

(b) **COORDINATION WITH OTHER RESEARCH INITIATIVES.**—The Under Secretary of Homeland Security for Border and Transportation Security shall ensure that the research and development program authorized by this section is coordinated with other research and development initiatives at the Department and the Department of Transportation. The Under Secretary of Homeland Security for Border and Transportation Security shall carry out any research and development project authorized by this section through a reimbursable agreement with the Secretary of Transportation if the Secretary of Transportation—

(1) is already sponsoring a research and development project in a similar area; or

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

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

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Under Secretary of Homeland Security for Border and Transportation Security \$50,000,000 in each of fiscal years 2005 and 2006 to carry out the purposes of this section. Amounts appropriated pursuant to this subsection shall remain available until expended.

#### **SEC. 14. WELDED RAIL AND TANK CAR SAFETY IMPROVEMENTS.**

(a) **TRACK STANDARDS.**—Within 90 days after the date of enactment of this Act, the Federal Railroad Administration shall—

(1) require each track owner using continuous welded rail track to include procedures (in its procedures filed with the Administration pursuant to section 213.119 of title 49, Code of Federal Regulations) to improve the identification of cracks in rail joint bars;

(2) instruct Administration track inspectors to obtain copies of the most recent continuous welded rail programs of each railroad within the inspectors' areas of responsibility and require that inspectors use those programs when conducting track inspections; and

(3) establish a program to periodically review continuous welded rail joint bar inspection data from railroads and Administration track inspectors and, whenever the Administration determines that it is necessary or appropriate, require railroads to increase the frequency or improve the methods of inspection of joint bars in continuous welded rail.

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

(1) within 1 year after the date of enactment of this Act, validate the predictive model it is developing to quantify the relevant dynamic forces acting on railroad tank cars under accident conditions; and

(2) within 18 months after the date of enactment of this Act, initiate a rulemaking to develop and implement appropriate design standards for pressurized tank cars.

(c) **OLDER TANK CAR IMPACT RESISTANCE ANALYSIS AND REPORT.**—Within 2 years after the date of enactment of this Act, the Federal Railroad Administration shall—

(1) conduct a comprehensive analysis to determine the impact resistance of the steels in the shells of pressure tank cars constructed before 1989; and

(2) transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure with recommendations for measures to eliminate or mitigate the risk of catastrophic failure.

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

Within 180 days after the date of enactment of this Act, the Under Secretary of Homeland Security for Border and Transportation Security, in consultation with the heads of other appropriate Federal departments and agencies and the National Railroad Passenger Corporation, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure that contains—

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

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

(3) an assessment of the current program to provide preclearance of freight railroad traffic between the United States and Canada as outlined in the "Declaration of Principle for the Improved Security of Rail Shipments by Canadian National Railway and Canadian Pacific Railway from Canada to the United States", dated April 2, 2003;

(4) information on progress by the Department of Homeland Security and other Federal agencies towards finalizing a bilateral protocol with Canada that would provide for preclearance of passengers on trains operating between the United States and Canada;

(5) a description of legislative, regulatory, budgetary, or policy barriers within the United States Government to providing pre-screened passenger lists for rail passengers travelling between the United States and Canada to the Department of Homeland Security;

(6) a description of the position of the Government of Canada and relevant Canadian agencies with respect to preclearance of such passengers; and

(7) a draft of any changes in existing Federal law necessary to provide for pre-screening of such passengers and providing pre-screened passenger lists to the Department of Homeland Security.

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

(a) **STUDY.**—The Secretary of Homeland Security shall, in consultation with State and local government officials, conduct a study on the impact of blocked highway-railroad grade crossings on the ability of emergency responders, including ambulances and police, fire, and other emergency vehicles, to perform public safety and security duties in the event of a terrorist attack.

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

#### **SEC. 17. WHISTLEBLOWER PROTECTION PROGRAM.**

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

##### **"§ 20116. Whistleblower protection for rail security matters**

"(a) **DISCRIMINATION AGAINST EMPLOYEE.**—No rail carrier engaged in interstate or for-

eign commerce may discharge a railroad employee or otherwise discriminate against a railroad employee because the employee (or any person acting pursuant to a request of the employee)—

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

"(2) provided, caused to be provided, or is about to provide or cause to be provided, testimony before Congress or at any Federal or State proceeding regarding a perceived threat to security; or

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

"(b) **DISPUTE RESOLUTION.**—A dispute, grievance, or claim arising under this section is subject to resolution under section 3 of the Railway Labor Act (45 U.S.C. 153). In a proceeding by the National Railroad Adjustment Board, a division or delegate of the Board, or another board of adjustment established under section 3 to resolve the dispute, grievance, or claim the proceeding shall be expedited and the dispute, grievance, or claim shall be resolved not later than 180 days after it is filed. If the violation is a form of discrimination that does not involve discharge, suspension, or another action affecting pay, and no other remedy is available under this subsection, the Board, division, delegate, or other board of adjustment may award the employee reasonable damages, including punitive damages, of not more than \$20,000.

"(c) **PROCEDURAL REQUIREMENTS.**—Except as provided in subsection (b), the procedure set forth in section 42121(b)(2)(B) of this title, including the burdens of proof, applies to any complaint brought under this section.

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

"(e) **DISCLOSURE OF IDENTITY.**—

"(1) Except as provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation may not disclose the name of an employee of a railroad carrier who has provided information about an alleged violation of this section.

"(2) The Secretary shall disclose to the Attorney General the name of an employee described in paragraph (1) of this subsection if the matter is referred to the Attorney General for enforcement."

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

"20116. Whistleblower protection for rail security matters."

#### **PUBLIC TRANSPORTATION TERRORISM PREVENTION ACT OF 2004**

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 2884 that was introduced earlier today.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2884) to authorize the Secretary of Homeland Security to award grants to public transportation agencies to improve security, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and any statements related to this bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 2884) was read the third time and passed, as follows:

S. 2884

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Public Transportation Terrorism Prevention Act of 2004”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purpose.
- Sec. 3. Memorandum of understanding.
- Sec. 4. Security assessments.
- Sec. 5. Security assistance grants.
- Sec. 6. Intelligence sharing.
- Sec. 7. Research, development, and demonstration grants.
- Sec. 8. Reporting requirements.
- Sec. 9. Authorization of appropriations.
- Sec. 10. Sunset provision.

#### SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) throughout the world, public transportation systems have been a primary target of terrorist attacks, causing countless death and injuries;

(2) 6,000 public transportation agencies operate in the United States;

(3) 14,000,000 people in the United States ride public transportation each work day;

(4) safe and secure public transportation systems are essential to the Nation's economy and for significant national and international public events;

(5) the Federal Transit Administration has invested \$68,700,000,000 since 1992 for construction and improvements to the Nation's public transportation systems;

(6) the Federal Government appropriately invested \$11,000,000,000 in fiscal years 2002 and 2003 to protect our Nation's aviation system and its 1,800,000 daily passengers;

(7) the Federal Government invested \$115,000,000 in fiscal years 2003 and 2004 to protect public transportation systems in the United States;

(8) the Federal Government has invested \$9.16 in aviation security improvements per passenger, but only \$0.006 in public transportation security improvements per passenger;

(9) the General Accounting Office, the Minnesota Institute for Surface Transportation Policy Studies, the American Public Transportation Association, and other experts have reported an urgent need for significant investment in transit security improvements; and

(10) the Federal Government has a duty to deter and mitigate, to the greatest extent practicable, threats against the Nation's public transportation systems.

#### SEC. 3. MEMORANDUM OF UNDERSTANDING.

(a) IN GENERAL.—Not later than 45 days after the date of enactment of this Act, the Secretary of Transportation shall enter into a memorandum of understanding with the Secretary of Homeland Security to define and clarify the respective public transportation security roles and responsibilities of the Department of Transportation and the Department of Homeland Security.

(b) CONTENTS.—The memorandum of understanding described in subsection (a) shall—

(1) establish a process to develop security standards for public transportation agencies;

(2) establish funding priorities for grants from the Department of Homeland Security to public transportation agencies;

(3) create a method of direct coordination with public transportation agencies on security matters;

(4) address any other issues determined to be appropriate by the Secretary of Transportation and the Secretary of Homeland Security; and

(5) include a formal and permanent mechanism to ensure coordination and involvement by the Department of Transportation, as appropriate, in public transportation security.

#### SEC. 4. SECURITY ASSESSMENTS.

(a) PUBLIC TRANSPORTATION SECURITY ASSESSMENTS.—

(1) SUBMISSION.—Not later than 30 days after the date of enactment of this Act, the Federal Transit Administration of the Department of Transportation shall submit all public transportation security assessments and all other relevant information to the Department of Homeland Security.

(2) REVIEW.—The Secretary of Homeland Security shall review and augment the security assessments received under paragraph (1).

(3) ALLOCATIONS.—The assessments described in paragraph (1) shall be used as the basis for allocating grant funds under section 5, unless the Secretary of Homeland Security determines that an adjustment is necessary to respond to an urgent threat or other significant factors, after notification to the Committee on Banking, Housing, and Urban Affairs of the Senate.

(4) SECURITY IMPROVEMENT PRIORITIES.—The Secretary of Homeland Security shall establish security improvement priorities, in consultation with the management and employee representatives of each public transportation system receiving an assessment that will be used by public transportation agencies for any funding provided under section 5.

(5) UPDATES.—The Secretary of Homeland Security shall annually update the assessments referred to in this subsection and conduct assessments of all transit agencies considered to be at greatest risk of a terrorist attack.

(b) USE OF ASSESSMENT INFORMATION.—The Secretary of Homeland Security shall use the information collected under subsection (a)—

(1) to establish the process for developing security guidelines for public transportation security;

(2) to design a security improvement strategy that minimizes terrorist threats to public transportation systems; and

(3) to design a security improvement strategy that maximizes the efforts of public transportation systems to mitigate damage from terrorist attacks.

(c) BUS PUBLIC TRANSPORTATION SYSTEMS.—The Secretary of Homeland Security shall conduct assessments of local bus-only public transportation systems to determine the specific needs of this form of public transportation that are appropriate to the size and nature of the bus system.

(d) RURAL PUBLIC TRANSPORTATION SYSTEMS.—The Secretary of Homeland Security shall conduct assessments of selected public transportation systems that receive funds under section 5311 of title 49, United States Code, to determine the specific needs of this form of public transportation that are appropriate to the size and nature of the system.

#### SEC. 5. SECURITY ASSISTANCE GRANTS.

(a) CAPITAL SECURITY ASSISTANCE PROGRAM.—

(1) IN GENERAL.—The Secretary of Homeland Security shall award grants directly to public transportation agencies for allowable capital security improvements based on the priorities established under section 4(a)(4).

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

(A) tunnel protection systems;

(B) perimeter protection systems;

(C) redundant critical operations control systems;

(D) chemical, biological, radiological, or explosive detection systems;

(E) surveillance equipment;

(F) communications equipment;

(G) emergency response equipment;

(H) fire suppression and decontamination equipment;

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

(J) evacuation improvements; and

(K) other capital security improvements.

(b) OPERATIONAL SECURITY ASSISTANCE PROGRAM.—

(1) IN GENERAL.—The Secretary of Homeland Security shall award grants directly to public transportation agencies for allowable operational security improvements based on the priorities established under section 4(a)(4).

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

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

(B) live or simulated drills;

(C) public awareness campaigns for enhanced public transportation security;

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

(E) overtime reimbursement for enhanced security personnel during significant national and international public events, consistent with the priorities established under section 4(a)(4); and

(F) other appropriate security improvements identified under section 4(a)(4), excluding routine, ongoing personnel costs.

(c) CONGRESSIONAL NOTIFICATION.—Not later than 3 days before any grant is awarded under this section, the Secretary of Homeland Security shall notify the Committee on Banking, Housing, and Urban Affairs of the Senate of the intent to award such grant.

(d) TRANSIT AGENCY RESPONSIBILITIES.—Each public transportation agency that receives a grant under this section shall—

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

(2) develop a comprehensive plan that demonstrates the agency's capacity for operating and maintaining the equipment purchased under this subsection; and

(3) report annually to the Department of Homeland Security on the use of grant funds received under this section.

(e) RETURN OF MISSPENT GRANT FUNDS.—If the Secretary of Homeland Security determines that a grantee used any portion of the grant funds received under this section for a purpose other than the allowable uses specified for that grant under this section, the grantee shall return any amount so used to the Treasury of the United States.

#### SEC. 6. INTELLIGENCE SHARING.

(a) INTELLIGENCE SHARING.—The Secretary of Homeland Security shall ensure that the Department of Transportation receives appropriate and timely notification of all credible terrorist threats against public transportation assets in the United States.

(b) INFORMATION SHARING ANALYSIS CENTER.—

(1) ESTABLISHMENT.—The Department of Homeland Security shall fund the reasonable

costs of the Information Sharing and Analysis Center for Public Transportation (referred to in this subsection as the "ISAC") established pursuant to Presidential Directive 63 to protect critical infrastructure.

(2) **PUBLIC TRANSPORTATION AGENCY PARTICIPATION.**—The Secretary of Homeland Security—

(A) shall require those public transportation agencies that the Secretary determines to be at significant risk of terrorist attack to participate in the ISAC;

(B) shall encourage all other public transportation agencies to participate in the ISAC; and

(C) shall not charge any public transportation agency a fee for participation in the ISAC.

#### **SEC. 7. RESEARCH, DEVELOPMENT, AND DEMONSTRATION GRANTS.**

(a) **GRANTS AUTHORIZED.**—The Secretary of Homeland Security, in consultation with the Federal Transit Administration, shall award grants to public or private entities to conduct research into, and demonstration of, technologies and methods to reduce and deter terrorist threats or mitigate damages resulting from terrorist attacks against public transportation systems.

(b) **USE OF FUNDS.**—Grants awarded under subsection (a) may be used for—

(1) researching chemical, biological, radiological, or explosive detection systems that do not significantly impede passenger access;

(2) researching imaging technologies;

(3) conducting product evaluations and testing; and

(4) researching other technologies or methods for reducing or deterring terrorist attacks against public transportation systems, or mitigating damage from such attacks.

(c) **REPORTING REQUIREMENT.**—Each entity that receives a grant under this section shall report annually to the Department of Homeland Security on the use of grant funds received under this section.

(d) **RETURN OF MISSPENT GRANT FUNDS.**—If the Secretary of Homeland Security determines that a grantee used any portion of the grant funds received under this section for a purpose other than the allowable uses specified under subsection (b), the grantee shall return any amount so used to the Treasury of the United States.

#### **SEC. 8. REPORTING REQUIREMENTS.**

(a) **ANNUAL REPORT TO CONGRESS.**—Not later than March 31 of each year, the Secretary of Homeland Security shall submit a report, which describes the implementation of section 4 through 7, and the state of public transportation security in the United States, to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate;

(2) the Committee on Governmental Affairs of the Senate; and

(3) the Committee on Appropriations of the Senate.

(b) **ANNUAL REPORT TO GOVERNORS.**—Not later than March 31 of each year, the Sec-

retary of Homeland Security shall submit a report to the governor of each State in which a transit agency that has received a grant under this Act is operating that specifies the amount of grant funds distributed to each such transit agency and the use of such grant funds.

#### **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

(a) **CAPITAL SECURITY ASSISTANCE PROGRAM.**—There are authorized to be appropriated \$2,370,000,000 for fiscal year 2005 to carry out the provisions of section 5(a), which shall remain available until expended.

(b) **OPERATIONAL SECURITY ASSISTANCE PROGRAM.**—There are authorized to be appropriated to carry out the provisions of section 5(b)—

(1) \$534,000,000 for fiscal year 2005;

(2) \$333,000,000 for fiscal year 2006; and

(3) \$133,000,000 for fiscal year 2007.

(c) **INTELLIGENCE.**—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of section 6.

(d) **RESEARCH.**—There are authorized to be appropriated \$130,000,000 for fiscal year 2005 to carry out the provisions of section 7, which shall remain available until expended.

#### **SEC. 10. SUNSET PROVISION.**

This Act is repealed on October 1, 2007.

### **ORDERS FOR MONDAY, OCTOBER 4, 2004**

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m. on Monday, October 4. I further ask consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and that there then be a period of morning business for up to 60 minutes, with the first 30 minutes under the control of the minority leader or his designee and the second 30 minutes under the control of the majority leader or his designee; provided further that following morning business, the Senate resume consideration of S. 2845, the intelligence reform bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

### **PROGRAM**

Mr. FRIST. Mr. President, for the information of all Senators, on Monday the Senate will resume consideration of the intelligence reform bill. Under the order, there will be a series of stacked votes beginning at 4:15 on Monday. That will be, in all likelihood, the

first series of votes on Monday. Monday will be a very, very busy day, and there are likely to be many more votes after these stacked votes over the course of the day into the evening. In all likelihood, we will be voting and debating well into the evening on Monday in order that we can complete this bill early next week.

The cloture motion I filed a few minutes ago will ripen on Tuesday morning, and that will determine the remaining action on this bill. Again, I will remind everyone that upon completion of this legislation, the pending legislation, the Collins-Lieberman bill, which focuses on executive reforms, we will also address the Senate intelligence reforms next week.

As you can tell, there is a lot of work that needs to be done before the Senate adjourns. We will adjourn next Friday on October 8 after we address both of these issues. Again, I want to stress we have both of these important pieces of legislation we will address before departing. Thus, I anticipate very busy sessions between now and next Friday.

As I mentioned earlier, we have had a very busy week, a very productive week. I thank all of our colleagues on both sides of the aisle for their patience and for their hard work. I thank the Presiding Officer, the Senator from Alabama, for his commitment this afternoon, and now into the evening, and for his steady hand at the gavel.

I wish all a restful weekend.

### **ADJOURNMENT UNTIL MONDAY, OCTOBER 4, 2004, AT 10 A.M.**

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:19 p.m., adjourned until Monday, October 4, 2004, at 10 a.m.

### **CONFIRMATION**

Executive nomination confirmed by the Senate October 1, 2004:

#### **INTERNATIONAL MONETARY FUND**

ALAN GREENSPAN, OF NEW YORK, TO BE UNITED STATES ALTERNATE GOVERNOR OF THE INTERNATIONAL MONETARY FUND FOR A TERM OF FIVE YEARS.