

Calendar No. 191

114TH CONGRESS }
1st Session }

SENATE

{ REPORT
114-111

TSA OFFICE OF INSPECTION
ACCOUNTABILITY ACT OF 2015

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

H.R. 719



AUGUST 4, 2015.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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TSA OFFICE OF INSPECTION ACCOUNTABILITY ACT OF 2015

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Mr. THUNE, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany H.R. 719]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (H. R. 719) to require the Transportation Security Administration to conform to existing Federal law and regulations regarding criminal investigator positions, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of H.R. 719 is to require the Transportation Security Administration (TSA) to conform to existing Federal law and regulations regarding criminal investigator positions, and for other purposes.

BACKGROUND AND NEEDS

The Office of Inspection (OOI) at the TSA conducts inspections, internal reviews, and covert testing to ensure the effectiveness and efficiency of the TSA's operations and administrative activities, and to identify vulnerabilities in the TSA security systems. Additionally, the OOI carries out internal investigations of the TSA workforce to ensure its integrity. The OOI refers all potential investigations to the Department of Homeland Security's Office of Inspector General (DHS OIG), which then chooses which cases to pursue. After this determination is made, the cases that the DHS OIG decided not to investigate are referred back to the OOI. In 2014, the OOI referred 417 cases to the DHS OIG. The DHS OIG retained

33 cases, or 7.9 percent, for investigation, referring 384 back to the OOI.¹

In September 2013, the DHS OIG issued a report entitled, “Transportation Security Administration Office of Inspection’s Efforts to Enhance Transportation Security.”² According to the DHS OIG report, roughly 100 criminal investigators in the OOI primarily monitor the results of criminal investigations conducted by other agencies, investigate administrative cases of TSA employee misconduct, and carry out inspections, covert tests, and internal reviews. While each of these functions is important, and in many cases, well-suited to some of those performed by a criminal investigator, they do not qualify a criminal investigator for enhanced retirement benefits afforded to law enforcement officers under Federal law and regulations. By law, only those Federal employees whose duties include “primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States” qualify as law enforcement officers.³

The DHS OIG reported that the premium pay and other benefits afforded to TSA criminal investigators within the OOI who are incorrectly classified as such could cost taxpayers as much as \$17.5 million over 5 years if the TSA fails to make any changes to the number of OOI criminal investigators. The DHS OIG projected even more savings in training, travel, supplies, and other special employment benefits if personnel were properly reclassified, but did not specify an amount.

SUMMARY OF PROVISIONS

H.R. 719 would require the TSA to certify to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, and the DHS OIG to validate, that only the TSA employees who meet the relevant legal and regulatory requirements specified in the legislation are classified as criminal investigators and therefore receive premium pay and other benefits. If the DHS OIG finds that the TSA is using inadequate or invalid data and methods to classify criminal investigators, the TSA may not hire any new employee to work in the OOI until the TSA makes a new certification and the DHS OIG submits to Congress a finding that the TSA utilized adequate and valid data and methods to make its certification. The bill also would require the TSA to reclassify any criminal investigators who do not, or are not expected to, spend an average of at least 50 percent of their time performing criminal investigative duties and report to Congress on any associated cost savings.

In addition, this legislation would require the TSA to submit to Congress any materials in the possession or control of the Department of Homeland Security (DHS) associated with the OOI’s review of instances in which Federal Air Marshal Service (FAMS) officials

¹Transportation Security Administration, Office of Legislative Affairs, 2014, (Information provided in response to request by the Committee on Commerce, Science, and Transportation of the Senate staff in June 2015).

²Department of Homeland Security, Office of Inspector General, Transportation Security Administration Office of Inspection’s Efforts to Enhance Transportation Security, September 2013, at http://www.oig.dhs.gov/assets/Mgmt/2013/OIG_13-123_Sep13.pdf.

³5 U.S.C. 8331(20), 8401(17), 5 C.F.R. 831.902; see also 5 C.F.R. 842.802.

obtained discounted or free firearms for personal use, and information on specific actions that will be taken to prevent FAMS officials from using their official positions, or exploiting FAMS relationships with private vendors, to obtain discounted or free firearms for personal use.

Lastly, as amended, H.R. 719 would require the DHS IG to submit a study to Congress comparing the employee requirements, responsibilities, and benefits of criminal investigators in the OOI with criminal investigators employed at agencies adhering to the Office of Personnel Management (OPM) employee classification system, and to identify any inconsistencies and cost implications for differences between the varying employee requirements, responsibilities, and benefits.

LEGISLATIVE HISTORY

H.R. 719 was introduced on February 4, 2015, by Representative John Katko (R-NY) and passed the House of Representatives on February 10, 2015, by a vote of 414-0. The bill is substantially similar to H.R. 4803, a bipartisan measure in the 113th Congress sponsored by Congressman Mark Sanford (R-SectionSC) that passed the House of Representatives by voice vote, but saw no action in the Senate.

No legislative hearings were held on H.R. 719 in the 114th Congress. However, the Subcommittee on Transportation Security of the Homeland Security Committee of the House of Representatives held an oversight hearing on January 28, 2014, entitled “Examining TSA’s Cadre of Criminal Investigators.”

On February 26, 2015, the Committee on Commerce, Science, and Transportation of the Senate held an Executive Session to consider H.R. 719, the TSA Office of Inspection Accountability Act of 2015, and ordered the bill to be reported to the Senate favorably, with an amendment in the nature of a substitute, by voice vote. Two first degree amendments were agreed to, including one sponsored by Chairman Thune and Ranking Member Nelson to make several changes to the bill reflecting agency feedback, and another sponsored by Senator Manchin to require the DHS OIG to conduct a study.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

H.R. 719—TSA Office of Inspection Accountability Act of 2015

The Office of Inspection in the Transportation Security Administration (TSA) is responsible for ensuring the effectiveness and efficiency of TSA’s operations and identifying vulnerabilities in the agency’s security systems. In carrying out its mission, the office conducts internal inspections, investigations, and covert tests to assess the integrity of the agency’s activities and staff. Under current law, roughly half of the office’s employees are classified as criminal investigators and are eligible for certain statutory employment benefits because they are considered law enforcement officers. In par-

ticular, such individuals qualify for additional compensation (known as Law Enforcement Availability Pay) and enhanced retirement benefits.

H.R. 719 would direct the Inspector General of the Department of Homeland Security (DHS) to review the data and methods that TSA uses to classify personnel as criminal investigators and to reclassify any staff of the Office of Inspection that are currently misclassified according to the results of that review. In addition, the legislation would require DHS to provide a variety of security-related updates and reports to the Congress.

According to DHS, TSA is already undertaking a strategic analysis of the agency's workforce that, under current law, will serve as the basis for potential reclassifications of investigative staff of the Office of Inspection. As a result of that effort, TSA's future costs for salaries and benefits of criminal investigators (which are subject to appropriation) could increase or decrease, but CBO does not expect that enacting H.R. 719 would significantly affect the timing or outcome of that process. We estimate that complying with the legislation's reporting requirements would cost less than \$500,000 and would be subject to the availability of appropriated funds. H.R. 719 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 719 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 Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The bill would not subject any individuals or businesses to additional regulations. It would address internal agency employee classification and benefits policies that could result in personnel treatment changes to no more than 125 existing TSA employees.

ECONOMIC IMPACT

The bill would not have an adverse economic impact on the Nation and would not authorize any new spending by the Federal Government. On the contrary, it could save an estimated \$17.5 million over 5 years, plus additional projected savings in training, travel, supplies, and other special employment benefits if personnel are properly reclassified. According to the DHS, the TSA is already undertaking a strategic analysis of its workforce that will serve as the basis for potential reclassifications of investigative staff of the OOI, and compliance with the legislation's reporting requirements would cost less than \$500,000, subject to the availability of appropriated funds.

PRIVACY

The bill would have no adverse impact on the personal privacy of individuals.

PAPERWORK

The bill would not significantly increase paperwork requirements for private individuals or businesses, and would require the Federal Government to produce a certification, an estimate, information, a finding, and a study to Congress. The TSA would be required to certify to Congress that only those OOI employees who meet the requirements of sections 8331(20), 8401(17), and 5545a of title 5, United States Code, are classified as criminal investigators and are receiving premium pay and other benefits associated with such classification. The TSA would also be required to submit to Congress an estimate of total long-term savings to the Federal Government resulting from its employee reclassification, as well as materials and information related to its OOI review of FAMS misconduct. The DHS OIG would be required to produce to Congress a finding that the TSA used adequate and valid data and methods to make a positive certification to Congress, and a study comparing the OOI criminal investigators to other agencies' criminal investigators adhering to the OPM employee classification system.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section would provide that the bill may be cited as the "TSA Office of Inspection Accountability Act of 2015."

Section 2. Findings

This section would make five findings based on a DHS OIG report regarding the TSA's inconsistent implementation of policies and best practices for designation of criminal investigators, and related inflated costs.

Section 3. Definitions

This section would define the terms "Administration" as the Transportation Security Administration, "Assistant Secretary" as the Assistant Secretary of Homeland Security (Transportation Security), and "Inspector General" as the Inspector General of the Department of Homeland Security.

Section 4. Inspector General audit

This section would direct the DHS OIG, within 60 days after the date of enactment, to analyze the data and methods that the TSA uses to identify OOI employees that meet the requirements of sections 8331(20), 8401(17), and 5545a of title 5, United States Code;

and provide relevant findings to the Assistant Secretary, including whether the data and methods are adequate and valid.

This section would further prohibit the TSA from hiring any new employee to work in the OOI if the DHS OIG finds that such data and methods are inadequate or invalid, until: (1) the TSA makes a certification to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate that only TSA employees who meet such requirements are classified as criminal investigators and are receiving premium pay and other benefits associated with such classification; and (2) the DHS OIG submits a finding that the TSA utilized adequate and valid data and methods to make such certification.

Section 5. TSA Office of Inspection workforce certification

This section would require the TSA, within 90 days after the date the DHS OIG provides its findings to the TSA, to document and certify in writing to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate that only those OOI employees who meet the requirements of sections 8331(20), 8401(17), and 5545a of title 5, United States Code, are classified as criminal investigators and are receiving premium pay and other benefits associated with such classification.

The section would require the TSA to re-classify criminal investigator positions in the OOI as noncriminal investigator positions or non-law enforcement positions if the individuals in those positions do not, or are not expected to, spend an average of at least 50 percent of their time performing criminal investigative duties.

This section would require the TSA to estimate the total long-term cost savings to the Federal Government resulting from its employee reclassification, and provide such estimate to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than 180 days after the date of enactment of this Act. Such estimate shall identify savings associated with the positions reclassified and include factors such as, law enforcement training; early retirement benefits; law enforcement availability and other premium pay; and weapons, vehicles, and communications devices.

Section 6. Investigation of Federal Air Marshal Service misconduct

This section would require the TSA to submit to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, not later than 90 days after enactment, or as soon as practicable, materials in the possession or control of the DHS associated with the DHS OIG's review of instances in which FAMS officials obtained discounted or free firearms for personal use, and information on specific actions that will be taken to prevent FAMS officials from using their official positions or exploiting FAMS relationships with private vendors to obtain discounted or free firearms for personal use.

Section 7. Study

As amended, this section would require the DHS OIG to submit to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, not later than 180 days after the TSA submits its certification to Congress, a study: (1) reviewing and comparing the employee requirements, responsibilities, and benefits of criminal investigators in the OOI with those of criminal investigators employed at agencies adhering to the OPM employee classification system; and (2) identifying any inconsistencies and costs implications for differences between the varying employee requirements, responsibilities, and benefits.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

