

Calendar No. 163

114TH CONGRESS }
1st Session }

SENATE

{ REPORT
114-92

GERARDO HERNANDEZ AIRPORT SECURITY
ACT OF 2015

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

H.R. 720



JULY 23, 2015.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

49-010

WASHINGTON : 2015

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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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. 720]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (H.R. 720) to improve intergovernmental planning for and communication during security incidents at domestic airports, 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. 720, as amended, is to improve intergovernmental planning for and communication during security incidents at domestic airports, and for other purposes.

BACKGROUND AND NEEDS

On November 1, 2013, a gunman entered a terminal at Los Angeles International Airport (LAX) and began a shooting rampage, which left Transportation Security Officer (TSO) Gerardo Hernandez dead and three other individuals wounded. While the response by law enforcement, the Transportation Security Administration (TSA) personnel, and emergency responders was heroic and impressive, after-action reports conducted on the incident showed gaps in communications and coordination procedures.

On March 20, 2015, an assailant with a machete attacked TSOs at a TSA checkpoint inside a concourse of the Louis Armstrong New Orleans International Airport. The assailant slashed Supervisory TSO Carol Richel, sprayed three other TSOs with wasp repellent, and carried a bag into the building that contained six

Molotov cocktails, a grill lighter, and a letter opener. The injured TSO sustained non-life-threatening injuries, while the assailant was shot and killed by a local law enforcement officer on duty near the checkpoint.

These recent security incidents, while not related to terrorism, show the continuing importance of and need for airports to respond quickly and effectively to a range of threats within an airport's perimeter, including those outside of the secure areas of an airport. Key improvements recommended by a TSA review in the aftermath of the LAX event included strengthening active shooter training, improving the communications infrastructure, adopting recommended standards for law enforcement presence at checkpoints and ticket counters, conducting biannual active shooter training and exercises, incorporation of maximum response times, and extending the temporary redeployment of additional Visible Intermodal Prevention and Response teams to airports.

SUMMARY OF PROVISIONS

H.R. 720, as amended, would improve security incident preparedness by directing the TSA to verify that airports across the United States have incorporated procedures for responding to active shooters targeting security checkpoints into their existing incident plans. Additionally, the legislation would direct the TSA Administrator to report to the appropriate congressional committees the TSA Administrator's findings regarding the levels of preparedness at airports. The bill also would mandate that the TSA establish a mechanism by which best practices in security incident mitigation can be shared with airports across the country and would require that the agency certify to the appropriate congressional committees that all screening personnel have participated in training for active shooter scenarios. Additionally, the bill would require the TSA to provide an analysis to the appropriate congressional committees on how cost savings can be used to increase funding for reimbursable agreements for airport law enforcement over the next five years. The legislation also would require the TSA Administrator to verify that high threat surface transportation hubs, as identified by the TSA Administrator, have similar active shooter training programs. Finally, the legislation would require the TSA to conduct a review of the interoperable communications capabilities of the law enforcement, fire, and medical personnel responsible for responding to a security incident at airports in the United States.

LEGISLATIVE HISTORY

H.R. 720 was introduced on February 4, 2015, by Representative John Katko (R-NY), Chairman of the Subcommittee on Transportation Security of the Committee on Homeland Security of the House of Representatives. H.R. 720 passed the House of Representatives on February 10, 2015, by a vote of 411-1. The bill is nearly identical to H.R. 4802, a bipartisan measure sponsored by Congressman Richard Hudson (R-NC) in the 113th Congress, which passed the House by voice vote, but saw no action in the Senate.

No hearings were held on H.R. 720 in the 114th Congress; however, the Subcommittee on Aviation Operations, Safety, and Security of the Committee on Commerce, Science, and Transportation

of the Senate held a hearing on March 17, 2015, entitled “TSA Oversight and Examination of the Fiscal Year 2016 Budget Request” and received testimony from Melvin Carraway, Acting Administrator, TSA, Department of Homeland Security.

During the 113th Congress, the Subcommittee on Transportation Security of the Committee on Homeland Security of the House of Representatives held a field hearing on March 28, 2014, at LAX entitled “Lessons from the LAX Shooting: Preparing for and Responding to Emergencies at Airports,” and a hearing on May 29, 2014, entitled “Lessons from the LAX Shooting: Airport and Law Enforcement Perspectives.”

On February 26, 2015, the Committee on Commerce, Science, and Transportation of the Senate met in open Executive Session to consider H.R. 720, and ordered the bill to be reported to the Senate favorably, with an amendment in the nature of a substitute, by voice vote. Three first degree amendments were agreed to, including one sponsored by Chairman Thune and Ranking Member Nelson to make several changes to the bill, one sponsored by Senator Cruz to include a strategy for providing airport law enforcement with access to airport security video surveillance systems at category X airports, and one sponsored by Senators Booker, Blumenthal, and Schatz to add a section regarding security incident response for surface transportation systems.

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. 720—Gerardo Hernandez Airport Security Act of 2015

H.R. 720 would direct the Assistant Secretary of Homeland Security, acting through the Transportation Security Administration (TSA), to undertake a variety of activities aimed at enhancing security at airports where TSA performs or oversees security-related activities. The bill would require TSA to verify that all such airports have plans in place for responding to security threats and to provide technical assistance as necessary to improve such plans. H.R. 720 also would require TSA to disseminate information on best practices for addressing security threats, ensure that all screening personnel have received training in how to handle potential shooting threats, and conduct outreach to assess the preparedness of passenger transportation agencies and providers with high-risk facilities. Finally, H.R. 720 would require the Department of Homeland Security’s (DHS’s) Office of Cybersecurity and Communications to report to the Congress on the capacity of law enforcement, fire, and medical response teams to communicate with each other and respond to security threats at airports.

Based on information from DHS, CBO estimates that implementing H.R. 720 would cost \$2.5 million in 2016, assuming appropriation of the necessary amounts. Of that amount, CBO estimates the department would spend about \$1.5 million to provide additional technical assistance to airports and about \$1 million to evaluate the interoperability of communication systems used by

emergency response teams and overall preparedness of those entities with high-risk facilities. H.R. 720 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 720 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 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 require the Assistant Secretary of Homeland Security (Transportation Security) to conduct outreach to approximately 450 airports where the TSA performs or oversees security operations. Airport operators must already submit to the TSA for approval airport security programs that address security procedures and controls unique to each airport, and designate one or more airport security coordinators to serve as the primary contact for security-related activities and communications with the TSA. The outreach directed in the legislation would involve coordination with these airport security coordinators, who in turn would be responsible for communicating with local law enforcement and emergency personnel, as well as airport entities such as the airlines and commercial businesses that serve the airport. Because airport operators and airport security coordinators are already subject to the TSA's rules and regulations, the number of persons covered under the bill should be consistent with the current number of individuals impacted. The legislation would further require that the Administrator conduct outreach at high-risk surface transportation facilities to ensure that the facilities have plans to respond to acts of terrorism, or other security-related incidents that target passengers.

ECONOMIC IMPACT

The bill would not authorize new spending by the Federal Government. The TSA estimates that the costs of providing technical assistance would be incidental, and the required interoperability review would cost approximately \$750,000, which would be paid for using funds already appropriated. It is anticipated that because airports will be able to utilize existing individualized working plans to fulfill the requirements of the bill, the cost of incorporating any additional procedures as a result of a TSA review would be minimal. The anticipated communication implicated by the bill between airport security directors and relevant stakeholders such as local law enforcement and emergency personnel, airlines, and other commercial operators already occurs on a regular, ongoing basis, so the bill would not result in additional burdens to these stakeholders. Addressing security incident response and best practices is intended to reduce the likelihood and impact of attacks and promote

confidence in the U.S. aviation system, which in turn would facilitate the free flow of commerce through the national airspace. It is anticipated that the required outreach for surface transportation facilities would occur as part of ongoing communication between the agency and surface transportation organizations identified as having high risk facilities. The TSA may consult as needed with the Department of Transportation and its modal agencies to determine if current security and safety reports contain, or could be revised, to include verification of the active shooter response training.

PRIVACY

The bill would have little if any adverse impact on the personal privacy of individuals. The bill would include, as a permissible type of airport plan for responding to security incidents, a strategy for providing law enforcement with access to existing airport security video systems at category X airports where those systems were purchased and installed using TSA funding. While law enforcement often already has access to such video systems, this provision would facilitate greater access.

PAPERWORK

The bill would not significantly increase paperwork requirements for private individuals or businesses. It is expected that airports, in response to the TSA outreach, will use security incident plans already in place and incorporate additional procedures into those existing plans, should there be a need to do so. The bill would require the Federal Government to produce four reports and a certification to Congress. One of the reports and the certification would be required within 90 days after the date of enactment, while a second report would be required within 120 days after the date of enactment, and the last two would be required within 180 days after the date of enactment.

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 this Act may be cited as the “Gerardo Hernandez Airport Security Act of 2015.”

Section 2. Definitions.

This section would define “Assistant Secretary” as the Assistant Secretary of Homeland Security (Transportation Security) of the Department of Homeland Security, which is another title for the TSA Administrator, and “Administration” as the Transportation Security Administration.

Section 3. Security incident response at airports.

As amended, this section would direct the Assistant Secretary, in consultation with other Federal agencies as appropriate, to: (1) conduct outreach to all U.S. airports at which the TSA performs, or oversees the implementation and performance of, security measures; and (2) give technical assistance as necessary to verify that such airports have in place individualized working plans for responding to security incidents inside the airport perimeter, including active shooters, acts of terrorism, and incidents that target passenger-screening checkpoints. The Committee believes that the Assistant Secretary's consultation with Federal agencies should include the Federal Emergency Management Agency.

The airport working plans can include, but are not limited to: (1) a strategy for evacuating and providing care to persons inside the airport with consideration given to the needs of persons with disabilities; (2) a plan for establishing a unified command post during an incident; (3) a specified schedule for testing of communications equipment; (4) an evaluation of how emergency calls placed inside the airport will reach airport police in an expeditious manner; (5) a method and plan to communicate with travelers inside the airport; (6) to the extent practicable, a projected maximum timeframe for law enforcement response to active shooters, acts of terrorism, and incidents that target security-screening checkpoints (as amended); (7) a schedule of joint exercises and training to be conducted by the airport, the TSA, and other stakeholders; (8) a schedule for producing after-action joint exercise reports to identify and determine how to improve security incident response capabilities, and as amended, (9) a strategy, where feasible, for providing airport law enforcement with access to airport security video surveillance systems at category X airports where those systems were purchased and installed using Administration funds.

This section also would require the Assistant Secretary to submit a report to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on findings from its outreach to airports, including an analysis of the level of preparedness such airports have to respond to security incidents.

This section also would allow and encourage flexibility for airports to maintain or develop security incident response plans, based on the airports individual needs and challenges. The Committee does not expect airports to create duplicative plans, rather; this bill is intended to ensure that airports have security incident plans in place and encourage the incorporation of more robust or tailored procedures into existing plans, should there be a need to do so.

Section 4. Disseminating information on best practices.

This section would require the Assistant Secretary to identify best practices and establish a mechanism for sharing of best practices for security incident planning, management, and training at airports.

Section 5. Certification.

This section would require the Assistant Secretary to certify annually to the Committee on Homeland Security of the House of

Representatives and the Committee on Commerce, Science, and Transportation of the Senate that all screening personnel have participated in practical training exercises for active shooter scenarios.

Section 6. Reimbursable agreements.

This section would require the Assistant Secretary to report to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate an analysis of how the TSA can use cost savings achieved through efficiencies to increase, over the next five fiscal years, the funding available for law enforcement support at screening checkpoints under reimbursable agreements.

Section 7. Security incident response for surface transportation systems.

As amended, this section would require the Assistant Secretary, in consultation with the Secretary of Transportation and other relevant agencies, to: (1) conduct outreach to all passenger transportation agencies and providers with high-risk facilities; and (2) verify such agencies and providers have in place plans to respond to active shooters, acts of terrorism, or other security-related incidents that target passengers.

The plans may include, but are not limited to: (1) a strategy for evacuating and providing care to individuals with consideration given to the needs of persons with disabilities; (2) a plan for establishing a unified command; (3) a plan for frontline employees to receive active shooter training; (4) a schedule for regular testing of communications equipment used to receive emergency calls; (5) an evaluation of how emergency calls placed by individuals using the transportation system will reach police in an expeditious manner; and (6) a practiced method and plan to communicate with individuals using the transportation system. This section also would require the Assistant Secretary to submit a report to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on findings from its outreach to agencies and providers, including an analysis of the level of preparedness such transportation systems have to respond to security incidents.

Section 8. No additional authorization of appropriations.

This section would make clear that no additional funds are authorized to be appropriated to carry out the Act, and that this Act must be carried out using appropriations otherwise made available for the purpose of aviation security.

Section 9. Interoperability review.

This section would require the Assistant Secretary to conduct a review of the interoperable communications capabilities of the law enforcement, fire, and medical personnel responsible for responding to security incidents, including active shooter events, acts of terrorism, and incidents that target passenger-screening checkpoints, at all U.S. airports at which the TSA performs, or oversees the implementation and performance of, security measures. This section also would require the Assistant Secretary to, not later than 30 days after the completion of the review, report the findings of the

review to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

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.

