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HOUSE OF REPRESENTATIVES
REPORT
110–833

TO PROHIBIT THE SECRETARY OF TRANSPORTATION FROM GRANTING AUTHORITY TO A MOTOR CARRIER DOMICILED IN MEXICO TO OPERATE BEYOND UNITED STATES MUNICIPALITIES AND COMMERCIAL ZONES ON THE UNITED STATES-MEXICO BORDER UNLESS EXPRESSLY AUTHORIZED BY CONGRESS

SEPTEMBER 9, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 6630]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 6630) to prohibit the Secretary of Transportation from granting authority to a motor carrier domiciled in Mexico to operate beyond United States municipalities and commercial zones on the United States-Mexico border unless expressly authorized by Congress, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE LEGISLATION

H.R. 6630 prohibits the Secretary of Transportation from granting authority to a motor carrier domiciled in Mexico to operate beyond United States municipalities and commercial zones on the United States-Mexico border unless expressly authorized by Congress.

BACKGROUND AND NEED FOR LEGISLATION

On February 23, 2007, Secretary of Transportation Mary Peters announced a plan to grant authority to 100 motor carrier companies based in Mexico to conduct long-haul operations beyond the commercial zones as part of a one-year pilot program. Prior to the pilot program, trucks entering from Mexico had been limited to approximately 20-mile-wide "commercial zones" along the U.S.-Mexico border.

The Secretary's announcement was met with strong opposition in Congress. Some Members of Congress and other interested parties expressed serious concerns about the U.S. Department of Transportation's ("DOT") legal authority to carry out the pilot program and to fully open the border, potential impacts of the pilot program on highway safety, and about reciprocity for U.S. carriers seeking access to Mexico.

Congress legislated safeguards into DOT's proposed pilot program in the U.S. Troop Readiness, Veterans Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (P.L. 110–28). Section 6901 of the Troop Readiness Act required the DOT Inspector General ("IG") to verify that DOT is prepared to enforce Federal motor carrier safety laws and regulations with respect to Mexico-domiciled carriers, required DOT to address any issues raised by the IG, and required DOT to submit a report to Congress detailing corrective actions taken before the start of the pilot program. The Inspector General submitted his report to Congress on September 6, 2007, raising questions about whether DOT had sufficient plans in place to carry out the Department's commitment to check every truck every time it crosses the border into the United States under the pilot program. Within a few hours of receiving the IG report, the Secretary submitted her report to Congress and granted operating authority to the first Mexican trucking company under the pilot program. Additional companies have been granted operating authority on a rolling basis.

On December 26, 2007, Congress enacted a further prohibition on DOT action to implement the pilot program. Section 136 of the Consolidated Appropriations Act prohibited DOT from using funds to establish a cross-border motor carrier pilot program. DOT has continued its pilot program despite this funding prohibition, arguing that the language only prohibits future pilot programs and does not impact the program initiated in September 2007.

After calls for additional information on the pilot program from Congress and the public, DOT published three notices in the Federal Register on May 1, 2007 (72 Fed. Reg. 23883), June 8, 2007 (72 Fed. Reg. 31877) and August 17, 2007 (72 Fed. Reg. 46263) outlining the details of the proposed pilot program. The May 1, 2007 notice specifically states that "The demonstration project will terminate and all provisional operating authority certificates expire one year from the date FMCSA grants the first provisional certificate." However, despite the plain language of this statement, DOT issued a subsequent notice on June 8, 2007, which stated that "[u]nder FMCSA regulations, all motor carriers receive provisional operating authority for 18 months after receiving a USDOT number." DOT has issued provisional operating authority to pilot program participants for 18 months.

On August 4, 2008, the Secretary of Transportation announced that the cross-border pilot program will be extended for an additional two years through September 2010.

Federal Motor Carrier Safety Administration ("FMCSA") data indicates that as of July 2008, 27 Mexican carriers operating 107 trucks had been granted authority under the pilot program to operate long-haul in the United States, and 10 U.S. carriers operating 55 trucks had been granted authority under the pilot program to operate in Mexico. Pilot program participants from Mexico crossed

into the United States 9,776 times. Only 1,337 of these crossings, or 14 percent, resulted in carriers traveling beyond the border zones. To monitor participants under the pilot program, FMCSA also paid to acquire and install Global Positioning Systems ("GPS") on each truck participating in the pilot program. According to estimates provided to the Committee by FMCSA, the agency has spent $700,000 through July 2008 on hardware, installation, monthly fees for tracking, and support services for the GPS units.

SUMMARY OF THE LEGISLATION

Section 1. Limitation on long-haul cross border trucking operations

Subsection (a) directs the Secretary of Transportation to terminate the one-year cross border demonstration project the Secretary started on September 6, 2007, no later than September 6, 2008. The Committee expects that upon termination of the one-year cross border demonstration project, the Secretary will terminate the provisional operating authority of all motor carriers participating in the demonstration project to operate beyond United States municipalities and commercial zones on the United States-Mexico border after September 6, 2008, and ensure that such motor carriers cease long-haul operations in the United States.

Subsection (b) prohibits the Secretary from initiating a new pilot program or otherwise granting new authority to a Mexico-domiciled motor carrier to operate beyond the border zones unless specifically authorized by Congress. The Committee notes that subsection (b) applies to Mexico-domiciled motor carriers, which includes both trucks and motorcoaches.

Section 2. Reports to Congress

Section 2 requires three reports to Congress assessing the implementation of the pilot program within 60 days of enactment.

The first report must be submitted to Congress by the Inspector General of the Department of Transportation, as required by section 6901(c) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (P.L. 110–28). That section required the IG to report to Congress "within 60 days after the conclusion of the pilot program" on whether the Secretary of Transportation has established sufficient mechanisms to determine whether the pilot program is having any adverse effect on motor carrier safety; whether Federal and State monitoring and enforcement activities are sufficient to ensure pilot program participants are in compliance with all U.S. safety laws; and whether the pilot program consists of a representative and adequate sample of Mexico-domiciled carriers likely to engage in cross-border operations. The requirement in Section 2 ensures that the IG submits an evaluation of the one-year pilot program to Congress independent of the requirement that it be done upon conclusion of the program in the appropriations law.

The second report must be submitted to Congress by the independent review panel established by the Secretary, consisting of former DOT IG Kenneth Mead, former DOT Deputy Secretary Mortimer Downey, and former Congressman Jim Kolbe. As described in a May 1, 2007 Federal Register notice (72 FR 23883), this panel is "responsible for evaluating the safety impacts of allow-

ing Mexico-domiciled motor carriers to operate on U.S. roads beyond the commercial zone." The notice further states that the panel's "conclusions will be considered carefully before a decision is made on a permanent full implementation of the NAFTA trucking provisions." Because this review panel was not authorized in statute, there is currently no timeframe for reporting, and the independent review panel is not required to share its findings with Congress.

Section 2 requires a third report to be submitted by the Secretary of Transportation. This report must include:

the number and names of United States and Mexico domiciled motor carriers that participated in the demonstration project and the number of vehicles each motor carrier utilized in the demonstration project;

the number of border crossings by motor carriers participating in the demonstration project, including the number of crossings which resulted in a motor carrier traveling beyond United States municipalities and commercial zones on the United States-Mexico border;

an itemization of safety and operational violations identified among motor carriers participating in the demonstration project in pre-authorization safety audits, compliance reviews, and roadside inspections, including a review of the most frequent types of violations;

an analysis of the cost to the Federal Government and State partners of implementing the demonstration project, including administrative costs, safety monitoring and enforcement costs, and the cost of installing global positioning system units on participating vehicles; and

measures taken by the Secretary to terminate the authority of motor carriers participating in the demonstration project to operate beyond United States municipalities and commercial zones on the United States-Mexico border after September 6, 2008, and ensure that such motor carriers cease long-haul operations.

LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

On March 13, 2007, the Subcommittee on Highways and Transit held a hearing, entitled "U.S./Mexican Trucking: Safety and the Cross Border Demonstration Project," to examine the proposed pilot program and to assess the status of cross-border trucking operations between the U.S. and Mexico.

On March 29, 2007, Representative Nancy E. Boyda introduced H.R. 1773, the "Safe American Roads Act of 2007." On May 2, 2007, the Committee on Transportation and Infrastructure ordered the bill, as amended, reported favorably to the House by recorded vote of 66–0. This legislation authorizes a three-year cross border trucking pilot program, but only under a specific set of conditions and once all prerequisites are met to ensure safety. The bill includes mechanisms to shut the program down if the pilot program has any detrimental effect on safety. The bill also requires Congress to pass additional legislation for the border to open fully beyond the limited pilot program. On May 15, 2007, the House passed H.R. 1773 by a vote of 411–3. To date, the Senate has not taken action on the bill.

On July 24, 2007, the House adopted an amendment to H.R. 3074, the FY 2008 Transportation, Treasury, Housing, and Related Agencies Appropriations Act, sponsored by Subcommittee on Highways and Transit Chairman Peter A. DeFazio, to prohibit DOT from using funds to establish or implement a cross-border motor carrier pilot program.

On July 29, 2008, Subcommittee Chairman DeFazio introduced H.R. 6630.

On July 31, 2008, the Committee on Transportation and Infrastructure met in open session, and ordered H.R. 6630 reported favorably to the House by voice vote with a quorum present.

RECORD VOTES

Clause 3(b) of rule XIII of the Rules 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 consideration of H.R. 6630 or ordering the bill reported. A motion to order H.R. 6630 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 section 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 direct the Secretary of Transportation to terminate a cross border motor carrier pilot program on September 6, 2008 and to prohibit the Secretary of Transportation from granting authority to a motor carrier domiciled in Mexico to operate beyond United States municipalities and commercial zones on the United States-Mexico border unless expressly authorized by Congress.

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. 6630 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 27, 2008.

Hon. JAMES 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. 6630, a bill to prohibit the Secretary of Transportation from granting authority to a motor carrier domiciled in Mexico to operate beyond United States municipalities and commercial zones on the United States-Mexico border unless expressly authorized by Congress.

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

Sincerely,

PETER H. FONTAINE
(For Peter R. Orszag, Director).

Enclosure.

H.R. 6630—A bill to prohibit the Secretary of Transportation from granting authority to a motor carrier domiciled in Mexico to operate beyond United States municipalities and commercial zones on the United States-Mexico border unless expressly authorized by Congress

H.R. 6630 would require the Department of Transportation (DOT) to terminate a pilot program that allows certain motor carriers based in Mexico to operate throughout the United States. CBO estimates that implementing H.R. 6630 would have no significant impact on spending subject to appropriation. Enacting the legislation would not affect direct spending or revenues.

In addition to terminating the current pilot program, the bill would require Congressional approval for any similar program conducted after that date. The bill also would require DOT to submit three reports to the Congress about the program. According to the agency, the funds that are currently used to install global positioning system units on participating motor carriers would be used for other purposes, and in the absence of this program, DOT personnel would remain at the border to complete other functions. As a result, CBO estimates that implementing the legislation would have no significant impact on spending subject to appropriation.

The bill contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. H.R. 6630 would impose a private-sector mandate, as defined in UMRA, on certain motor carriers based in Mexico. By terminating the pilot program, those carriers that participate in the project would be prohibited from making long-haul trips beyond designated zones along the border. According to data collected by the Federal Motor Carrier Safety Administration (FMCSA), a small number of motor carriers participating in the project make only a few such long-haul trips. Based on this information, CBO estimates that the cost of complying with the mandate (measured as net income forgone) would fall below the

annual threshold established in UMRA for private-sector mandates ($136 million in 2008, adjusted annually for inflation).

The CBO staff contacts for this estimate are Sarah Puro (for federal costs) and Jacob Kuipers (for the the private-sector impact). 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. 6630 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. 6630 does not preempt any State, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

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

APPLICABILITY TO THE LEGISLATIVE BRANCH

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

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 6630 makes no changes to existing law.

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