

KNOW THE CBRN TERRORISM THREATS TO
TRANSPORTATION ACT

OCTOBER 20, 2015.—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. 3350]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 3350) to require a terrorism threat assessment regarding the transportation of chemical, biological, nuclear, and radiological materials through United States land borders and within the United States, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of H.R. 3350 is to require a terrorism threat assessment regarding the transportation of chemical, biological, nuclear, and radiological materials through United States land borders and within the United States. The bill requires the Office of Intelligence and Analysis (I&A) within the Department of Homeland Security (DHS) to conduct the assessment and directs that the results of the assessment be shared with relevant Federal, State and local agencies, including the Department of Energy.

BACKGROUND AND NEED FOR LEGISLATION

Terrorist groups have long had an interest in using weapons of mass destruction, especially those utilizing chemical, biological, radiological, and nuclear (CBRN) agents or materials. Many officials working in homeland security and intelligence analysis agree that the threat from CBRN agents is real, although difficulty in intelligence gathering hampers efforts to get a clear picture of the current state of terrorist development and planned use of such weapons of mass destruction. The Director of the Defense Intelligence Agency testified in 2012 that “terrorist organizations are working to acquire and employ chemical, biological, and radiological materials.”¹ Two years later, in his statement for the record before the Senate Select Committee on Intelligence, Director of National Intelligence James Clapper noted that the “[Intelligence Community is] focused on the threat and destabilizing effects of nuclear proliferation, proliferation of chemical and biological warfare (CBW)-related materials, and development of weapons of mass destruction (WMD) delivery systems.”²

The Department of State Country Report on Terrorism for 2014 highlights continued concerns securing CBRN materials. Specifically, the report states, “CBRN materials and expertise remain a terrorist threat as demonstrated by terrorists’ stated intent to acquire and use these materials; the nature of injury and damage these weapons can inflict; the ease with which information on these topics now flows; and the dual-use nature of many relevant technologies and material.”³

In addition to concerns that terror groups may try to create or purchase CBRN materials, there are concerns that terrorists could exploit such materials with legitimate commercial uses, including when such materials are transported from one location to another. It is this concern that the bill seeks to address.

According to public reporting, spent nuclear fuel is being transported from a laboratory in Canada, across the Peace Bridge to a Department of Energy laboratory in South Carolina for disposal.⁴ While both the Nuclear Regulatory Commission and the Department of Transportation regulate the transportation of this mate-

¹Testimony of Lieutenant General Ronald L. Burgess, Jr., Director, Defense Intelligence Agency, before the Senate Armed Services Committee on February 16, 2012.

²Worldwide Threat Assessment of the US Intelligence Community, Before the Senate Select Committee on Intelligence, 113th Congress (2014) (statement of the Honorable James Clapper, Director of National Intelligence at 5).

³“Country Reports on Terrorism 2014,” Department of State, June 2015, page 289. (Accessed at: <http://www.state.gov/documents/organization/239631.pdf>).

⁴Ashley Hirtzel, “Higgins expresses concern with transporting nuclear waste over Peace Bridge,” WBFP 88.7, July 25, 2014. (Accessed at: <http://news.wbfo.org/post/higgins-expresses-concern-transporting-nuclear-waste-over-peace-bridge#stream/0>).

rial, this bill requires the Department of Homeland Security to review the process from a terrorist threat perspective.

HEARINGS

The Committee did not hold any hearing specifically on H.R. 3350; however, the Committee did hold the following oversight hearing in the 114th Congress.

On September 17, 2015, the Subcommittee on Transportation Security and the Subcommittee on Counterterrorism and Intelligence held a joint hearing entitled “Safeguarding our Nation’s Surface Transportation Systems Against Evolving Terrorist Threats.” The Subcommittees received testimony from Mr. Eddie Mayenschein, Assistant Administrator, Office of Security Policy and Industry Engagement, Transportation Security Administration, U.S. Department of Homeland Security; Ms. Jennifer Grover, Director, Transportation Security and Coast Guard Issues, Homeland Security and Justice Team, U.S. Government Accountability Office; Mr. Raymond Diaz, Director of Security, Metropolitan Transportation Authority (New York); and Ms. Polly Hanson, Chief of Police, National Railroad Passenger Corporation (Amtrak).

COMMITTEE CONSIDERATION

The Committee met on September 30, 2015, to consider H.R. 3350, and ordered the measure to be reported to the House with a favorable recommendation, without amendment, by voice vote.

The Subcommittee on Counterterrorism and Intelligence met on September 17, 2015, to consider H.R. 3350 and reported the measure to the Full Committee 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 consideration of H.R. 3350.

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. 3350, the Know the CBRN Terrorism Threats to Transportation 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, October 16, 2015.

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. 3350, the Know the CBRN Terrorism Threats to Transportation Act.

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

Sincerely,

KEITH HALL.

Enclosure.

H.R. 3350—Know the CBRN Terrorism Threats to Transportation Act

H.R. 3350 would require the Department of Homeland Security (DHS), within 90 days of the bills enactment, to prepare a threat assessment relating to the transportation of chemical, biological, nuclear, and radiological materials throughout the United States. The department is currently carrying out activities similar to those required by the bill, and CBO estimates that implementing H.R. 3350 would not significantly affect DHS spending.

Because enacting the legislation would not affect direct spending or revenues, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 3350 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2026.

H.R. 3350 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Mark Grabowicz. 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. 3350 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

The legislation requires that the Undersecretary for I&A coordinate with other Federal agencies and components to ensure that the threat assessment is robust and complete. Additionally, the bill requires I&A to share the completed assessment with appropriate Federal, State, and local partners, including fusion centers in the National Network of Fusion Centers and the Department of Energy.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of Rule XIII, the Committee finds that H.R. 3350 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. 3350 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 3350 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 bill may be cited as the “Know the CBRN Terrorism Threats to Transportation Act”.

Sec. 2. Terrorism Threat Assessment.

This section requires the Secretary of Homeland Security, acting through the Under Secretary of Intelligence and Analysis (I&A), to conduct a threat assessment of the transportation of chemical, biological, nuclear, and radiological materials through the land bor-

ders and within the United States within 90 days of the enactment of the Act.

The Committee believes that it is appropriate for the threat assessment to be conducted by I&A. Section 201 of the Homeland Security Act lays out the responsibilities for the Secretary related to intelligence analysis and infrastructure protection. Such responsibilities include subparagraph (1), which directs DHS to gather all available information and intelligence to “identify and assess the scope of terrorist threats to the homeland; detect and identify threats of terrorism against the United States; and understand such threats in light of actual and potential vulnerabilities of the homeland.” Subparagraph (2) further requires DHS “to carry out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States, including the performance of risk assessments to determine the risks posed by particular types of terrorist attacks within the United States (including an assessment of the probability of success of such attacks and the feasibility and potential efficacy of various countermeasures to such attacks).”

The bill requires the Under Secretary for I&A to consult with the Administrator of the Transportation Security Administration, the Commissioner of U.S. Customs and Border Protection, and the heads of other Federal agencies in the preparation of the assessment.

The Committee strongly believes that coordination and information sharing within the Department, as well as between the Department and other agencies is critical for securing the homeland efficiently. While I&A is the lead agency in preparing the threat assessment, the Committee expects the agency to coordinate with the Department of Transportation, the Department of Energy, and appropriate DHS component agencies.

Lastly, the bill requires that upon completion of the threat assessment, the Under Secretary disseminate the threat assessment to appropriate Federal, State, and local partners, including fusion centers in the National Network of Fusion Centers and the Department of Energy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

As reported, H.R. 3350 makes no changes to existing law.