

SURFACE TRANSPORTATION SECURITY IMPROVEMENT
ACT OF 2018

MARCH 19, 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. 5131]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 5131) to improve the effectiveness of Federal efforts to identify and address homeland security risks to surface transportation, secure against vehicle-based attacks, and conduct a feasibility assessment of introducing new security technologies and measures, 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 “Surface Transportation Security Improvement Act of 2018”.

SEC. 2. DEFINITIONS.

In this Act:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(2) **PUBLIC AND PRIVATE SECTOR STAKEHOLDERS.**—The term “public and private sector stakeholders” has the meaning given such term in section 114(u)(1)(C) of title 49, United States Code.

(3) **SURFACE TRANSPORTATION ASSET.**—The term “surface transportation asset” includes facilities, equipment, or systems used to provide transportation services by—

(A) a public transportation agency (as such term is defined in section 1402(5) of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110–53; 6 U.S.C. 1131(5)));

(B) a railroad carrier (as such term is defined in section 20102(3) of title 49, United States Code);

(C) an owner or operator of—

(i) an entity offering scheduled, fixed-route transportation services by over-the-road bus (as such term is defined in section 1501(4) of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110–53; 6 U.S.C. 1151(4))); or

(ii) a bus terminal; or

(D) other transportation facilities, equipment, or systems, as determined by the Secretary.

SEC. 3. NATIONAL STRATEGY FOR TRANSPORTATION SECURITY REVIEW.

Not later than one year after the date of the enactment of this Act, the Comptroller General of the United States shall evaluate the degree to which the 2016 Biennial National Strategy for Transportation Security, as required pursuant to section 114(s) of title 49, United States Code, that was issued on August 11, 2016, by the Administrator of the Transportation Security Administration, is reflected in Federal transportation security programs, budgets, research, staffing levels, and related efforts and, in carrying out such evaluation, shall consider the degree to which—

(1) such strategy is sufficiently forward-looking to guide future Federal efforts relating to transportation security;

(2) Federal transportation security programs, budgets, research, staffing levels, and related efforts for fiscal year 2018 and beyond are guided by such strategy; and

(3) the annual progress reports submitted to Congress pursuant to such section subsequent to the issuance of such strategy provide information on the degree to which such strategy guides Federal efforts relating to transportation security.

SEC. 4. RISK SCENARIOS.

(a) **IN GENERAL.**—The Secretary of Homeland Security shall annually develop, consistent with the transportation modal security plans required under section 114(s) of title 49, United States Code, risk-based priorities based on risk assessments conducted or received by the Secretary across all transportation modes that consider threats, vulnerabilities, and consequences.

(b) **SCENARIOS.**—The Secretary of Homeland Security shall ensure that the risk-based priorities identified pursuant to subsection (a) are informed by an analysis of terrorist attack scenarios for each transportation mode, including cyber attack scenarios and intelligence and open source information about current and evolving threats.

(c) **REPORT.**—Not later than 120 days after each development of risk-based priorities under subsection (a), the Secretary of Homeland Security shall provide to the appropriate congressional committees a report that includes the following:

(1) Copies of the risk assessments for each transportation mode.

(2) A summary that ranks the risks within and across modes.

(3) A description of the risk-based priorities for securing the transportation sector that identifies and prioritizes the greatest security needs of such trans-

portation sector, both across and within modes, in the order that such priorities should be addressed.

(4) Information on the underlying methodologies used to assess risks across and within each transportation mode and the basis for any assumptions regarding threats, vulnerabilities, and consequences made in assessing and prioritizing risks within each such mode and across modes.

(d) CLASSIFICATION.—The information provided under subsection (c) may be submitted in a classified format or unclassified format, as appropriate.

SEC. 5. ASSESSMENTS AND SECURITY PLANS; FRONTLINE EMPLOYEE SECURITY TRAINING.

(a) REPORT.—Not later than 60 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the appropriate congressional committees and the Inspector General of the Department of Homeland Security a report on—

(1) the status of regulations requiring assessments and security plans as specified in sections 1405, 1512, and 1531 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (6 U.S.C. 1134, 1162, and 1181) that includes a timeline for the issuance of a final rulemaking subsequent to the December 16, 2016, publication in the Federal Register of an advance notice of proposed rulemaking; and

(2) the status of regulations for a security training program to prepare transportation employees for potential security threats and conditions as specified in sections 1408, 1517, and 1534 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (6 U.S.C. 1137, 1167, and 1184) that includes a timeline for the issuance of a final rulemaking subsequent to the December 16, 2016, publication in the Federal Register of a notice of proposed rulemaking.

(b) INSPECTOR GENERAL REVIEW.—Not later than 120 days after submission of the report under subsection (a), the Inspector General of the Department of Homeland Security shall submit to the appropriate congressional committees a review of such report that includes information on—

(1) departmental efforts to finalize rulemaking; and

(2) recommendations, as necessary, to ensure implementation of the regulations referred to in such subsection.

SEC. 6. RESEARCH AND DEVELOPMENT.

(a) EMERGING ISSUES.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security, acting through the Under Secretary for Science and Technology of the Department of Homeland Security and in coordination with the Administrator of the Transportation Security Administration, shall submit to the appropriate congressional committees a feasibility assessment of modifying the security of surface transportation assets by—

(1) introducing next generation technologies to be integrated into systems of surface transportation assets to detect explosives, including through the deployment of mobile explosives detection technologies to conduct risk-based passenger and property screening at such systems;

(2) providing surface transportation asset operators with access to the Transportation Security Administration's Secure Flight Program or a similar passenger vetting system maintained by the Transportation Security Administration;

(3) deploying a credential authentication technology or other means of identification document inspection to high-risk surface transportation assets to assist operators conducting passenger vetting; and

(4) deploying scalable, cost-effective technology solutions to detect chemical, biological, radiological, nuclear, or explosive threats within high-risk surface transportation assets that are capable of passive, continuous, and real-time sensing and detection of, and alerting passengers and operating personnel to, the presence of such a threat.

(b) CONSIDERATIONS.—In carrying out the assessment required under subsection (a), the Secretary of Homeland Security, acting through the Under Secretary for Science and Technology of the Department of Homeland Security and in coordination with the Administrator of the Transportation Security Administration, shall address the technological, privacy, operational, passenger facilitation, and public acceptance considerations involved with each security measure contemplated in such assessment.

SEC. 7. BEST PRACTICES TO SECURE AGAINST VEHICLE-BASED ATTACKS.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall disseminate best practices to public and private sector stakeholders regarding how to enhance transportation security against the threat of a vehicle-based terrorist attack.

SEC. 8. SURFACE TRANSPORTATION STAKEHOLDER SURVEY.

(a) **IN GENERAL.**—Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security shall begin conducting a survey of public and private stakeholders responsible for securing surface transportation assets regarding resource challenges, including the availability of Federal funding, associated with securing such assets that provides an opportunity for respondents to set forth information on specific unmet needs.

(b) **REPORT.**—Not later than 120 days after beginning the survey required under subsection (a), the Secretary of Homeland Security shall report to the appropriate congressional committees regarding the results of such survey and the Department of Homeland Security's efforts to address any identified security vulnerabilities.

SEC. 9. INNOVATIVE TECHNOLOGIES AND CAPABILITIES.

(a) **IN GENERAL.**—The Administrator of the Transportation Security Administration may establish a task force to collaborate with public and private sector stakeholders to identify and develop an innovative technology or capability with the potential to enhance transportation security, including by—

(1) conducting a field demonstration of such a technology or capability in an operational environment;

(2) gathering performance data from such a demonstration to inform the acquisition process; and

(3) to the extent practicable, providing funding and promoting efforts to enable participation in a demonstration by a small business that has an innovative technology or capability but does not have adequate resources to participate in a field demonstration under paragraph (1).

(b) **COMPOSITION.**—The task force authorized under subsection (a) shall be chaired by the Administrator of the Transportation Security Administration's designee and comprised of representatives appointed by the Administrator, in consultation with the Chairperson of the Aviation Security Advisory Committee (established pursuant to section 44946 of title 49, United States Code).

(c) **ACTIVITIES.**—The chair of the task force shall—

(1) evaluate technologies and capabilities for field demonstrations with potential to enhance surface transportation security, in addition to technologies and capabilities with potential to enhance aviation security;

(2) coordinate with the Science and Technology Directorate of the Department of Homeland Security to leverage such technologies and capabilities; and

(3) submit to the Secretary of Homeland Security an annual report regarding the task force's activities that identifies, for each such technology or capability, what mode of transportation could be enhanced by the integration of such technology or capability into security operations and, as appropriate, plans for deploying such technology or capability.

(d) **RULE OF CONSTRUCTION.**—Nothing in this section shall require the Administrator of the Transportation Security Administration to acquire an innovative technology or capability.

(e) **NON-APPLICABILITY OF FACA.**—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the task force.

SEC. 10. SECURITY TECHNOLOGIES TIED TO FOREIGN THREAT COUNTRIES.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security, acting through the Under Secretary for Intelligence and Analysis of the Department of Homeland Security, in consultation with the Under Secretary for the National Protection and Programs Directorate of the Department, shall submit to the appropriate congressional committees an assessment of terrorist and other threats to the transportation sector, including surface transportation assets, posed by the use of security technologies, including software and networked technologies, developed or manufactured by firms that are owned or closely linked to the governments of countries that are known to pose a cyber or homeland security threat.

SEC. 11. SURFACE TRANSPORTATION SECURITY INSPECTORS.

(a) **STRATEGY.**—Not later than 180 days after the date of the enactment of this Act, the Administrator of the Transportation Security Administration shall submit to the appropriate congressional committees and the Comptroller General of the United States a strategy to guide operations of surface transportation security inspectors that addresses the following:

(1) Any limitations in data systems for such inspectors, as identified by the Comptroller General.

(2) Alignment of operations with risk assessment findings, including an approach to identifying and prioritizing entities and locations for inspections.

(3) Measurable objectives for the surface transportation security inspectors program.

(b) COMPTROLLER GENERAL REVIEW.—Not later than 180 days after the submission of the strategy required under subsection (b), the Comptroller General of the United States shall review such strategy and, as appropriate, issue recommendations.

PURPOSE AND SUMMARY

The purpose of H.R. 5131, the Surface Transportation Security Improvement Act of 2018, is to prioritize and improve surface transportation security at the Transportation Security Administration (TSA). This bill requires: a GAO review of the national strategy for transportation security, the development of risk-based priorities for all transportation modes, a feasibility assessment of utilizing security technologies for surface transportation assets, the dissemination of best practices for enhancing security against vehicle-based terrorist attacks, the authorization of the Innovation Task Force (ITF), a threat assessment of certain security technologies tied to foreign countries, and a strategy for surface transportation inspectors.

BACKGROUND AND NEED FOR LEGISLATION

The TSA was originally established in 2001 in response to the terrorist attacks of September 11th. While the impetus behind its creation was the threat to aviation security, TSA is responsible for securing all transportation modes, including surface transportation assets such as railroads, mass transit, pipelines, buses, and ports. However, due to the nature of the 9/11 attacks, as well as the persistent threat since, TSA's main focus has been securing the aviation sector.

Nevertheless, attacks on transportation modes in recent years have often targeted surface transportation hubs, due to their porous and accessible configuration and large numbers of passengers and, on average, result in larger numbers of casualties. Unsophisticated lone wolf attacks are especially difficult for TSA and security stakeholders to protect against since they generally occur without prior warning. Such targets are more attractive to lone wolf or homegrown violent extremists since they often require less sophistication. The most recent example is the attempted pipe bomb attack in December 2017 at New York City's Port Authority Bus Terminal.¹ This bill seeks to review TSA's approach to securing all transportation modes, including its utilization of innovative security technologies, and prioritize surface transportation security in the face of evolving threats.

HEARINGS

The Committee did not hold any legislative hearings on H.R. 5131 in the 115th Congress. However, this legislation was informed by a joint Subcommittee on Transportation and Protective Security and Subcommittee on Emergency Preparedness, Response, and Communications hearing on January 30, 2018 entitled "Securing our Surface Transportation Systems: Examining the Department of

¹ Gingras, Brynn. "Suspect in attempted 'terrorist attack' pledged allegiance to ISIS, officials say." CNN, December 12, 2017. <https://www.cnn.com/2017/12/11/us/new-york-possible-explosion-port-authority-subway/index.html>.

Homeland Security's Role in Surface Transportation Technologies." The Subcommittee received testimony from Ms. Sonya Proctor, Director of Surface Division, Office of Security Policy and Industry Engagement, Transportation Security Administration; Mr. Robert Pryor, Director of Intermodal Division, Office of Requirements and Capabilities Analysis, Transportation Security Administration; Mr. Donald E. Roberts, Program Manager of Explosive Threat Detection, Explosives Division, Homeland Security Advanced Research Projects Agency, DHS Science and Technology Directorate; and Mr. Brian Michael Jenkins, Director, National Transportation Security Center of Excellence, Mineta Transportation Institute.

This legislation was also informed by a Subcommittee on Transportation and Protective Security hearing on November 28, 2017 entitled "Securing Public Areas of Transportation Systems: Stakeholder Perspectives." The Subcommittee received testimony from Mr. Charles Cunningham, Director of Homeland Security and Emergency Management, Delaware River Port Authority (DRPA) Public Safety/PATCO; Mr. Thomas J. Nestel, III, Chief of Transit Police, Southeastern Pennsylvania Transportation Authority (SEPTA); Mr. Douglas Lemanowicz, Lieutenant of Special Operations Section, New Jersey State Police; and Mr. Christopher Trucillo, Chief of Transit Police, New Jersey Transit.

COMMITTEE CONSIDERATION

The Committee met on March 7, 2018, to consider H.R. 5131, and ordered the measure to be reported to the House with a favorable recommendation, as amended, by unanimous consent. The Committee took the following actions:

The following amendment was offered:

An amendment offered by MRS. WATSON COLEMAN (#1); was AGREED TO by unanimous consent.

In section 9, re designate subsections (c) through (f) as subsections (b) through (e), respectively.

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. 5131.

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. 5131, the Surface Transportation Security Improvement Act of 2018, 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. 5131 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

This legislation seeks to improve the effectiveness of Federal efforts to identify and address homeland security risks to surface transportation, secure against vehicle-based attacks, and conduct a feasibility assessment of introducing new security technologies and measures.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of Rule XIII, the Committee finds that H.R. 5131 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

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.

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. 5131 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 5131 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 “Surface Transportation Security Improvement Act of 2018”.

Sec. 2. Definitions.

This section defines the terms used in this act including: “appropriate congressional committees”; “public and private sector stakeholders”; and “surface transportation asset”.

Sec. 3. National Strategy for Transportation Security Review.

This section requires the Comptroller General to evaluate how much of the 2016 Biennial National Strategy for Transportation Security has been implemented throughout Federal transportation security programs, budgets, research, and related efforts.

Additionally, this section identifies what should be considered during such evaluation.

Sec. 4. Risk Scenarios.

This section requires the Secretary of Homeland Security to annually develop risk-based priorities across all transportation modes that consider threats and vulnerabilities.

Additionally, this section requires that the aforementioned risk-based priorities be informed by an analysis of terrorist attack scenarios for each transportation mode.

This section also requires the Secretary to submit a report to Congress that includes details of all of the risk assessments including the ranks of each, priority within each mode of transportation, and the methodologies used to assess risks.

Sec. 5. Assessments and Security Plans; Frontline Employee Security Training.

This section requires the Secretary to submit a report to the appropriate congressional committees regarding the status of (1) regulations requiring assessments and security plans, and (2) regulations for a security training program to prepare transportation employees for potential threats, pursuant to the Implementing Recommendations of the 9/11 Commission Act of 2007.

Additionally, this section also requires the Inspector General to submit to congressional committees a review of the aforementioned report that should detail the departmental efforts to finalize rule-making and any recommendations to ensure implementation of the regulations. The Committee expects the Inspector General to leverage any relevant ongoing work when conducting its review of TSA's report.

Sec. 6. Research and Development.

This section requires the Secretary to submit to Congressional committees a feasibility assessment of modifying the security of surface transportation assets by introducing next generation explosives detection technologies, providing asset operators with access to a passenger vetting system, deploying credential authentication technology, and deploying other technology solutions. Additionally, this section requires the Secretary to address the technological, privacy, operational, passenger facilitation, and public acceptance considerations involved with each security measure contemplated in the assessment.

The Committee encourages TSA to explore integrating innovative technologies and security measures into current surface transportation security regimes. However, the Committee does not necessarily support the adoption of each measure outlined in this section. The Committee intends to ensure TSA appropriately considers the potential impacts of adoption of such measures—such as the potential passenger facilitation impacts of even relatively minimally intrusive security measures within high-volume systems—prior to their implementation.

Sec. 7. Best Practices to Secure Against Vehicle-based Attacks.

This section requires the Secretary to disseminate best practices to stakeholders regarding ways to enhance transportation security against the threat of vehicle-based attacks.

Sec. 8. Surface Transportation Stakeholder Survey.

This section requires the Secretary to begin conducting a survey of stakeholders responsible for securing surface transportation regarding resource challenges.

Additionally, this section requires the Secretary to report the survey results and DHS's efforts to address any vulnerabilities.

The Committee has received testimony regarding significant resource challenges facing surface transportation stakeholders, including at the November 28, 2017, hearing entitled "Securing Public Areas of Transportation Systems: Stakeholder Perspectives," and intends for the results of the survey to inform future TSA activities.

Sec. 9. Innovative Technologies and Capabilities.

This section permits the TSA Administrator to establish a task force to collaborate with stakeholders to identify and develop technology to enhance transportation security, including by promoting efforts to enable small business participation in technology demonstrations. The task force shall be chaired by the Administrator's designee and comprised of representatives appointed by the Administrator, in consultation with the Chairperson of the Aviation Secu-

riety Advisory Committee. Additionally, this section identifies the duties of the task force chair such as evaluating technologies with potential to enhance surface transportation and aviation security and reporting on the task force's activities.

The Committee intends for this section to authorize TSA's Innovation Task Force in order to improve coordination with private industry and better utilize innovative security technologies.

Sec. 10. Security Technologies Tied to Foreign Threat Countries.

This section requires the Secretary to submit an assessment of threats to the transportation sector posed by the use of technologies developed or manufactured by firms that are owned or closely linked to foreign governments that are known to pose a security threat.

Sec. 11. Surface Transportation Security Inspectors.

This section requires the Administrator to submit a strategy to guide operations of surface transportation security inspectors. This strategy shall address limitations in data systems for inspectors, the alignment of operations with risk assessment findings, and measurable objectives for the surface transportation security inspectors program.

Additionally, this section requires the Comptroller General to review the aforementioned strategy and issue recommendations.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

As reported, H.R. 5131 makes no changes to existing law.

