

108TH CONGRESS
2D SESSION

H. R. 4476

To provide for the security and safety of rail and rail transit transportation systems, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 1, 2004

Mr. LYNCH introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To provide for the security and safety of rail and rail transit transportation systems, and for other purposes.

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 Transit Security and Safety Act of 2004”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Rail transportation security risk assessment.
- Sec. 3. Federal Rail Security Managers.
- Sec. 4. Study of foreign rail transport security programs.
- Sec. 5. Fire and life-safety improvements.
- Sec. 6. Security assistance grants.
- Sec. 7. Rail security research and development.

Sec. 8. Whistleblower protections for rail employees.

Sec. 9. Authorization of appropriations.

1 **SEC. 2. RAIL TRANSPORTATION SECURITY RISK ASSESS-**
2 **MENT.**

3 (a) IN GENERAL.—

4 (1) VULNERABILITY ASSESSMENT.—The Under
5 Secretary for Border and Transportation Security of
6 the Department of Homeland Security, in consulta-
7 tion with the Secretary of Transportation, shall com-
8 plete a vulnerability assessment of freight and pas-
9 senger rail transportation (encompassing railroad
10 carriers, as that term is defined in section 20102(2)
11 of title 49, United States Code). The assessment
12 shall include—

13 (A) identification and evaluation of critical
14 assets and infrastructures;

15 (B) identification of threats to those assets
16 and infrastructures;

17 (C) identification of vulnerabilities that are
18 specific to the transportation of hazardous ma-
19 terials via railroad; and

20 (D) identification of security weaknesses in
21 passenger and cargo security, transportation in-
22 frastructure, protection systems, procedural
23 policies, communications systems, employee

1 training, emergency response planning, and any
2 other area identified by the assessment.

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

8 (3) RECOMMENDATIONS.—Based on the assess-
9 ment conducted under paragraph (1), the Under
10 Secretary, in consultation with the Secretary of
11 Transportation, shall develop prioritized rec-
12 ommendations for improving rail security, including
13 any recommendations the Under Secretary has for—

14 (A) improving the security of rail tunnels,
15 rail bridges, rail switching areas, other rail in-
16 frastructure and facilities, information systems,
17 and other areas identified by the Under Sec-
18 retary as posing significant rail-related risks to
19 public safety and the movement of interstate
20 commerce, taking into account the impact that
21 any proposed security measure might have on
22 the provision of rail service;

23 (B) deploying weapon detection equipment;

1 (C) training employees in terrorism pre-
2 vention, passenger evacuation, and response ac-
3 tivities;

4 (D) conducting public outreach campaigns
5 on passenger railroads;

6 (E) deploying surveillance equipment; and

7 (F) identifying the immediate and long-
8 term economic impact of measures that may be
9 required to address those risks.

10 (4) PLANS.—The report required by subsection
11 (c) shall include—

12 (A) a plan, developed in consultation with
13 the freight and intercity passenger railroads,
14 and State and local governments, for the Fed-
15 eral Government to provide increased security
16 support at high or severe threat levels of alert;
17 and

18 (B) a plan for coordinating rail security
19 initiatives undertaken by the public and private
20 sectors.

21 (b) CONSULTATION.—In carrying out the assessment
22 required by subsection (a), the Under Secretary for Bor-
23 der and Transportation Security of the Department of
24 Homeland Security shall consult with rail management,
25 rail labor, owners or lessors of rail cars used to transport

1 hazardous materials, shippers of hazardous materials,
2 public safety officials (including those within other agen-
3 cies and offices within the Department of Homeland Secu-
4 rity) and other relevant parties.

5 (c) REPORT.—

6 (1) CONTENTS.—Within 90 days after the date
7 of enactment of this Act, the Under Secretary shall
8 transmit to the Senate Committee on Commerce,
9 Science, and Transportation and the House of Rep-
10 resentatives Committee on Transportation and In-
11 frastructure a report containing the assessment and
12 prioritized recommendations required by subsection
13 (a) and an estimate of the cost to implement such
14 recommendations.

15 (2) FORMAT.—The Under Secretary may sub-
16 mit the report in both classified and redacted for-
17 mats if the Under Secretary determines that such
18 action is appropriate or necessary.

19 (d) ALLOCATIONS.—The assessment required by sub-
20 section (a) shall be used as the basis for allocating grant
21 funds under section 6, unless the Secretary of Homeland
22 Security determines that an adjustment is necessary to re-
23 spond to an urgent threat or other significant factors.

24 (e) 2-YEAR UPDATES.—The Under Secretary, in con-
25 sultation with the Secretary of Transportation, shall up-

1 date the assessment and recommendations every 2 years
2 and transmit a report, which may be submitted in both
3 classified and redacted formats, to the Committees named
4 in subsection (c)(1), containing the updated assessment
5 and recommendations.

6 (f) AUTHORIZATION OF APPROPRIATIONS.—There
7 are authorized to be appropriated to the Under Secretary
8 for Border and Transportation Security of the Depart-
9 ment of Homeland Security \$5,000,000 for fiscal year
10 2005 for the purpose of carrying out this section.

11 **SEC. 3. FEDERAL RAIL SECURITY MANAGERS.**

12 (a) ESTABLISHMENT, DESIGNATION, AND STA-
13 TIONING.—The Under Secretary for Border and Trans-
14 portation Security of the Department of Homeland Secu-
15 rity shall establish the position of Federal Rail Security
16 Manager within each of at least 8 regional areas, as di-
17 vided on a geographical basis. The Under Secretary shall
18 designate individuals as Managers for, and station those
19 Managers within, those regions.

20 (b) DUTIES AND POWERS.—The Manager within
21 each region shall—

22 (1) receive intelligence information related to
23 rail and mass transit security;

1 (2) ensure, and assist in, the implementation of
2 a comprehensive rail security plan for the region de-
3 scribed in section 2(a)(4);

4 (3) serve as the regional coordinator of the
5 Under Secretary's response to terrorist incidents and
6 threats to rail and rail assets within the region;

7 (4) coordinate efforts related to rail security
8 with State and local law enforcement; and

9 (5) coordinate with other Managers.

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

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

18 (b) **PURPOSE.**—The purpose of this 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 this 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 (d) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated \$1,000,000 for fiscal
9 year 2005 to carry out the provisions of this section, which
10 shall remain available until expended.

11 **SEC. 5. FIRE AND LIFE-SAFETY IMPROVEMENTS.**

12 (a) LIFE-SAFETY NEEDS.—The Secretary of Trans-
13 portation is authorized to make grants to Amtrak for the
14 purpose of making fire and life-safety improvements to
15 tunnels on the Northeast Corridor in New York, New
16 York, Baltimore, Maryland, Washington, District of Co-
17 lumbia, and Boston, Massachusetts.

18 (b) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated to the Secretary of
20 Transportation for the purposes of carrying out subsection
21 (a) the following amounts:

22 (1) For the 6 New York tunnels to provide ven-
23 tilation, electrical, and fire safety technology up-
24 grades, emergency communication and lighting sys-

1 tems, and emergency access and egress for pas-
2 sengers—

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

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

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

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

7 and

8 (E) \$100,000,000 for fiscal year 2009.

9 (2) For the Baltimore & Potomac Tunnel and
10 the Union tunnel, together, to provide adequate
11 drainage, ventilation, communication, lighting, and
12 passenger egress upgrades—

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

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

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

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

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

18 (3) For the Washington, District of Columbia,
19 Union Station tunnels to improve ventilation, com-
20 munication, lighting, and passenger egress up-
21 grades—

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

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

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

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

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

2 (4) For the Boston, Massachusetts, Back Bay
3 tunnels to improve ventilation, communication, light-
4 ing, and passenger egress upgrades—

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

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

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

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

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

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

15 (d) AVAILABILITY OF APPROPRIATED FUNDS.—
16 Amounts appropriated pursuant to this section shall re-
17 main available until expended.

18 (e) PLAN REQUIRED.—The Secretary may not make
19 amounts available to Amtrak for obligation or expenditure
20 under subsection (a)—

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

24 (2) unless, for each project funded pursuant to
25 this section, the Secretary has approved a project

1 management plan prepared by Amtrak addressing
2 project budget, construction schedule, recipient staff
3 organization, document control and record keeping,
4 change order procedure, quality control and assur-
5 ance, periodic status reports, and such other matter
6 the Secretary deems appropriate;

7 (f) FINANCIAL CONTRIBUTION FROM OTHER TUN-
8 NEL USERS.—The Secretary shall, taking into account the
9 need for timely completion of all life-safety portions of the
10 tunnel projects described in subsection (a)—

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

13 (2) consider the feasibility of seeking a financial
14 contribution from those other rail carriers toward
15 the costs of the projects; and

16 (3) seek financial contributions or commitments
17 from such other rail carriers at levels reflecting the
18 extent of their use of the tunnels.

19 **SEC. 6. SECURITY ASSISTANCE GRANTS.**

20 (a) CAPITAL ASSISTANCE PROGRAM.—

21 (1) IN GENERAL.—The Secretary of Homeland
22 Security shall award grants directly to public trans-
23 portation agencies for allowable capital security im-
24 provements based on the recommendations estab-
25 lished under section 2(a)(3).

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

3 (A) tunnel protection systems;

4 (B) perimeter protection systems;

5 (C) redundant critical operations control
6 systems;

7 (D) chemical, biological, radiological, or ex-
8 plosive detection systems;

9 (E) surveillance equipment;

10 (F) communications equipment;

11 (G) emergency response equipment;

12 (H) fire suppression and decontamination
13 equipment;

14 (I) global positioning or automated vehicle
15 locator type system equipment;

16 (J) evacuation improvements; and

17 (K) other capital safety improvements.

18 (b) OPERATIONAL SECURITY ASSISTANCE PRO-
19 GRAM.—

20 (1) IN GENERAL.—The Secretary of Homeland
21 Security shall award grants directly to public trans-
22 portation agencies for allowable operational security
23 improvements based on the recommendations estab-
24 lished under section 2(a)(3).

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

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

7 (B) live or simulated drills;

8 (C) public awareness campaigns for en-
9 hanced public transit security;

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

12 (E) overtime reimbursement for enhanced
13 security personnel during significant national
14 and international public events; and

15 (F) other appropriate security improve-
16 ments.

17 (c) CONGRESSIONAL NOTIFICATION.—Not later than
18 3 days before any grant is awarded under this section,
19 the Secretary of Homeland Security shall notify the Com-
20 mittee on Transportation and Infrastructure of the House
21 of Representatives of the intent to award such grant.

22 (d) PROCEDURES FOR GRANT AWARD.—The Sec-
23 retary shall prescribe procedures and schedules for the
24 awarding of grants under this section, including applica-
25 tion and qualification procedures, and a record of decision

1 on applicant eligibility. The procedures shall include the
2 execution of a grant agreement between the grant recipi-
3 ent and the Secretary. The Secretary shall issue a final
4 rule establishing the procedures not later than 90 days
5 after the date of enactment of this Act.

6 (e) TRANSIT AGENCY RESPONSIBILITIES.—Each
7 public transportation agency that receives a grant under
8 this section shall—

9 (1) identify a security coordinator to coordinate
10 security improvements;

11 (2) develop a comprehensive plan that dem-
12 onstrates the agency’s capacity for operating and
13 maintaining the equipment purchased under this
14 subsection;

15 (3) develop a comprehensive training plan that
16 demonstrates the agency’s capacity to train all em-
17 ployees in emergency response and security aware-
18 ness; and

19 (4) report annually to the Department of
20 Homeland Security on the use of grant funds re-
21 ceived under this section.

22 (f) RETURN OF MISSPENT GRANT FUNDS.—If the
23 Secretary of Homeland Security determines that a grantee
24 used any portion of the grant funds received under this
25 section for a purpose other than allowable uses specified

1 for that grant under this section, the grantee shall return
2 any amount so used to the Treasury of the United States.

3 **SEC. 7. RAIL SECURITY RESEARCH AND DEVELOPMENT.**

4 (a) ESTABLISHMENT OF RESEARCH AND DEVELOP-
5 MENT PROGRAM.—The Under Secretary for Border and
6 Transportation Security of the Department of Homeland
7 Security, in conjunction with the Secretary of Transpor-
8 tation, shall carry out a research and development pro-
9 gram for the purpose of improving freight and intercity
10 passenger rail security, including research and develop-
11 ment projects to—

12 (1) reduce the vulnerability of passenger trains,
13 stations, infrastructure, and equipment to explosives;

14 (2) test new emergency response techniques and
15 technologies;

16 (3) research chemical, biological, radiological, or
17 explosive detection systems;

18 (4) research imaging technologies;

19 (5) research technologies for sealing rail cars;

20 and

21 (6) support enhanced security for transpor-
22 tation of hazardous materials by rail, including—

23 (A) technologies to detect a breach in a
24 tank car and transit information about the in-
25 tegrity of tank cars to the train crew;

1 (B) research to improve tank car integrity,
2 with a focus on tank cars that carry toxic-inha-
3 lation chemicals; and

4 (C) techniques to transfer hazardous mate-
5 rials from rail cars that are damaged or other-
6 wise represent an unreasonable risk to human
7 life or public safety.

8 (b) RESEARCH AND DEVELOPMENT GRANTS.—The
9 Under Secretary, in consultation with the Federal Transit
10 Administration, shall award grants to public or private en-
11 tities to conduct research into, and demonstration of, tech-
12 nologies and methods to reduce and deter terrorist threats
13 or mitigate damages resulting from terrorist attacks
14 against public transportation systems, as described in sub-
15 section (a).

16 **SEC. 8. WHISTLEBLOWER PROTECTIONS FOR RAIL EM-**
17 **PLOYEES.**

18 (a) IN GENERAL.—No company involved in rail
19 transportation (encompassing railroad carriers, as that
20 term is defined in section 20102(2) of title 49, United
21 States Code) or any officer, employee, contractor, subcon-
22 tractor, or agent of such company, may discharge, demote,
23 suspend, threaten, harass, hold liable, or discriminate in
24 any way against an employee because of any lawful act
25 done by the employee—

1 (1) to provide information, to cause information
2 to be provided, or otherwise assist in any investiga-
3 tion or proceeding regarding conduct that the em-
4 ployee believes reasonably contravenes the purposes,
5 functions, or responsibilities of this Act, when that
6 information or assistance is provided to or the inves-
7 tigation is conducted by—

8 (A) a Federal or State regulatory or law
9 enforcement agency;

10 (B) any Member of Congress or any com-
11 mittee of Congress; or

12 (C) a person with supervisory authority
13 over the employee (or such other person work-
14 ing for the employer who has the authority to
15 investigate, discover, or terminate misconduct);

16 or

17 (2) to refuse to violate or assist in the violation
18 of any rule, law, or regulation related to rail secu-
19 rity.

20 (b) ENFORCEMENT ACTION.—

21 (1) IN GENERAL.—A person who alleges dis-
22 charge or other discrimination by any person in vio-
23 lation of subsection (a) may seek relief under sub-
24 section (c) by—

1 (A) filing a complaint with the Secretary of
2 Labor; or

3 (B) if the Secretary of Labor has not
4 issued a final decision within 180 days of the
5 filing of the complaint and there is no showing
6 that such delay is due to bad faith of the claim-
7 ant, bringing an action at law or equity for de
8 novo review in the appropriate district court of
9 the United States, which shall have jurisdiction
10 over such action without regard to the amount
11 in controversy.

12 (2) PROCEDURE.—

13 (A) IN GENERAL.—An action brought
14 under paragraph (1)(A) shall be governed by
15 the rules and procedures set forth in section
16 42121(b)(1) of title 49, United States Code.

17 (B) EXCEPTION.—Notification made under
18 section 42121(b)(1) of title 49, United States
19 Code, shall be made to the person named in the
20 complaint and to the employer.

21 (C) BURDENS OF PROOF.—An action
22 under paragraph (1)(B) shall be governed by
23 the legal burdens of proof set forth in section
24 42121(b) of title 49, United States Code.

1 (D) STATUTE OF LIMITATIONS.—An action
2 brought under paragraph (1) shall be com-
3 menced not later than 90 days after the date on
4 which the violation occurs.

5 (c) REMEDIES.—

6 (1) IN GENERAL.—An employee prevailing in
7 any action under subsection (b)(1) shall be entitled
8 to all relief necessary to make the employee whole.

9 (2) COMPENSATORY DAMAGES.—Relief for any
10 action under paragraph (1) shall include—

11 (A) reinstatement with the same seniority
12 status that the employee would have had, but
13 for the discrimination;

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

16 (C) the compensation for any special dam-
17 ages sustained as a result of the discrimination,
18 including litigation costs, expert witness fees,
19 and reasonable attorney's fees.

20 (d) RIGHTS RETAINED BY EMPLOYEE.—Nothing in
21 this section shall be deemed to diminish the rights, privi-
22 leges, or remedies of any employee under any Federal or
23 State law, or under any collective bargaining agreement.

1 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) CAPITAL SECURITY ASSISTANCE PROGRAM.—

3 There are authorized to be appropriated \$2,500,000,000
4 for fiscal year 2005 to carry out the provisions of section
5 6(a), which shall remain available until expended.

6 (b) OPERATIONAL SECURITY ASSISTANCE PRO-
7 GRAM.—There are authorized to be appropriated to carry
8 out the provisions of section 6(b)—

9 (1) \$100,000,000 for fiscal year 2005;

10 (2) \$750,000,000 for fiscal year 2006; and

11 (3) \$500,000,000 for fiscal year 2007.

12 (c) RAIL SECURITY RESEARCH AND DEVELOP-
13 MENT.—There are authorized to be appropriated
14 \$50,000,000 for fiscal year 2005 to carry out the provi-
15 sions of section 7(a), and \$50,000,000 for fiscal year 2005
16 to carry out the provisions of section 7(b), which shall re-
17 main available until expended.

○