

SECURITY ASSESSMENT FEASIBILITY FOR EQUIPMENT TESTING AND EVALUATION OF CAPABILITIES FOR OUR HOMELAND ACT

JANUARY 9, 2018.—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. 4561]

[Including cost estimate of the Congressional Budget Office]

The Committee Homeland Security, to whom was referred the bill (H.R. 4561) to provide for third party testing of transportation security screening technology, 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 that follows after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Security Assessment Feasibility for Equipment Testing and Evaluation of Capabilities for our Homeland Act” or the “SAFE TECH Act”.

SEC. 2. DEFINITIONS.

In this Act:

- (1) ADMINISTRATION.—The term “Administration” means the Transportation Security Administration.
- (2) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Transportation Security Administration.

SEC. 3. THIRD PARTY TESTING OF SECURITY SCREENING TECHNOLOGY.

(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Administrator, in consultation with the Under Secretary for Science and Technology of the Department of Homeland Security, shall develop a program to enable a vendor of transportation security screening technology to obtain testing, including as an alternative to the Administration’s testing process under paragraph (9) of section 114(f) of title 49, United States Code, by an appropriate third party, as determined by the Administrator, in consultation with the Under Secretary, of such technology before procurement or development of such technology.

(b) DETECTION TESTING.—

(1) IN GENERAL.—The third party testing program authorized under subsection (a) shall include detection testing to evaluate the performance of a security screening technology relating to the probability of detection, the probability of false alarm, and other indicators that such technology is able to meet the Administration’s mission needs for detection of—

- (A) explosives; and
- (B) prohibited items.

(2) COORDINATION WITH FINAL PROCESSES.—To the extent practicable, and without compromising the integrity of the Administration’s testing process under paragraph (9) of section 114(f) of title 49, United States Code, or the Department of Homeland Security’s oversight of such testing process, or increasing costs to the Administration, the Administrator shall coordinate the third party detection testing under paragraph (1) with any associated subsequent final Department of Homeland Security testing.

(3) INTERNATIONAL PARTNERSHIPS.—To the extent practicable and permissible under law, and in accordance with national security interests of the United States, the Administrator shall—

- (A) share with appropriate international partners detection testing information and standards; and
- (B) coordinate with such appropriate international partners to align such testing information and standards to maximize the capability to detect explosives and other threats.

(c) ALTERNATIVE TESTING FACTORS.—Third party testing under subsection (a) may include as an alternative, at the discretion of the Administrator, the testing at the TSA Systems Integration Facility of the Administration, including testing for—

- (1) health and safety factors;
- (2) operator interface;
- (3) human factors;
- (4) environmental factors;
- (5) throughput;
- (6) reliability, maintainability, and availability factors; and
- (7) interoperability.

(d) TESTING FRAMEWORK.—The Administrator, in consultation with the Under Secretary for Science and Technology of the Department of Homeland Security, shall—

- (1) establish a framework for the third party testing under this section to determine if the security screening technology that is the subject of such testing satisfies the Administration’s requirements before such technology may enter or re-enter, as applicable, operational testing at an airport or other transportation facility; and
- (2) use phased implementation to allow the Administration and the third party concerned to establish best practices.

(e) PRIORITIZATION OF THIRD PARTY TESTING.—The Administrator may prioritize, when appropriate, the field testing of security screening technology and equipment by third parties.

(f) ELIGIBLE ENTITIES.—

(1) UNITED STATES OWNERSHIP.—An entity providing third party testing under the program developed pursuant to subsection (a) shall be owned and controlled by a citizen of the United States.

(2) WAIVER.—The Administrator may waive the requirement specified in paragraph (1) with respect to an entity that is a United States subsidiary of a parent company that has implemented a foreign ownership, control, or influence mitigation plan that has been approved by the Defense Security Service of the Department of Defense prior to seeking to engage in third party testing. The Administrator has complete discretion to reject any proposal from a company to provide testing under subsection (a) that requires a waiver under this paragraph.

(3) CONFLICTS OF INTEREST.—The Administrator shall ensure, to the extent possible, that an entity providing third party testing under this section does not have a contractual, business, or other pecuniary interest (exclusive of any such testing) in—

- (A) the security screening technology subject to such testing; or the
- (B) vendor of such technology.

SEC. 4. RECIPROCAL RECOGNITION OF SECURITY STANDARDS.

(a) IN GENERAL.—The Administrator, in coordination with the European Civil Aviation Conference, shall continue development of a validation process for the reciprocal recognition of security validation processes for recognition of security screening technologies or certification authorities for deployment.

(b) REQUIREMENT.—The validation process under subsection (a) shall ensure that the certification process of each participating international security partner or recognized certification authority complies with Administration standards.

SEC. 5. GAO REVIEW.

Not later than two years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a study on the third party testing program developed under this Act. Such study shall include a review of the following:

- (1) Any efficiencies or gains in effectiveness achieved in the Administration's operations as a result of such program.
- (2) The degree to which the Administration conducts timely and regular oversight of entities engaged in such testing.
- (3) The effect of such program on the following:
 - (A) The introduction of innovative detection technologies into security screening operations.
 - (B) The availability of testing for technologies developed by small to medium sized businesses.
 - (C) Any vulnerabilities associated with such program including with respect to the following:
 - (i) National security.
 - (ii) Conflicts of interest between entities carrying out such testing and entities with such technologies to be tested.
 - (iii) Waste, fraud and abuse.

PURPOSE AND SUMMARY

This legislation directs the Administrator of the Transportation Security Administration (TSA) to establish a program and framework for enabling third party testing for advanced security screening technologies, in order to alleviate existing bureaucratic hurdles and bottleneck's in the TSA's testing and evaluation process. This legislation will seek to increase efficiencies while decreasing costs to TSA, while also having a positive impact on the acquisitions and procurement process for mitigating the rapidly evolving threats to transportation security. Lastly, this bill seeks to align various security standards and protocols with the European Civil Aviation Conference, in order to streamline international security standards and raise the global baseline of aviation security.

BACKGROUND AND NEED FOR LEGISLATION

Technology stakeholders consistently face challenges in partnering with the Department of Homeland Security (DHS) and the TSA to test and validate their screening technologies for procurement. This is due in large part to current bottlenecks at the Science and Technology (S&T) Directorate's Transportation Security Laboratory and TSA's Transportation Systems Integration Facility, where new technologies are testing and evaluated before they can be purchased and deployed at passenger screening checkpoints. These bottlenecks and bureaucratic hurdles have often cut out small or startup technology businesses and stifled innovations in passenger screening, all while the threat landscape facing transportation has continued to evolve rapidly and put the traveling public at risk. Most recently, this has been observed in TSA's struggle to develop and deploy Computed Tomography technology at checkpoints, which provides greater imaging and enhanced screening capabilities. This legislation will hopefully spur more rapid and efficient technology testing while saving TSA money in testing costs.

HEARINGS

114th Congress

On January 7, 2016, the Subcommittee on Transportation Security held a hearing entitled "Transportation Security Acquisition Reform Act: Examining Remaining Challenges." The Subcommittee received testimony from Mr. Steven Wallen, Director, Explosives Division, Homeland Security Advanced Research Projects Agency, Science and Technology Directorate, U.S. Department of Homeland Security; Ms. Jill Vaughan, Assistant Administrator, Office of Security Technologies, Transportation Security Administration, U.S. Department of Homeland Security; Ms. Michele Mackin, Director, Office Acquisition and Sourcing Management, U.S. Government Accountability Office; and Mr. TJ Schulz, Executive Director, Security Manufacturers Coalition.

115th Congress

On April 27, 2017, the Subcommittee on Transportation and Protective Security held a hearing entitled "Checkpoint of the Future: Evaluating TSA's Innovation Task Force Initiative" The Subcommittee received testimony from Mr. Steve Karoly, Acting Assistant Administrator, Office of Requirements and Capabilities Analysis, Transportation Security Administration, U.S. Department of Homeland Security; Mr. Roosevelt Council, Jr., General Manager, Hartsfield-Jackson Atlanta International Airport, Department of Aviation, City of Atlanta, Georgia; Ms. Jeanne M. Olivier, A.A.E., Assistant Director, Aviation Security & Technology, Security Operations and Programs Department, The Port Authority of New York and New Jersey.

On September 26, 2017, the Subcommittee on Transportation and Protective Security held a hearing entitled "Raising the Standard: DHS's Efforts to Improve Aviation Security Around the Globe." The Subcommittee received testimony from Mr. Craig Lynes, Director of Global Compliance, Office of Global Strategies, Transportation Security Administration, U.S. Department of Homeland Se-

curity; Mr. Todd C. Owen, Executive Assistant Commissioner, Office of Field Operations, Customs and Border Protection, U.S. Department of Homeland Security; and Ms. Jennifer Grover, Director, Homeland Security and Justice, U.S. Government Accountability Office.

On November 8, 2017, the Full Committee held a hearing entitled “Preventing the Next Attack: TSA’s Role in Keeping Our Transportation Systems Secure.” The Committee received testimony from Hon. David P. Pekoske, Administrator, Transportation Security Administration, U.S. Department of Homeland Security.

COMMITTEE CONSIDERATION

The Committee met on December 13, 2017, to consider H.R. 4561, 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 amendment was offered:

An amendment offered by MR. THOMPSON of Mississippi (#1); was AGREED TO by voice vote.

At the end of section 3, insert a new subsection entitled “(f) Eligible entities.”

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. 4561.

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. 4561, the Security Assessment Feasibility for Equipment Testing and Evaluation of Capabilities for our Homeland 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, January 8, 2018.

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. 4561, the Security Assessment Feasibility for Equipment Testing and Evaluation of Capabilities for Our Homeland Act.

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

Sincerely,

KEITH HALL,
 Director.

Enclosure.

H.R. 4561—Security Assessment Feasibility for Equipment Testing and Evaluation of Capabilities for Our Homeland Act

Under current law, the Transportation Security Administration (TSA) is responsible for testing facilities, equipment, and systems related to transportation security. As an alternative, H.R. 4561 would direct TSA to establish a program to allow technology developers to obtain testing from a third party, subject to requirements specified in the bill. H.R. 4561 also would require the Government Accountability Office to study the effects of the proposed program and would direct TSA to develop, in consultation with the European Civil Aviation Conference, processes to promote reciprocal recognition of security-related standards among international organizations.

Using information from TSA, CBO estimates that implementing H.R. 4561 would cost about \$300,000 annually. Such spending—which would be subject to appropriation—would support additional staff required to develop policies related to TSA’s vetting of data from external sources and for reviewing information submitted by vendors that would use the third-party testing program. Enacting H.R. 4561 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 4561 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 4561 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Megan Carroll. The estimate was approved by H. Samuel Papenfuss, Deputy 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. 4561 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

The legislation requires the Administrator to develop a program to enable third party testing for technologies, without increases ex-

penses to the Administration or lowering the quality of testing. Additionally, this legislation provides for the Government Accountability Office to submit a report as to the effectiveness of this program.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of Rule XIII, the Committee finds that H.R. 4561 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 the following 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. 4561 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 4561 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 “Security Assessment Feasibility for Equipment Testing and Evaluation of Capabilities for our Homeland Act” or the “SAFE TECH Act”.

Sec. 2. Definitions.

This section defines the terms used in this act including: “Administration” and “Administrator”.

Sec. 3. Third Party Testing of Security Screening Technology.

This section directs the Administrator, in consultation with the Under Secretary for Science and Technology of DHS, to develop a program to enable a vendor of transportation security screening technology to obtain testing by a third party. This testing shall include detection testing to evaluate the performance of a security screening technology relating to the detection of explosives, and other prohibited items. The third party testing, without increasing expenses and lowering quality of testing, shall coordinate its final qualification processes with DHS testing.

To the extent practicable, and in accordance to national security interests, the administrator shall share detection testing information and standards, and coordinate testing alignments with international partners to maximize the capability to detect explosives and other threats. Alternate testing may also include (at the discretion of the administrator; health and safety factors, Operator interface, human factors, environmental factors, and reliability/maintainability and availability factors. The administrator may prioritize the field testing of security screening technology and equipment by third parties.

Sec. 4. Reciprocal Recognition of Security Standards.

This section requires the Administrator to continue to develop a validation process for the reciprocal recognition of security validation processes for recognition of security screening technologies or certification authorities for deployment with the European Civil Aviation Conference. Validation shall ensure that each participating international security partner complies with the Administrator’s standards.

Sec. 5. GAO Review.

This section requires the Comptroller General of the United States to provide to the House Committee on Homeland Security and the Senate Committee on Homeland Security and Governmental Affairs a study on the third party testing program developed under this measure. The Committee believes that this study will provide the appropriate committees the ability to review and enhance this legislation in the future.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

As reported, H.R. 4561 makes no changes to existing law.