

PARTNERS FOR AVIATION SECURITY ACT

NOVEMBER 2, 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. 3144]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 3144) to require consultation with the Aviation Security Advisory Committee regarding modifications to the prohibited item list, require a report on the Transportation Security Oversight Board, 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 out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

The Act may be cited as the “Partners for Aviation Security Act”.

SEC. 2. AVIATION SECURITY ADVISORY COMMITTEE CONSULTATION.

The Administrator of the Transportation Security Administration shall consult, to the extent practicable, with the Aviation Security Advisory Committee (established pursuant to section 44946 of title 49 of the United States Code) regarding any modification to the prohibited item list prior to issuing a determination about any such modification.

SEC. 3. REPORT ON THE TRANSPORTATION SECURITY OVERSIGHT BOARD.

Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the Transportation Security Oversight Board (established pursuant to section 115 of title 49, United States Code), the Committee on Homeland Security of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs and the Committee on Commerce, Science, and Transportation of the Senate a report that includes general information on how often the Board has met, the current composition of the Board, and what activities the Board has undertaken, consistent with the duties specified in subsection (c) of such section. The Administrator may include in such report recommendations for changes to such section in consideration of the provisions of section 44946 of title 49, United States Code.

SEC. 4. TECHNICAL CORRECTIONS.

(a) **TERMS.**—Subparagraph (A) of section 44946(c)(2) of title 49, United States Code, is amended to read as follows:

“(A) **TERMS.**—The term of each member of the Advisory Committee shall be two years but may continue until such time as a successor member begins serving on the Advisory Committee. A member of the Advisory Committee may be reappointed.”

(b) **CLARIFICATION.**—Paragraph (5) of section 44946(b) of title 49, United States Code, is amended by striking “under paragraph (4)” and inserting “under this subsection”.

SEC. 5. DEFINITION.

In this Act, the term “prohibited item list” means the list of items passengers are prohibited from carrying as accessible property or on their persons through passenger screening checkpoints at airports, into sterile areas at airports, and on board passenger aircraft, pursuant to section 1540.111 of title 49, Code of Federal Regulations (as in effect on January 1, 2015).

PURPOSE AND SUMMARY

The purpose of H.R. 3144 is to require consultation with the Aviation Security Advisory Committee (ASAC) regarding modifications to the prohibited items list, require a report on the Transportation Security Oversight Board, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

This legislation is based on previous instances in which the Transportation Security Administration (TSA) has sought to change the prohibited items list without proper consultation with industry stakeholders, resulting in confusion and consternation on the part of industry, the public, and Congress. Additionally, stakeholder feedback has indicated that the Transportation Security Oversight Board has been inactive since being established by statute. Lastly, the technical correction to the existing ASAC law will allow members to serve without a lapse in participation or input.

HEARINGS

No legislative hearings were held on H.R. 3144.

COMMITTEE CONSIDERATION

The Committee met on September 30, 2015, to consider H.R. 3144, 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 offered by MR. PAYNE (#1); was AGREED TO by voice vote.

Page 2, beginning line 13, strike “Administrator of the Transportation Security Administration” and insert “Secretary of Homeland Security”.

Page 3, line 3, strike “CORRECTION” and insert “CORRECTIONS”.

Page 3, line 4, strike “Subparagraph (A) of section 4946(c)(2)” and insert the following: (a) TERMS.-Subparagraph (A) of section 2 44946(c)(2)

Page 3, beginning line 12, insert the following: (b) CLARIFICATION.-Paragraph 5 of section 44946(b) of title 49, United States Code, is amended by striking “under paragraph (4)” and inserting “under this subsection”.

The Subcommittee on Transportation Security met on July 23, 2015, to consider H.R. 3144 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. 3144.

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. 3144, the Partners for Aviation Security 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. 3144, the Partners for Aviation Security 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.

Enclosure.

H.R. 3144—Partners for Aviation Security Act

H.R. 3144 would require the Administrator of the Transportation Security Administration (TSA) to consult with the Aviation Security Advisory Committee before making any changes to TSA's list of items that are prohibited on airplanes. The bill also would require the Secretary of Homeland Security to report to the Congress on activities of the Transportation Security Oversight Board.

Based on information from TSA about the cost of similar efforts, CBO estimates that meeting the requirements of H.R. 3144 would cost less than \$500,000; any such spending would be subject to the availability of appropriated funds. Enacting H.R. 3144 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 3144 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2026.

H.R. 3144 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 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. 3144 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

This bill directs the Administrator of the Transportation Security Administration to consult with the Aviation Security Advisory Committee (ASAC) regarding any modification to the prohibited items list prior to enforcing such modifications. This bill, also, requires the Administrator to supply a report to the pertinent Congressional committees outlining the activities of the ASAC.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 3144 does not contain any provision that establishes or reau-

thorizes 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. 3144 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 3144 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 “Partners for Aviation Security Act”.

Sec. 2. Aviation Security Advisory Committee consultation

This section requires the Administrator of the Transportation Security Administration to consult with the Aviation Security Advisory Committee regarding any modification to the prohibited items list prior to executing such actions.

Sec. 3. Report on the Transportation Security Oversight Board

This section directs the Administrator to submit, within 120 days of the bill’s enactment, a report to the Transportation Security Oversight Board, the Committee on Homeland Security of the

House of Representatives, the Committee on Homeland Security and Governmental Affairs and the Committee on Commerce, Science and Transportation of the Senate on the actions of the Aviation Security Advisory Committee. The actions to be included will be: General information on how often the board has met, the composition of the board and what activities the board has taken. The Administrator may also include recommendations for changes.

Sec. 4. Technical corrections

This section amends Subparagraph (A) of section 4946(c)(2) of title 49, United States Code in order to allow a member of the Aviation Security Advisory Committee to serve longer than a two year term in order to prevent a vacancy before a successor is appointed.

Sec. 5. Definition

This section defines the use of the term “prohibited item list” to mean the list of items passengers are prohibited from carrying as accessible property or on their persons through passenger screening checkpoints at airports, into sterile areas at airports, and on board passenger aircraft, pursuant to section 1540.111 of title 49, Code of Federal Regulations.

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):

TITLE 49, UNITED STATES CODE

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SUBTITLE VII—AVIATION PROGRAMS

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PART A—AIR COMMERCE AND SAFETY

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SUBPART III—SAFETY

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CHAPTER 449—SECURITY

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SUBCHAPTER II—ADMINISTRATION AND PERSONNEL

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§ 44946. Aviation Security Advisory Committee

(a) ESTABLISHMENT.—The Assistant Secretary shall establish within the Transportation Security Administration an aviation security advisory committee.

(b) DUTIES.—

(1) IN GENERAL.— The Assistant Secretary shall consult the Advisory Committee, as appropriate, on aviation security matters, including on the development, refinement, and implementation of policies, programs, rulemaking, and security directives pertaining to aviation security, while adhering to sensitive security guidelines.

(2) RECOMMENDATIONS.—

(A) IN GENERAL.— The Advisory Committee shall develop, at the request of the Assistant Secretary, recommendations for improvements to aviation security.

(B) RECOMMENDATIONS OF SUBCOMMITTEES.— Recommendations agreed upon by the subcommittees established under this section shall be approved by the Advisory Committee before transmission to the Assistant Secretary.

(3) PERIODIC REPORTS.— The Advisory Committee shall periodically submit to the Assistant Secretary—

(A) reports on matters identified by the Assistant Secretary; and

(B) reports on other matters identified by a majority of the members of the Advisory Committee.

(4) ANNUAL REPORT.— The Advisory Committee shall submit to the Assistant Secretary an annual report providing information on the activities, findings, and recommendations of the Advisory Committee, including its subcommittees, for the preceding year. Not later than 6 months after the date that the Secretary receives the annual report, the Secretary shall publish a public version describing the Advisory Committee's activities and such related matters as would be informative to the public consistent with the policy of section 552(b) of title 5.

(5) FEEDBACK.— Not later than 90 days after receiving recommendations transmitted by the Advisory Committee [under paragraph (4)] *under this subsection*, the Assistant Secretary shall respond in writing to the Advisory Committee with feedback on each of the recommendations, an action plan to implement any of the recommendations with which the Assistant Secretary concurs, and a justification for why any of the recommendations have been rejected.

(6) CONGRESSIONAL NOTIFICATION.— Not later than 30 days after providing written feedback to the Advisory Committee under paragraph (5), the Assistant Secretary shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Homeland Security of the House of Representatives on such feedback, and provide a briefing upon request.

(7) REPORT TO CONGRESS.— Prior to briefing the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Homeland Security of the House of Representatives under paragraph (6), the Assistant Secretary shall submit to such committees a report containing information re-

lating to the recommendations transmitted by the Advisory Committee in accordance with paragraph (4).

(c) MEMBERSHIP.—

(1) APPOINTMENT.—

(A) IN GENERAL.— Not later than 180 days after the date of enactment of the Aviation Security Stakeholder Participation Act of 2014, the Assistant Secretary shall appoint the members of the Advisory Committee.

(B) COMPOSITION.— The membership of the Advisory Committee shall consist of individuals representing not more than 34 member organizations. Each organization shall be represented by 1 individual (or the individual's designee).

(C) REPRESENTATION.— The membership of the Advisory Committee shall include representatives of air carriers, all-cargo air transportation, indirect air carriers, labor organizations representing air carrier employees, labor organizations representing transportation security officers, aircraft manufacturers, airport operators, airport construction and maintenance contractors, labor organizations representing employees of airport construction and maintenance contractors, general aviation, privacy organizations, the travel industry, airport-based businesses (including minority-owned small businesses), businesses that conduct security screening operations at airports, aeronautical repair stations, passenger advocacy groups, the aviation security technology industry (including screening technology and biometrics), victims of terrorist acts against aviation, and law enforcement and security experts.

(2) TERM OF OFFICE.—

[(A) TERMS.— The term of each member of the Advisory Committee shall be 2 years. A member of the Advisory Committee may be reappointed.]

(A) TERMS.— The term of each member of the Advisory Committee shall be two years but may continue until such time as a successor member begins serving on the Advisory Committee. A member of the Advisory Committee may be reappointed.

(B) REMOVAL.— The Assistant Secretary may review the participation of a member of the Advisory Committee and remove such member for cause at any time.

(3) PROHIBITION ON COMPENSATION.— The members of the Advisory Committee shall not receive pay, allowances, or benefits from the Government by reason of their service on the Advisory Committee.

(4) MEETINGS.—

(A) IN GENERAL.— The Assistant Secretary shall require the Advisory Committee to meet at least semiannually and may convene additional meetings as necessary.

(B) PUBLIC MEETINGS.— At least 1 of the meetings described in subparagraph (A) shall be open to the public.

(C) ATTENDANCE.— The Advisory Committee shall maintain a record of the persons present at each meeting.

(5) MEMBER ACCESS TO SENSITIVE SECURITY INFORMATION.— Not later than 60 days after the date of a member's appoint-

ment, the Assistant Secretary shall determine if there is cause for the member to be restricted from possessing sensitive security information. Without such cause, and upon the member voluntarily signing a non-disclosure agreement, the member may be granted access to sensitive security information that is relevant to the member's advisory duties. The member shall protect the sensitive security information in accordance with part 1520 of title 49, Code of Federal Regulations.

(6) CHAIRPERSON.— A stakeholder representative on the Advisory Committee who is elected by the appointed membership of the Advisory Committee shall chair the Advisory Committee.

(d) SUBCOMMITTEES.—

(1) MEMBERSHIP.— The Advisory Committee chairperson, in coordination with the Assistant Secretary, may establish within the Advisory Committee any subcommittee that the Assistant Secretary and Advisory Committee determine to be necessary. The Assistant Secretary and the Advisory Committee shall create subcommittees to address aviation security issues, including the following:

(A) AIR CARGO SECURITY.— The implementation of the air cargo security programs established by the Transportation Security Administration to screen air cargo on passenger aircraft and all-cargo aircraft in accordance with established cargo screening mandates.

(B) GENERAL AVIATION.— General aviation facilities, general aviation aircraft, and helicopter operations at general aviation and commercial service airports.

(C) PERIMETER AND ACCESS CONTROL.— Recommendations on airport perimeter security, exit lane security and technology at commercial service airports, and access control issues.

(D) SECURITY TECHNOLOGY.— Security technology standards and requirements, including their harmonization internationally, technology to screen passengers, passenger baggage, carry-on baggage, and cargo, and biometric technology.

(2) RISK-BASED SECURITY.— All subcommittees established by the Advisory Committee chairperson in coordination with the Assistant Secretary shall consider risk-based security approaches in the performance of their functions that weigh the optimum balance of costs and benefits in transportation security, including for passenger screening, baggage screening, air cargo security policies, and general aviation security matters.

(3) MEETINGS AND REPORTING.— Each subcommittee shall meet at least quarterly and submit to the Advisory Committee for inclusion in the annual report required under subsection (b)(4) information, including recommendations, regarding issues within the subcommittee.

(4) SUBCOMMITTEE CHAIRS.— Each subcommittee shall be co-chaired by a Government official and an industry official.

(e) SUBJECT MATTER EXPERTS.— Each subcommittee under this section shall include subject matter experts with relevant expertise who are appointed by the respective subcommittee chairpersons.

(f) NONAPPLICABILITY OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Committee and its subcommittees.

(g) DEFINITIONS.—In this section:

(1) ADVISORY COMMITTEE.— The term “Advisory Committee” means the aviation security advisory committee established under subsection (a).

(2) ASSISTANT SECRETARY.— The term “Assistant Secretary” means the Assistant Secretary of Homeland Security (Transportation Security Administration).

(3) PERIMETER SECURITY.—

(A) IN GENERAL.— The term “perimeter security” means procedures or systems to monitor, secure, and prevent unauthorized access to an airport, including its airfield and terminal.

(B) INCLUSIONS.— The term “perimeter security” includes the fence area surrounding an airport, access gates, and access controls.

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