 to make contracts for safety, procurement, management,  
15 and financial compliance reviews and audits of a recipient  
16 of amounts under subsection (a).

17 (c) PROCEDURES FOR GRANT AWARD.—*The Under*  
18 *Secretary shall prescribe procedures and schedules for the*  
19 *awarding of grants under this Act, including application*  
20 *and qualification procedures (including a requirement that*  
21 *the applicant have a security plan), and a record of deci-*  
22 *sion on applicant eligibility. The procedures shall include*  
23 *the execution of a grant agreement between the grant recipi-*  
24 *ent and the Under Secretary. The Under Secretary shall*

1 *issue a final rule establishing the procedures not later than*  
 2 *90 days after the date of enactment of this Act.*

3 **SEC. 13. RAIL SECURITY RESEARCH AND DEVELOPMENT.**

4 (a) ESTABLISHMENT OF RESEARCH AND DEVELOP-  
 5 MENT PROGRAM.—The Under Secretary of Homeland Se-  
 6 curity for Border and Transportation Security, in conjunc-  
 7 tion with the Secretary of Transportation, shall carry out  
 8 a research and development program for the purpose of  
 9 improving freight and intercity passenger rail ~~security, in-~~  
 10 ~~cluding~~ *security that may include* research and develop-  
 11 ment projects to—

12 (1) reduce the vulnerability of passenger trains,  
 13 stations, and equipment to ~~explosives~~, *explosives and*  
 14 *hazardous chemical, biological, and radioactive sub-*  
 15 *stances*;

16 (2) test new emergency response techniques and  
 17 technologies;

18 (3) develop improved freight technologies, in-  
 19 cluding—

20 (A) technologies for sealing rail cars;

21 (B) automatic inspection of rail cars;

22 (C) communication-based train controls;

23 and

24 (D) emergency response training;

1           (4) test wayside detectors that can detect tam-  
2           pering with railroad equipment; and

3           (5) support enhanced security for the transpor-  
4           tation of hazardous materials by rail, including—

5                   (A) technologies to detect a breach in a  
6                   tank car and transmit information about the in-  
7                   tegrity of tank cars to the train crew;

8                   (B) research to improve tank car integrity,  
9                   with a focus on tank cars that carry ~~toxic inha-~~  
10                   ~~lation chemicals; and~~ *high hazard materials (as*  
11                   *defined in section 11(g) of this Act;*

12                   (C) techniques to transfer hazardous mate-  
13                   rials from rail cars that are damaged or other-  
14                   wise represent an unreasonable risk to human  
15                   life or public ~~safety.~~ *safety;*

16           (6) *other projects recommended in the report re-*  
17           *quired by section 2.*

18           (b) COORDINATION WITH OTHER RESEARCH INITIA-  
19           TIVES.—The Under Secretary of Homeland Security for  
20           Border and Transportation Security shall ensure that the  
21           research and development program authorized by this sec-  
22           tion is coordinated with other research and development  
23           initiatives at the Department and the Department of  
24           Transportation. *The Under Secretary of Homeland Secu-*  
25           *rity for Border and Transportation Security shall carry out*

1 *any research and development project authorized by this*  
 2 *section through a reimbursable agreement with the Sec-*  
 3 *retary of Transportation if the Secretary of Transpor-*  
 4 *tation—*

5           (1) is already sponsoring a research and devel-  
 6           opment project in a similar area; or

7           (2) has a unique facility or capability that  
 8           would be useful in carrying out the project.

9       (c) ~~ACCOUNTABILITY.—The Under Secretary of~~  
 10 ~~Homeland Security for Border and Transportation Secu-~~  
 11 ~~rity shall carry out any research and development project~~  
 12 ~~authorized by this section through a reimbursable agree-~~  
 13 ~~ment with the Secretary of Transportation if the Secretary~~  
 14 ~~of Transportation—~~

15           ~~(1) is already sponsoring a research and devel-~~  
 16           ~~opment project in a similar area; or~~

17           ~~(2) has a unique facility or capability that~~  
 18           ~~would be useful in carrying out the project.~~

19       (c) *ACCOUNTABILITY.—The Under Secretary shall*  
 20 *adopt necessary procedures, including audits, to ensure that*  
 21 *grants made under this section are expended in accordance*  
 22 *with the purposes of this Act and the priorities and other*  
 23 *criteria developed by the Under Secretary.*

24       (d) ~~AUTHORIZATION OF APPROPRIATIONS.—There~~  
 25 ~~are authorized to be appropriated to the Under Secretary~~

1 of Homeland Security for Border and Transportation Se-  
2 curity \$50,000,000 in each of fiscal years 2005 and 2006  
3 to carry out the purposes of this section. Amounts appro-  
4 priated pursuant to this subsection shall remain available  
5 until expended.

6 **SEC. 14. WELDED RAIL AND TANK CAR SAFETY IMPROVE-**  
7 **MENTS.**

8 (a) TRACK STANDARDS.—Within 90 days after the  
9 date of enactment of this Act, the Federal Railroad Ad-  
10 ministration shall—

11 (1) require each ~~railroad~~ *track owner* using con-  
12 tinuous welded rail track to include procedures (in  
13 its ~~program procedures~~ filed with the ~~Administra-~~  
14 ~~tion~~) *that Administration pursuant to section*  
15 *213.119 of title 49, Code of Federal Regulations*) to  
16 improve the identification of cracks in rail joint bars;

17 (2) instruct Administration track inspectors to  
18 obtain copies of the most recent continuous welded  
19 rail programs of each railroad within the inspectors'  
20 areas of responsibility and require that inspectors  
21 use those programs when conducting track inspec-  
22 tions; and

23 (3) establish a program to periodically review  
24 continuous welded rail joint bar inspection data from  
25 railroads and Administration track inspectors and,

1 whenever the Administration determines that it is  
 2 necessary or appropriate, require railroads to in-  
 3 crease the frequency or improve the methods of in-  
 4 spection of joint bars in continuous welded rail.

5 (b) TANK CAR STANDARDS.—The Federal Railroad  
 6 Administration shall—

7 (1) within 1 year after the date of enactment  
 8 of this Act, validate the predictive model it is devel-  
 9 oping to quantify the ~~maximum~~ *relevant* dynamic  
 10 forces acting on railroad tank cars under accident  
 11 conditions; and

12 (2) within 18 months after the date of enact-  
 13 ment of this Act, initiate a rulemaking to develop  
 14 and implement appropriate design standards for  
 15 pressurized tank cars.

16 (c) OLDER TANK CAR IMPACT RESISTANCE ANAL-  
 17 YSIS AND REPORT.—Within 2 years after the date of en-  
 18 actment of this Act, the Federal Railroad ~~Administration,~~  
 19 ~~in coordination with the National Transportation Safety~~  
 20 ~~Board, shall—~~ *Administration shall—*

21 (1) conduct a comprehensive analysis to deter-  
 22 mine the impact resistance of the steels in the shells  
 23 of pressure tank cars constructed before 1989; and

24 (2) transmit a report to the Senate Committee  
 25 on Commerce, Science, and Transportation and the

1 House of Representatives Committee on Transpor-  
2 tation and Infrastructure with recommendations for  
3 measures to eliminate or mitigate the risk of cata-  
4 strophic failure.

5 **SEC. 15. NORTHERN BORDER RAIL PASSENGER REPORT.**

6 Within 180 days after the date of enactment of this  
7 Act, the Under Secretary of Homeland Security for Bor-  
8 der and Transportation Security, in consultation with the  
9 heads of other appropriate Federal departments and agen-  
10 cies and the National Railroad Passenger Corporation,  
11 shall transmit a report to the Senate Committee on Com-  
12 merce, Science, and Transportation and the House of Rep-  
13 resentatives Committee on Transportation and Infrastruc-  
14 ture that contains—

15 (1) a description of the current system for  
16 screening passengers and baggage on passenger rail  
17 service between the United States and Canada;

18 (2) an assessment of the current program to  
19 provide preclearance of airline passengers between  
20 the United States and Canada as outlined in “The  
21 Agreement on Air Transport Preclearance between  
22 the Government of Canada and the Government of  
23 the United States of America”, dated January 18,  
24 2001;

1           (3) an assessment of the current program to  
2 provide preclearance of freight railroad traffic be-  
3 tween the United States and Canada as outlined in  
4 the “Declaration of Principle for the Improved Secu-  
5 rity of Rail Shipments by Canadian National Rail-  
6 way and Canadian Pacific Railway from Canada to  
7 the United States”, dated April 2, 2003;

8           (4) information on progress by the Department  
9 of Homeland Security and other Federal agencies to-  
10 wards finalizing a bilateral protocol with Canada  
11 that would provide for preclearance of passengers on  
12 trains operating between the United States and Can-  
13 ada;

14           (5) a description of legislative, regulatory,  
15 budgetary, or policy barriers within the United  
16 States Government to providing pre-screened pas-  
17 senger lists for rail passengers travelling between the  
18 United States and Canada to the Department of  
19 Homeland Security;

20           (6) a description of the position of the Govern-  
21 ment of Canada and relevant Canadian agencies  
22 with respect to preclearance of such passengers; and

23           (7) a draft of any changes in existing Federal  
24 law necessary to provide for pre-screening of such

1 passengers and providing pre-screened passenger  
2 lists to the Department of Homeland Security.

3 **SEC. 16. REPORT REGARDING IMPACT ON SECURITY OF**  
4 **TRAIN TRAVEL IN COMMUNITIES WITHOUT**  
5 **GRADE SEPARATION.**

6 (a) *STUDY.*—*The Secretary of Homeland Security*  
7 *shall, in consultation with State and local government offi-*  
8 *cials, conduct a study on the impact of blocked highway-*  
9 *railroad grade crossings on the ability of emergency re-*  
10 *sponders, including ambulances and police, fire, and other*  
11 *emergency vehicles, to perform public safety and security*  
12 *duties in the event of a terrorist attack.*

13 (b) *REPORT.*—*Not later than 1 year after the date of*  
14 *enactment of this Act, the Secretary of Homeland Security*  
15 *shall submit a report to the Committee on Transportation*  
16 *and Infrastructure of the House of Representatives and the*  
17 *Committee on Commerce, Science, and Transportation of*  
18 *the Senate on the findings of the study conducted under*  
19 *subsection (a) and recommendations for reducing the im-*  
20  *pact of blocked crossings on emergency response.*

21 **SEC. 17. WHISTLEBLOWER PROTECTION PROGRAM.**

22 (a) *IN GENERAL.*—*Subchapter A of chapter 201 of title*  
23 *49, United States Code, is amended by inserting after sec-*  
24 *tion 20115 the following:*

1 **“§20116. Whistleblower protection for rail security**  
2 **matters**

3 “(a) *DISCRIMINATION AGAINST EMPLOYEE.*—No rail  
4 carrier engaged in interstate or foreign commerce may dis-  
5 charge a railroad employee or otherwise discriminate  
6 against a railroad employee because the employee (or any  
7 person acting pursuant to a request of the employee)—

8 (1) *provided, caused to be provided, or is about*  
9 *to provide or cause to be provided, to the employer or*  
10 *the Federal Government information relating to a*  
11 *perceived threat to security; or*

12 “(2) *provided, caused to be provided, or is about*  
13 *to provide or cause to be provided, testimony before*  
14 *Congress or at any Federal or State proceeding re-*  
15 *garding a perceived threat to security; or*

16 “(3) *refused to violate or assist in the violation*  
17 *of any law, rule or regulation related to rail security.*

18 “(b) *DISPUTE RESOLUTION.*—A dispute, grievance, or  
19 claim arising under this section is subject to resolution  
20 under section 3 of the Railway Labor Act (45 U.S.C. 153).  
21 In a proceeding by the National Railroad Adjustment  
22 Board, a division or delegate of the Board, or another board  
23 of adjustment established under section 3 to resolve the dis-  
24 pute, grievance, or claim the proceeding shall be expedited  
25 and the dispute, grievance, or claim shall be resolved not  
26 later than 180 days after it is filed. If the violation is a

1 *form of discrimination that does not involve discharge, sus-*  
2 *pension, or another action affecting pay, and no other rem-*  
3 *edy is available under this subsection, the Board, division,*  
4 *delegate, or other board of adjustment may award the em-*  
5 *ployee reasonable damages, including punitive damages, of*  
6 *not more than \$20,000.*

7       “(c) *PROCEDURAL REQUIREMENTS.*—*Except as pro-*  
8 *vided in subsection (b), the procedure set forth in section*  
9 *42121(b)(2)(B) of this title, including the burdens of proof,*  
10 *applies to any complaint brought under this section.*

11       “(d) *ELECTION OF REMEDIES.*—*An employee of a*  
12 *railroad carrier may not seek protection under both this*  
13 *section and another provision of law for the same allegedly*  
14 *unlawful act of the carrier.*

15       “(e) *DISCLOSURE OF IDENTITY.*—

16               “(1) *Except as provided in paragraph (2) of this*  
17 *subsection, or with the written consent of the em-*  
18 *ployee, the Secretary of Transportation may not dis-*  
19 *close the name of an employee of a railroad carrier*  
20 *who has provided information about an alleged viola-*  
21 *tion of this section.*

22               “(2) *The Secretary shall disclose to the Attorney*  
23 *General the name of an employee described in para-*  
24 *graph (1) of this subsection if the matter is referred*  
25 *to the Attorney General for enforcement.”.*

1           **(b) CONFORMING AMENDMENT.**—*The chapter analysis*  
2 *for chapter 201 of title 49, United States Code, is amended*  
3 *by inserting after the item relating to section 20115 the fol-*  
4 *lowing:*

“20116. Whistleblower protection for rail security matters.”.

Calendar No. 536

108<sup>TH</sup> CONGRESS  
2<sup>D</sup> Session

**S. 2273**

[Report No. 108-278]

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**A BILL**

To provide increased rail transportation security.

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MAY 21, 2004

Reported with amendments