



**Legislative Bulletin.....October 17, 2007**

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**H.R. 2095**—Federal Railroad Safety Improvement Act

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**Summary of the Bills Under Consideration Today:**

**Total Number of New Government Programs:** At least three new grant programs

**Total Cost of Discretionary Authorizations:** \$1.2 billion over four years

**Effect on Revenue:** \$30 million over five years, as result of higher fines on railroads

**Total Change in Mandatory Spending:** \$0

**Total New State & Local Government Mandates:** Several

**Total New Private Sector Mandates:** Several

**Number of Bills Without Committee Reports:** 0

**Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority:** 1

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**H.R. 2095 — Federal Railroad Safety Improvement Act**  
**(Oberstar, D-MN)**

**Order of Business:** The bill is scheduled to be considered on Wednesday, October 17<sup>th</sup>, subject to a structured rule (H.Res. 724) that makes four amendments in order (see summaries below). The rule waives all points of order against the consideration of the bill (except those for earmarks and PAYGO), and makes in order one motion to recommit.

The rule does *not* make in order six of the amendments [submitted](#) to the Rules Committee (including two submitted by RSC Members).

**Summary:** H.R. 2095 would rename the Federal Railroad Administration (FRA) the Federal Rail Safety Administration (FRSA), and reauthorize FRSA programs through 2011.

**Notable Discretionary Program Authorization Levels:**

- **FRSA Programs.** Authorizes \$1.12 billion for the Federal Rail Safety Administration as follows:
  - 2008—\$230 million
  - 2009—\$260 million
  - 2010—\$295 million
  - 2011—\$335 million
  
- **Pueblo, Colorado Facility.** Authorizes a total of \$18 million from FY 2008—FY 2011 to design, develop, and construct an Underground Rail Station and Tunnel at the at the Transportation Technology Center in Pueblo, Colorado. This authorization is listed in the committee report as the only earmark in the bill.
  
- **Grants for Programs to Increase Rail Safety.** CBO estimates that three new rail safety grant programs in H.R. 2095 would lead to \$86 million in authorized discretionary spending over the 2008 to 2011 period (two of the three new programs are authorized at “such sums”). The three new rail safety grant programs created by the bill are: Grants for the Development of Train Control Systems, Grants to Support the Improvement of Grade Crossings, and Grants for Operation Lifesaver.

The total estimated authorization levels for all three programs are as follows:

- 2008—\$22 million
  - 2009—\$22 million
  - 2010—\$22 million
  - 2011—\$20 million
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- **NTSB Assistance after Rail Accidents.** H.R. 2095 requires NTSB to provide assistance to families of passengers who are in Amtrak rail accidents that result in a major loss of life. CBO estimates that this provision authorizes \$1 million a year.

**Hours of Service Restrictions:**

H.R. 2095 places new regulations on the hours that train signalmen and members of a train operating crew may work, which according to the committee report, are intended to reduce employee fatigue. Specifically:

- H.R. 2095 increases the mandatory minimum rest period for train operating crews and train signalmen from 8 to 10 hours, between time on the job. Restricts contacts between the employer and employee during this mandatory rest period to emergencies.

- Prevents a member of a train operating crew or a train signalmen from working for more than twelve consecutive hours.
- Requires an employee of a train operating crew or a train signalman to have at least 24 hours off during any seven day period.
- Prevents an employee from contacting a worker within the employee's minimum of ten hours of time off except during an emergency.
- Counts time spent in "deadhead transportation" (time getting to and from the train) as time on duty.
- Allows carriers to use 40 hours of "limbo time" a month per employee in the first year after the bill passes, 30 hours the year after, and 10 hours from then on.
- Allows the Secretary of Transportation, based on "scientific and medical research" to adjust downward the maximum number of hours an employee is allowed to remain on duty. The bill also allows the Secretary to require an upward increase in the minimum number of hours of rest the employee is required to have between time on the job.

The SAP expresses concern that these requirements are overly restrictive and "would tend to increase railroads' need to *hire additional operating employees* at a time when retirements and resignations are making it increasingly difficult for railroads to have a full complement of workers, thereby aggravating potential service disruptions and the safety problems that can come with large numbers of new, relatively inexperienced employees." *[emphasis added]* In addition, any of these new railroad employees would likely result in additional union members.

H.R. 2095 (twelve months after enactment) would also prohibit railroad carriers from providing camp cars as sleeping quarters to employees.

### **Grade Crossings:**

- Requires, within 18 months of enactment, each railroad carrier to maintain a toll-free number for grade crossing problems.
- Requires railroad carriers to remove from their right-of-way all vegetation which restricts views at highway-rail crossings.
- Requires the Federal Railroad Safety Administration to make available to states model legislation for enforcing penalties for violations of grade crossing signals.
- Requires the Federal Railroad Safety Administration to conduct audits of Class I railroads at least once every two years and to conduct an audit of every non-class I railroad once every five years, for the intended purpose of making sure that grade crossing fatalities and collisions are reported to that national accident database.

### **Increased Civil Penalties:**

H.R. 2095 increases civil penalties (imposed on railroads) for railroad safety violations. The maximum penalty for general railroad safety violations would be increased from \$10,000 to \$25,000. The maximum penalty for a grossly negligent violation would be increased from \$20,000 to \$100,000. CBO estimates that the higher civil penalties would result in \$30 million in increased federal revenues over five years. The SAP expresses opposition to the higher civil penalties in H.R. 2095.

### **Inspector Staffing:**

H.R. 2095 increases the total number of positions for railroad safety inspection and enforcement personnel at the Federal Railroad Safety Administration to at least 500 by the end of 2008, at least 600 by the end of 2009, at least 700 by the end of 2010, and to at least 800 by 2011.

According to the [Committee Report](#), there are currently 421 federal rail safety inspectors.

### **Positive Train Control (PTC) System:**

Within 12 months of enactment, requires each Class I railroad carrier to develop a plan for implementing a positive train control system by the end of 2014. According to the committee report, positive train control has “great potential to reduce the number of serious train accidents by providing safety redundant systems to protect against such human performance failures.”

CBO estimates that the total cost of this mandate on the private sector would “total at least a few billion dollars for the industry.” As with any mandate, the costs of compliance would be passed on to consumers.

### **Other Provisions**

Some of the other railroad safety regulatory provisions in H.R. 2095:

- Within 12 months of enactment, requires the Secretary of Transportation to prescribe regulations requiring railroads to install technology that prevents misaligned switches.
- Within 12 months of enactment, requires the Secretary of Transportation to prescribe regulations aimed at requiring “railroad carriers to manage the rail in their tracks so as to maximize accidents due to internal rail flaws.”
- Within 18 months, requires the Secretary of Transportation to prescribe regulations on the certification of conductors.
- Within 180 days of enactment, requires the Secretary of Transportation to establish minimum training standards for railroad employees.

- Within twelve months of enactment, requires the Secretary of Transportation to issue a report on “the effects of the locomotive cab environment on the safety, health, and performance of train crews.”
- Requires the Secretary of Transportation to conduct a study of its regulations on museum operated diesel-electric locomotives.

**Committee Action:** H.R. 2095 was introduced on May 1, 2007, and referred to the Committee on Transportation and Infrastructure. On June 14, 2007, the Committee on Transportation and Infrastructure held a mark-up and reported the bill, as amended, by voice vote.

**Possible Conservative Concerns:** Some conservatives may be concerned that H.R. 2095 creates new federal programs and authorizes higher levels of discretionary spending (an amendment by Representative Tom Price aimed at preventing any net increase in federal spending, as a result of H.R. 2095, was not made in order by the Rules Committee). Some conservatives may also be concerned about the private sector mandates included in the bill.

**Amendments Made in Order under the Rule (H.Res. 724):**

*All amendments are debatable for 10 minutes.*

1. **Oberstar (D-MN): Manager’s Amendment:** This amendment strikes sections 301, 610, and 616 from the bill since these sections, according to the sponsor’s summary, were included in Public Law 110-53, the “Implementing Recommendations of the 9/11 Commission Act of 2007.” The amendment also requires the Federal Railroad Safety Administration to, within 12 months of enactment, implement regulations aimed at requiring owners of railroad track to “prevent the deterioration of railroad bridges and reduce the risk of human casualties, environmental damage, and disruption to the Nation’s transportation system that would result from a catastrophic bridge failure.”
2. **Napolitano (D-CA):** Adds a new section to the bill that would require mechanical and brake inspections of rail cars performed in Mexico not be treated as satisfying U.S. rail safety laws. The amendment allows the Secretary to override this requirement if he or she certifies the inspections in Mexico are being performed under regulations and standards equivalent to those in the U.S. and the Federal Rail Safety Administration is able to perform onsite inspections, among other things. The amendment also prohibits hazardous material inspections performed in Mexico from being treated as having satisfied U.S. rail safety laws and regulations.
3. **Pallone (D-NJ):** Adds a new section to the bill which allows state and local governments to regulate solid waste rail transfer facilities, which is defined by the amendment as “the portion of any facility owned or operated by or on behalf of a rail carrier.” According to the sponsor’s summary, this is amendment intended to make sure that the Surface Transportation Board does not have exclusive authority to preempt state and local regulation of solid waste management facilities.

- 4. Rohrabacher (R-CA):** Authorizes at “such sums as may be necessary” (over the 2008 to 2011 period) to “design and develop a pilot electric cargo conveyer system for the transportation of containers from ports to depots outside of urban areas.”

**Administration Position:** The SAP does not threaten a veto but does state that, “The Administration has concerns with several provisions of the bill and thus strongly opposes House passage of H.R. 2095 in its current form.”

**Cost to Taxpayers:** According to CBO, H.R. 2095 would authorize \$284 million in discretionary spending (subject to appropriation) in 2008 and \$1.2 billion over the FY 2008 – FY 2011 period. The bill would also increase federal revenues by \$30 million due to increased fines.

**Does the Bill Expand the Size and Scope of the Federal Government?:** Yes, the bill increases authorized spending levels over 2008—2011 and imposes new mandates on the private sector that CBO estimates as exceeding \$131 million.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** Yes. As noted above, H.R. 2095 exceeds the \$131 million private sector mandate threshold established by the Unfunded Mandates Reform Act (UMRA). The bill also places mandates on state and local governments, but these mandates do not exceed the \$66 million threshold established by UMRA.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** The Transportation and Infrastructure Committee, in House Report [110-336](#), asserts that H.R. 2095 contains one congressional earmark: “Sec. 105, Pueblo, CO, Facility for Underground Rail Station and Tunnel at the Transportation Technology Center—\$18 million, Rep. John T. Salazar.”

**Constitutional Authority:** The Transportation Committee, in House Report 110-336, cites constitutional authority in Article 1, Section 8, but fails to cite a specific clause. House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific powers* granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” [*emphasis added*]

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