

CUBAN AIRPORT SECURITY ACT OF 2017

SEPTEMBER 13, 2017.—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

together with

ADDITIONAL VIEWS

[To accompany H.R. 3328]

The Committee on Homeland Security, to whom was referred the bill (H.R. 3328) to require a study regarding security measures and equipment at Cuba’s airports, require the standardization of Federal Air Marshal Service agreements, require efforts to raise international aviation security standards, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of H.R. 3328 is to require a study regarding security measures and equipment at Cuba's airports, require the standardization of Federal Air Marshal Service agreements, and to require efforts to raise international aviation security standards.

BACKGROUND AND NEED FOR LEGISLATION

On December 17, 2014, President Obama announced a change in U.S. policy towards Cuba. After four rounds of talks and the bilateral meeting, on July 1, 2015, President Obama announced that "the United States has agreed to formally re-establish diplomatic relations with the Republic of Cuba, and re-open embassies in our respective countries." On July 20, 2015, the "Interests" sections located in Washington D.C. and Havana were converted into embassies and on August 14, 2015, Secretary of State Kerry traveled to Havana to raise the U.S. flag at the new embassy. On February 16, 2016, an agreement was signed that would allow "more than 100 daily round-trip flights between the United States and Cuba." The Department of Transportation awarded 110 routes between Cuba and the United States to ten different U.S. air carriers. The first scheduled commercial flight from Fort Lauderdale, Florida, to Villa Clara, Cuba, took place on August 31, 2016.

On March 17, 2016, the Transportation Security and Oversight and Management Subcommittees held a joint Member-level briefing on aviation security in Cuba with the Transportation Security Administration (TSA). Due to concerning information that was brought to light during that briefing, the Transportation Security Subcommittee held a public hearing on May 17, 2016. The Administration witnesses stonewalled Members of Congress, claiming that answers to basic questions contained Security Sensitive Information (SSI) in spite of having briefed Committee members in March in an open setting. Chairman McCaul planned to lead a Congressional delegation to the island in June to examine first-hand the security at Cuba's airports, but all of the delegation's visas were denied.

Despite the change in President Trump's June 2017 announcement that travel and tourism would, again, be restricted, the Committee remains concerned about the security of Cuba's airport. Most notably, U.S. air carriers operating in Cuba must contract a vast majority of their operations support positions. These contracts are with the Empresa Cubana de Aeropuertos y Servicios is an entity run by the communist Cuban government. The airlines have no visibility into who the workers are, how they are vetted and how much they are paid. This raises serious concerns about the extent of the vetting of workers with access to sensitive areas of the airport given the potentially catastrophic security threat posed by a radicalized or corrupted individual with insider access.

This bill also addresses concerns about the baseline security standards for airports that serve as Last Points of Departure to the United States by requiring that the U.S. representative to the International Civil Aviation Organization (ICAO) work to raise security standards globally. It also increases Congressional oversight of Federal Air Marshal Service agreements by requiring that the agreements be written and transmitted to Congress once signed.

Currently, the Administration is not required to share information on these agreements with Congress and has been resistant to Committee oversight in the past.

HEARINGS

The Subcommittee held no legislative hearings on H.R. 3328, but did hold oversight hearings which informed the legislation in the 114th Congress.

On May 17, 2016, the Subcommittee on Transportation Security held a hearing entitled, “Flying Blind: What Are The Security Risks of Resuming U.S. Commercial Air Service To Cuba?” Testimony was received by Mr. Larry Mizell, TSA Representative for the Caribbean region at the Transportation Security Administration, Mr. Paul Fujimura, Assistant Administrator for the Office of Global Strategies at the Transportation Security Administration, Mr. John Wagner, Deputy Executive Assistant Commissioner for Customs and Border Protection at the U.S. Department of Homeland Security, Mr. Seth Stodder, Assistant Secretary for Border, Immigration and Trade Policy at the Department of Homeland Security, and Mr. Kurt Tong, Principle Deputy Assistant Secretary for the Bureau of Economic and Business Affairs at the U.S. Department of State.

COMMITTEE CONSIDERATION

The Committee met on July 26, 2017, to consider H.R. 3328, and ordered the measure to be reported to the House with a favorable recommendation, without amendment, by voice vote.

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 Committee consideration of H.R. 3328.

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. 3328, the Cuban Airport Security Act of 2017, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall

cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

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. 3328 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

The bill requires the Administrator of the Transportation Security Administration (TSA) to brief the relevant committees and the Comptroller General of the United States on the details of the following security measures at each of Cuba's ten international airports: information about the type of equipment used at screening checkpoints and an analysis of such equipment's capability and weaknesses; information about each airport's canine program; the frequency of training for screening and security personnel; access controls in place to ensure only credentialed personnel have access to the secure and sterile areas of such airports; an assessment of the ability of known or suspected terrorists to use Cuba as a gateway to enter the United States; airport perimeter security; a mitigation assessment regarding Man Portable Air Defense Systems; the vetting practices and procedures for airport employees; and any other information determined relevant to the security practices, procedures and equipment in place at such airports.

This legislation also requires that no U.S. carrier that has entered into a covered agreement pursuant to 31 C.F.R. 515.573 may employ a Cuban national after a date that is 30 days after enactment of this Act, unless the air carrier publicly discloses the full text of the covered agreement.

This bill also directs the Administrator to develop a standard working document that shall be the basis of all negotiations and agreements between the FAMS and foreign governments and partners, which requires such agreements to be written and signed by the Secretary of Homeland Security or the Secretary's designee. Following the signing of such agreements, the relevant Congressional committees must be notified within 30 days.

Finally, this legislation directs the U.S. Ambassador or Charge d'Affaires to the United States Mission to the International Civil Aviation Organization to pursue improvements to airport safety and security, including introducing a resolution to raise minimum standards for airport safety and security if practicable, and report to the relevant Congressional Committees on the aforementioned efforts.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of Rule XIII, the Committee finds that H.R. 21626 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

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

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. 3328 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 3328 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 “Cuban Airport Security Act of 2017”.

Sec. 2. Flights Between the United States and Cuba.

This section requires the Administrator of the Transportation Security Administration (TSA) to provide a briefing to the relevant Congressional committees and the Comptroller General of the United States detailing the following security measures at each of Cuba’s ten international airports: information about the type of equipment used at screening checkpoints and an analysis of such equipment’s capability and weaknesses; information about each airport’s canine program; the frequency of training for screening and

security personnel; access controls in place to ensure only credentialed personnel have access to the secure and sterile areas of such airports; an assessment of the ability of known or suspected terrorists to use Cuba as a gateway to enter the United States; airport perimeter security; a mitigation assessment regarding Man Portable Air Defense Systems; the vetting practices and procedures for airport employees; and any other information determined relevant to the security practices, procedures and equipment in place at such airports.

This section also requires that no U.S. carrier that has entered into a covered agreement pursuant to 31 C.F.R. 515.573 may employ a Cuban national after a date that is 30 days after enactment of this Act, unless the air carrier publicly discloses the full text of the covered agreement. Covered agreement is defined as a formal agreement between a U.S. air carrier with passenger air service between Cuba and the United States and the Empresa Cubana de Aeropuertos y Servicios Aeronauticos or any other entity associated with the Government of Cuba.

Sec. 3. Federal Air Marshal Service Agreements.

This section directs the Administrator to develop a standard working document that shall be the basis of all negotiations and agreements between the FAMS and foreign governments and partners. This section also requires such agreements to be written and signed by the Secretary of Homeland Security or the Secretary's designee. Following the signing of such agreements, the relevant Congressional committees must be notified within 30 days.

Sec. 4. International Civil Aviation Organizations.

This section directs the U.S. Ambassador or Charge d'Affaires to the United States Mission to the International Civil Aviation Organization to pursue improvements to airport safety and security, including introducing a resolution to raise minimum standards for airport safety and security if practicable. This section also directs the Ambassador or Charge d'Affaires to report to the relevant Congressional committees on the aforementioned efforts.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

As reported, H.R. 3328 makes no changes to existing law.

ADDITIONAL VIEWS

I submit these additional views on H.R. 3328, the Cuban Airport Security Act of 2017. I do not understand the need for this bill. When you remove the two provisions that passed the House as a part of the Department of Homeland Security Reauthorization Act of 2017 (H.R. 2825), what we are left with is a bill that requires TSA to brief Congress on security measures at Cuban airports. I do not understand why a Republican Subcommittee Chairman would need legislation to get the Trump Administration to provide a Congressional briefing. Further, as I understand it, briefings on Cuba from the Transportation Security Administration (TSA) were provided to the House Committee on Homeland Security on March 7, 2016, March 17, 2016, June 23, 2016, August 10, 2016, and August 31, 2016. I have yet to hear that TSA has refused to brief the Committee on matters of importance, such as this one.

While H.R. 3328 passed our Committee on a voice vote, I would urge my colleagues not to use legislation to resolve issues that can be addressed through phone calls and calendar invites. This body has many, many other issues to be focused on in the 115th Congress and helping members organize briefings should not be one of them.

BENNIE G. THOMPSON.

