

TSA OPPORTUNITIES TO PURSUE EXPANDED NETWORKS
 FOR BUSINESS ACT

SEPTEMBER 4, 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. 6459]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 6459) to amend the Homeland Security Act of 2002 to require a strategy to diversify the technology stakeholder marketplace regarding the acquisition by the Transportation Security Administration of security screening technologies, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 6459 seeks to increase industry participation in the Transportation Security Administration's (TSA) acquisitions and procurements. The bill requires TSA to develop and submit to Congress a strategy to diversify the technology stakeholder marketplace that TSA relies upon to acquire security screening technologies, including by increased participation of small business innovators. The strategy shall include specific actions the TSA Administrator will take to foster diversification within the marketplace and plans for how the Administrator may, to the extent practicable, assist a small business innovator at certain points in acquisitions processes, including by addressing resource limitations. The bill also requires a feasibility assessment of increasing TSA engagement, through the Department of Homeland Security (DHS) Science and Technology Directorate or by TSA setting up its own venture capital partnership modeled after the In-Q-tel program, a program maintained by the Intelligence Community. Finally, H.R. 6459 prohibits TSA from lowering security technology standards to meet the requirements of the bill and requires the Comptroller General to review the strategy TSA submits under the bill.

BACKGROUND AND NEED FOR LEGISLATION

Navigating the Transportation Security Administration's (TSA) procurement and acquisition process is a complicated and lengthy undertaking. Over the years, the Committee has repeatedly received testimony from the private sector that participating in these processes is an extremely costly endeavor for vendors. As a result, businesses with limited resources, including innovative small businesses, often find themselves at a disadvantage as they may not have the capital needed to pursue an acquisition through TSA's lengthy processes. Small businesses provide some of the most innovative security solutions; greater participation of small business innovators in a larger and more diverse marketplace of technology stakeholders has the potential to drive greater competition and lead to TSA acquiring more effective and innovative security solutions. Given the evolving nature of the threat to our nation's transportation systems, it is imperative that TSA drives technology innovations and procures cutting-edge security technology. Small businesses have an important role to play in helping address and mitigate the wide array of threats that TSA faces. As such, the procurement and acquisition process must be as fair and accessible as possible.

HEARINGS

The Committee did not hold a legislative hearing on H.R. 6459. However, the Committee held a hearing with Department officials on November 8, 2017, to discuss TSA's role in keeping our transportation systems secure. The Subcommittee on Transportation and Protective Security also held a hearing on April 27, 2017 entitled "Checkpoint of the Future: Evaluating TSA's Innovation Task Force Initiative".

COMMITTEE CONSIDERATION

The Committee met on July 24, 2018, to consider H.R. 6459, and ordered the measure to be reported to the House with a favorable recommendation, without amendment, by unanimous consent.

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.

The Committee on Homeland Security considered H.R. 6459 on July 24, 2018, and took the following votes:

No recorded votes were requested during consideration of H.R. 6459.

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. 6459, the TSA Opportunities to Pursue Expanded Networks for Business 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, August 31, 2018.

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. 6459, the TSA Opportunities to Pursue Expanded Networks for Business Act, and H.R. 6461, the TSA National Deployment Force Act.

If you wish further details on these estimates, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

KEITH HALL,
Director.

Enclosure.

Transportation Security Administration Legislation

On July 24, the House Committee on Homeland Security ordered two bills to be reported related to activities of the Transportation Security Administration (TSA):

- H.R. 6459, the TSA Opportunities to Pursue Expanded Networks for Business Act, would require the agency to develop a strategy for diversifying and encouraging participation of small businesses in the marketplace through which TSA acquires security-related technologies; and
- H.R. 6461, the TSA National Deployment Force Act, would establish an office responsible for deploying TSA personnel to provide additional security at airports and other locations and to respond to manmade disasters and other situations.

Using information from the TSA regarding the costs of similar activities, CBO estimates that neither of those bills would lead to additional federal spending of more than \$500,000 annually. (Such spending would be subject to appropriation.)

Neither H.R. 6459 nor H.R. 6461 would affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply for either bill.

Neither bill would increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029, CBO estimates.

H.R. 6459 and H.R. 6461 contain 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 reviewed by Leo Lex, 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. 6459 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

This legislation amends the Homeland Security Act of 2002 to require a strategy to diversify the technology stakeholder marketplace that the TSA Administrator relies upon to acquire security screening technologies. The legislation is intended to drive TSA to (1) pursue policies to foster diversification of the vendor community on which it relies and (2) partner more effectively with small business innovators with promising security technologies through acquisitions processes.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 6459 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. 6459 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 6459 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 “TSA Opportunities to Pursue Expanded Networks for Business Act” or the “TSA OPEN for Business Act”.

Sec. 2. Strategy

This section requires TSA to submit a strategy to diversify the technology stakeholder marketplace, including by increasing the participation of small business innovators, to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

This strategy shall evaluate how current solicitation, testing, evaluation, piloting, acquisition, and procurement processes impact the Administrator’s ability to acquire innovative technology from stakeholders, including small businesses, who have not previously done business with TSA. Furthermore, the strategy will outline specific actions TSA will take to foster diversification within the

technology stakeholder marketplace, including modifications to existing acquisition policies and processes.

The strategy will also include plans for how TSA may assist small business innovators throughout the acquisition process. For example, the strategy shall include a feasibility assessment of partnering with non-profit organizations to help provide small business innovators with the resources needed to commercialize their homeland security technology solutions. In addition, the assessment shall explore the possibility of utilizing a venture capital partnership between the private sector and the intelligence community to help businesses commercialize innovative security-related technologies. To do so, TSA may either establish an organization, modeled after the In-Q-tel program, or increase its engagement with the In-Q-tel program, either directly or through the Science and Technology Directorate at DHS. Finally, nothing in the section shall be construed as requiring TSA to lower the standards for security technology.

One year after the submission of the strategy, the Comptroller General of the United States shall submit a review to Congress that addresses how the strategy TSA developed resulted in increased participation of small business innovators and diversified the technology stakeholder marketplace.

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 (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Homeland Security Act of 2002”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

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TITLE XVI—TRANSPORTATION SECURITY

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Subtitle B—Transportation Security Administration Acquisition Improvements

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Sec. 1617. Diversified technology stakeholder marketplace.

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TITLE XVI—TRANSPORTATION SECURITY

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Subtitle B—Transportation Security Administration Acquisition Improvements

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SEC. 1617. DIVERSIFIED TECHNOLOGY STAKEHOLDER MARKETPLACE.

(a) *IN GENERAL.*—Not later than 120 days after the date of the enactment of this section, the Administrator shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a strategy to diversify the technology stakeholder marketplace that the Administrator relies upon to acquire security screening technologies, including by increased participation of small business innovators.

(b) *CONTENTS.*—The strategy required under subsection (a) shall include the following:

(1) Information on how Administration solicitation, testing, evaluation, piloting, acquisition, and procurement processes impact the Administrator's ability to acquire from a technology stakeholder, including a small business innovator, that has not previously provided technology to the Administration, an innovative technology or capability with the potential to enhance transportation security.

(2) Specific actions that the Administrator will take, including modifications to the processes described in paragraph (1), to foster diversification within the technology stakeholder marketplace, together with information on projected timelines for such actions.

(3) Plans for how the Administrator may, to the extent practicable, assist a small business innovator at certain points in such processes, including when such an innovator lacks adequate resources to participate in such processes, to help ensure that an advanced technology or capability can be developed and acquired by the Administrator.

(4) A feasibility assessment of partnering with an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code to help provide venture capital to businesses, particularly small business innovators, for commercialization of innovative homeland security technologies that are expected to be ready for commercialization in the near term and within 36 months. In conducting such feasibility assessment, the Administrator shall consider the following:

(A) Establishing an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, modeled after the In-Q-tel program, as a venture capital partnership between the private sector and the intelligence community to help businesses, particularly small business innovators, commercialize innovative security-related technologies.

(B) Enhanced engagement, either through the Science and Technology Directorate of the Department of Homeland Security or directly, with the In-Q-tel program described in subparagraph (A).

(c) *RULE OF CONSTRUCTION.*—Nothing in this section may be construed as requiring changes to the Transportation Security Administration standards for security technology.

(d) *DEFINITIONS.*—In this section:

(1) *INTELLIGENCE COMMUNITY.*—The term “intelligence community” has the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)).

(2) *SMALL BUSINESS CONCERN.*—The term “small business concern” has the meaning described under section 3 of the Small Business Act (15 U.S.C. 632).

(3) *SMALL BUSINESS INNOVATOR.*—The term “small business innovator” means a stakeholder that is a small business concern that has an advanced transportation security technology or capability.

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