

TRANSIT SECURITY GRANT PROGRAM FLEXIBILITY ACT

SEPTEMBER 20, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MCCAUL, from the Committee on Homeland Security,
 submitted the following

R E P O R T

[To accompany H.R. 5943]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 5943) to amend the Implementing Recommendations of the 9/11 Commission Act of 2007 to clarify certain allowable uses of funds for public transportation security assistance grants and establish periods of performance for such grants, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Transit Security Grant Program Flexibility Act”.

SEC. 2. ALLOWABLE USES OF FUNDS FOR PUBLIC TRANSPORTATION SECURITY ASSISTANCE GRANTS.

Subparagraph (A) of section 1406(b)(2) of the Implementing Recommendations of the 9/11 Commission Act of 2007 (6 U.S.C. 1135(b)(2); Public Law 110–53) is amended by inserting “and associated backfill” after “security training”.

SEC. 3. PERIODS OF PERFORMANCE FOR PUBLIC TRANSPORTATION SECURITY ASSISTANCE GRANTS.

Section 1406 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (6 U.S.C. 1135; Public Law 110–53) is amended—

- (1) by redesignating subsection (m) as subsection (n); and
- (2) by inserting after subsection (l) the following new subsection:

“(m) PERIODS OF PERFORMANCE.—

“(1) IN GENERAL.—Except as provided in paragraph (2), funds provided pursuant to a grant awarded under this section for a use specified in subsection (b) shall remain available for use by a grant recipient for a period of not fewer than 36 months.

“(2) EXCEPTION.—Funds provided pursuant to a grant awarded under this section for a use specified in subparagraph (M) or (N) of subsection (b)(1) shall remain available for use by a grant recipient for a period of not fewer than 55 months.”.

SEC. 4. GAO REVIEW.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a review of the transit security grant program under section 1406 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (6 U.S.C. 1135; Public Law 110–53).

(b) SCOPE.—The review required under paragraph (1) shall include the following:

- (1) An assessment of the type of projects funded under the transit security grant program.
- (2) An assessment of the manner in which such projects address threats to transportation infrastructure.
- (3) An assessment of the impact, if any, of this Act (including the amendments made by this Act) on types of projects funded under the transit security grant program.
- (4) An assessment of the management and administration of transit security grant program funds by grantees.
- (5) Recommendations to improve the manner in which transit security grant program funds address vulnerabilities in transportation infrastructure.
- (6) Recommendations to improve the management and administration of the transit security grant program.

(c) REPORT.—Not later than one year after the date of the enactment of this Act and again not later than five years after such date of enactment, the Comptroller General shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the review required under this section.

PURPOSE AND SUMMARY

The purpose of H.R. 5943 is to amend the Implementing Recommendations of the 9/11 Commission Act of 2007 to clarify certain allowable uses of funds for public transportation security assistance grants and establish periods of performance for such grants, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

Authorized in section 1406 of the Implementing Recommendations of the 9/11 Commission Act of 2007, the Transit Security Grant Program (TSGP) provides funds to eligible transit agencies for capital and operational projects. TSGP recipients have noted that the period of performance, the time in which grant recipients have to expend grant funds, has hindered their ability to complete some projects. H.R. 5943 would address this challenge by codifying

the period of performance for TSGP awards at thirty-six months for the majority of eligible projects and extending the period of performance for large-scale capital security projects to fifty-five months to allow for grant close out.

Additionally, TSGP awards can be used to provide personnel with security training. Unfortunately, recipients of these awards are not permitted to use TSGP funds to pay for backfilling personnel attending such training. In some cases, that extra cost to the transit agency has resulted in an inability to send staff for security training. H.R. 5943 provides flexibility to transit agencies eligible for TSGP funding by allowing grant recipients to use funding for security training related backfill, consistent with other homeland security grants.

HEARINGS

The Committee did not hold any legislative hearings on H.R. 5943 in the 114th Congress. However, this legislation was informed by a Subcommittee on Emergency Preparedness, Response, and Communications field hearing in Jersey City, New Jersey, on June 21, 2016, entitled “Protecting our Passengers: Perspectives on Securing Surface Transportation in New Jersey and New York.” The Subcommittee received testimony from Ms. Sonya Proctor, Director, Surface Division, Office of Security Policy and Industry Engagement, Transportation Security Administration, U.S. Department of Homeland Security; Mr. Thomas Belfiore, Chief Security Officer, The Port Authority of New York and New Jersey; Mr. Raymond Diaz, Director of Security, Metropolitan Transportation Authority (New York); Mr. Christopher Trucillo, Chief of Police, New Jersey Transit Police Department; Mr. Martin Conway, Deputy Police Chief, National Railroad Passenger Corporation—AMTRAK; Sergeant W. Greg Kierce, Director, Office of Emergency Management and Homeland Security, City of Jersey City, New Jersey; Mr. Rick Sposa, Operations Coordinator, Emergency Medical Services, Jersey Medical Center; Lieutenant Vincent Glenn, Commander, Emergency Service Unit, Police Department, Jersey City, New Jersey; Captain Richard D. Gorman, Office of Emergency Management and Homeland Security, Department of Fire and Emergency Services, Jersey City, New Jersey; and Mr. Mike Mollahan, Trustee, Port Authority Police Benevolent Association.

COMMITTEE CONSIDERATION

The Committee met on September 13, 2016, to consider H.R. 5943, and ordered the measure to be reported to the House with a favorable recommendation, as amended, by voice vote. The Committee took the following actions:

The following amendments were offered:

An amendment by MR. PAYNE (#1); was agreed to by voice vote.

Add the end a new section entitled “Sec. 4. GAO Review.”

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

No recorded votes were requested during consideration of H.R. 5943.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 5943, the Transit Security Grant Program Flexibility Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 19, 2016.

Hon. MICHAEL MCCAUL,
*Chairman, Committee on Homeland Security,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5943, the Transit Security Grant Program Flexibility Act.

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

Sincerely,

MARK P. HADLEY
(For KEITH HALL, *Director*).

Enclosure.

H.R. 5943—Transit Security Grant Program Flexibility Act

H.R. 5943 would amend the Implementing Recommendations of the 9/11 Commission Act of 2007 to stipulate the length of time that grants for security improvements to public transit systems made to public transportation agencies by the Federal Emergency Management Agency (FEMA) must remain available. Under the bill grants that are made specifically for improvements to public transit systems under construction or for improvements to public transit infrastructure would have to remain available to the recipient for at least 55 months. All other such grants would have to remain available to the recipient for at least 36 months.

Under current law, FEMA has the authority to determine and subsequently extend the length of time, known as the Period of Performance (POP), that a grantee has to complete a project on a case by case basis and no minimum amount of time is required. If the POP is exceeded before the grant is used and no extension is provided, FEMA revokes the remainder of the grant funds and returns them to the Treasury.

Enacting this bill could extend the POP for some grants that would have otherwise expired under current law. CBO estimates that such extensions could increase direct spending of grant funding that has already been appropriated; therefore, pay-as-you-go procedures apply. However, based on information from FEMA about the amount and frequency of grant funds that expire, CBO estimates that any such increase would be insignificant in any year over the 2017–2026 period. Enacting the bill would not affect revenues.

The bill also would require the Government Accountability Office (GAO) to conduct a review of the FEMA transit security grant program and to submit a report to the Congress on their findings within one year of the bill's enactment. Based on information from GAO about the amount of effort required to complete the review and report, CBO estimates that implementing H.R. 5943 would cost about \$1 million in 2017 and a negligible amount over the remainder of the 5-year period. Any such spending would be subject to the availability of appropriated funds.

CBO estimates that enacting H.R. 5943 would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2027.

H.R. 5943 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would benefit public transit systems and agencies by providing greater flexibility in the use of federal transit security grants.

The CBO staff contact for this estimate is Robert Reese. The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 5943 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

This legislation would ensure TSGP recipients could effectively utilize such funds to pay for the cost to backfill personnel attending security training and ensure large-scale capital security projects funded by TSGP could be successfully completed within the allotted period of performance.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 5943 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED
TARIFF BENEFITS

In compliance with rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the Rule XXI.

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.

PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring 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 finds that H.R. 5943 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 5943 would require no directed rule makings.

ADVISORY COMMITTEE STATEMENT

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

APPLICABILITY TO 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.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short Title.

This section provides that this bill may be cited as the “Transit Security Grant Program Flexibility Act”.

Sec. 2. Allowable uses of Funds for Public Transportation Security Assistance Grants.

This section amends section 1406 of the Implementing Recommendations of the 9/11 Commission Act of 2007 to permit grant recipients to use funding to pay for backfill associated with sending personnel to security training.

Sec. 3. Periods of Performance for Public Transportation Security Assistance Grants.

This section sets the period of performance for grants awarded under the Transit Security Grant Program at 36 months, with the exception of large-scale capital security projects. The bill sets the period of performance for those projects at 55 months.

Sec. 4. GAO Review.

This section requires the Government Accountability Office (GAO) to conduct a review of the Transit Security Grant Program, including the impact and effectiveness of the changes required in this legislation as well as recommendations to improve the program. GAO is required to report the findings of their review to Congress no later than one year after the date of enactment of this bill and again no later than five years after the date of enactment of this bill.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

SECTION 1406 OF THE IMPLEMENTING RECOMMENDATIONS OF THE 9/11 COMMISSION ACT OF 2007

SEC. 1406. PUBLIC TRANSPORTATION SECURITY ASSISTANCE

(a) SECURITY ASSISTANCE PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish a program for making grants to eligible public transportation agencies for security improvements described in subsection (b).

(2) ELIGIBILITY.—A public transportation agency is eligible for a grant under this section if the Secretary has performed a security assessment or the agency has developed a security plan under section 1405. Grant funds shall only be awarded for permissible uses under subsection (b) to—

- (A) address items included in a security assessment; or
- (B) further a security plan.

(b) USES OF FUNDS.—A recipient of a grant under subsection (a) shall use the grant funds for one or more of the following:

(1) Capital uses of funds, including—

- (A) tunnel protection systems;
- (B) perimeter protection systems, including access control, installation of improved lighting, fencing, and barricades;
- (C) redundant critical operations control systems;
- (D) chemical, biological, radiological, or explosive detection systems, including the acquisition of canines used for such detection;
- (E) surveillance equipment;
- (F) communications equipment, including mobile service equipment to provide access to wireless Enhanced 911 (E911) emergency services in an underground fixed guideway system;
- (G) emergency response equipment, including personal protective equipment;
- (H) fire suppression and decontamination equipment;
- (I) global positioning or tracking and recovery equipment, and other automated-vehicle-locator-type system equipment;

(J) evacuation improvements;

(K) purchase and placement of bomb-resistant trash cans throughout public transportation facilities, including subway exits, entrances, and tunnels;

(L) capital costs associated with security awareness, security preparedness, and security response training, including training under section 1408 and exercises under section 1407;

(M) security improvements for public transportation systems, including extensions thereto, in final design or under construction;

(N) security improvements for stations and other public transportation infrastructure, including stations and other public transportation infrastructure owned by State or local governments; and

(O) other capital security improvements determined appropriate by the Secretary.

(2) Operating uses of funds, including—

(A) security training *and associated backfill*, including training under section 1408 and training developed by institutions of higher education and by nonprofit employee labor organizations, for public transportation employees, including frontline employees;

(B) live or simulated exercises under section 1407;

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

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

(E) development of security plans under section 1405;

(F) overtime reimbursement including reimbursement of State, local, and tribal governments, for costs for enhanced security personnel during significant national and international public events;

(G) operational costs, including reimbursement of State, local, and tribal governments for costs for personnel assigned to full-time or part-time security or counterterrorism duties related to public transportation, provided that this expense totals no more than 10 percent of the total grant funds received by a public transportation agency in any 1 year; and

(H) other operational security costs determined appropriate by the Secretary, excluding routine, ongoing personnel costs, other than those set forth in this section.

(c) DEPARTMENT OF HOMELAND SECURITY RESPONSIBILITIES.—In carrying out the responsibilities under subsection (a), the Secretary shall—

(1) determine the requirements for recipients of grants under this section, including application requirements;

(2) pursuant to subsection (a)(2), select the recipients of grants based solely on risk; and

(3) pursuant to subsection (b), establish the priorities for which grant funds may be used under this section.

(d) DISTRIBUTION OF GRANTS.—Not later than 90 days after the date of enactment of this Act, the Secretary and the Secretary of Transportation shall determine the most effective and efficient way

to distribute grant funds to the recipients of grants determined by the Secretary under subsection (a). Subject to the determination made by the Secretaries, the Secretary may transfer funds to the Secretary of Transportation for the purposes of disbursing funds to the grant recipient.

(e) **SUBJECT TO CERTAIN TERMS AND CONDITIONS.**—Except as otherwise specifically provided in this section, a grant provided under this section shall be subject to the terms and conditions applicable to a grant made under section 5307 of title 49, United States Code, as in effect on January 1, 2007, and such other terms and conditions as are determined necessary by the Secretary.

(f) **LIMITATION ON USES OF FUNDS.**—Grants made under this section may not be used to make any State or local government cost-sharing contribution under any other Federal law.

(g) **ANNUAL REPORTS.**—Each recipient of a grant under this section shall report annually to the Secretary on the use of the grant funds.

(h) **GUIDELINES.**—Before distribution of funds to recipients of grants, the Secretary shall issue guidelines to ensure that, to the extent that recipients of grants under this section use contractors or subcontractors, such recipients shall use small, minority, women-owned, or disadvantaged business concerns as contractors or subcontractors to the extent practicable.

(i) **COORDINATION WITH STATE HOMELAND SECURITY PLANS.**—In establishing security improvement priorities under section 1405 and in awarding grants for capital security improvements and operational security improvements under subsection (b), the Secretary shall act consistently with relevant State homeland security plans.

(j) **MULTISTATE TRANSPORTATION SYSTEMS.**—In cases in which a public transportation system operates in more than one State, the Secretary shall give appropriate consideration to the risks of the entire system, including those portions of the States into which the system crosses, in establishing security improvement priorities under section 1405 and in awarding grants for capital security improvements and operational security improvements under subsection (b).

(k) **CONGRESSIONAL NOTIFICATION.**—Not later than 3 days before the award of any grant under this section, the Secretary shall notify simultaneously, the appropriate congressional committees of the intent to award such grant.

(l) **RETURN OF MISSPENT GRANT FUNDS.**—The Secretary shall establish a process to require the return of any misspent grant funds received under this section determined to have been spent for a purpose other than those specified in the grant award.

(m) **PERIODS OF PERFORMANCE.**—

(1) **IN GENERAL.**—*Except as provided in paragraph (2), funds provided pursuant to a grant awarded under this section for a use specified in subsection (b) shall remain available for use by a grant recipient for a period of not fewer than 36 months.*

(2) **EXCEPTION.**—*Funds provided pursuant to a grant awarded under this section for a use specified in subparagraph (M) or (N) of subsection (b)(1) shall remain available for use by a grant recipient for a period of not fewer than 55 months.*

[(m)] (n) AUTHORIZATION OF APPROPRIATIONS.—

(1) There are authorized to be appropriated to the Secretary to make grants under this section—

(A) such sums as are necessary for fiscal year 2007;

(B) \$650,000,000 for fiscal year 2008, except that not more than 50 percent of such funds may be used for operational costs under subsection (b)(2);

(C) \$750,000,000 for fiscal year 2009, except that not more than 30 percent of such funds may be used for operational costs under subsection (b)(2);

(D) \$900,000,000 for fiscal year 2010, except that not more than 20 percent of such funds may be used for operational costs under subsection (b)(2); and

(E) \$1,100,000,000 for fiscal year 2011, except that not more than 10 percent of such funds may be used for operational costs under subsection (b)(2).

(2) PERIOD OF AVAILABILITY.—Sums appropriated to carry out this section shall remain available until expended.

(3) WAIVER.—The Secretary may waive the limitation on operational costs specified in subparagraphs (B) through (E) of paragraph (1) if the Secretary determines that such a waiver is required in the interest of national security, and if the Secretary provides a written justification to the appropriate congressional committees prior to any such action.

(4) EFFECTIVE DATE.—Funds provided for fiscal year 2007 transit security grants under Public Law 110-28 shall be allocated based on security assessments that are in existence as of the date of enactment of this Act.

