

## Union Calendar No.

116<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3469

[Report No. 116-]

To direct the Transportation Security Administration to carry out covert testing and risk mitigation improvement of aviation security operations, and for other purposes.

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### IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 2019

Mr. CUMMINGS (for himself, Mr. THOMPSON of Mississippi, Mrs. CAROLYN B. MALONEY of New York, Ms. NORTON, Mr. CLAY, Mr. LYNCH, Mr. COOPER, Mr. CONNOLLY, Mr. KRISHNAMOORTHY, Mr. RASKIN, Mr. ROUDA, Ms. HILL of California, Ms. WASSERMAN SCHULTZ, Mr. SARBANES, Mr. WELCH, Ms. SPEIER, Ms. KELLY of Illinois, Mr. DESAULNIER, Mrs. LAWRENCE, Ms. PLASKETT, Mr. KHANNA, Mr. GOMEZ, Ms. OCASIO-CORTEZ, Ms. PRESSLEY, and Ms. TLAIB) introduced the following bill; which was referred to the Committee on Homeland Security

NOVEMBER --, 2019

Committed to the Committee of the Whole House on the State of the Union,  
and ordered to be printed

# **A BILL**

To direct the Transportation Security Administration to carry out covert testing and risk mitigation improvement of aviation security operations, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “Covert Testing and  
5 Risk Mitigation Improvement Act of 2019”.

6 **SEC. 2. TSA COVERT TESTING AND RISK MITIGATION IM-**  
7 **PROVEMENT.**

8        (a) IN GENERAL.—Not later than 180 days after the  
9 date of the enactment of this Act and annually thereafter,  
10 the Administrator of the Transportation Security Admin-  
11 istration shall implement the following:

12            (1) A system for conducting risk-informed  
13 headquarters-based covert tests of aviation security  
14 operations, including relating to airport passenger  
15 and baggage security screening operations, that can  
16 yield statistically valid data that can be used to iden-  
17 tify and assess the nature and extent of  
18 vulnerabilities to such operations that are not miti-  
19 gated by current security practices. The Adminis-  
20 trator shall execute annually not fewer than three  
21 risk-informed covert testing projects designed to  
22 identify systemic vulnerabilities in the transportation  
23 security system, and shall document the assumptions  
24 and rationale guiding the selection of such projects.

1           (2) A long-term headquarters-based covert test-  
2           ing program, employing static but risk-informed  
3           threat vectors, designed to assess changes in overall  
4           screening effectiveness.

5           (b) MITIGATION.—

6           (1) IN GENERAL.—The Administrator of the  
7           Transportation Security Administration shall estab-  
8           lish a system to address and mitigate the  
9           vulnerabilities identified and assessed pursuant to  
10          the testing conducted under subsection (a).

11          (2) ANALYSIS.—Not later than 60 days after  
12          the identification of any such vulnerability, the Ad-  
13          ministrator shall ensure a vulnerability described in  
14          paragraph (1) is analyzed to determine root causes.

15          (3) DETERMINATION.—Not later than 120 days  
16          after the identification of any such vulnerability, the  
17          Administrator shall make a determination regarding  
18          whether or not to mitigate such vulnerability. The  
19          Administrator shall prioritize mitigating  
20          vulnerabilities based on their ability to reduce risk.  
21          If the Administrator determines—

22                 (A) to not mitigate such vulnerability, the  
23                 Administrator shall document the reasons for  
24                 the decision; or

1 (B) to mitigate such vulnerability, the Ad-  
2 ministrator shall establish and document—

3 (i) key milestones appropriate for the  
4 level of effort required to so mitigate such  
5 vulnerability; and

6 (ii) a date by which measures to so  
7 mitigate such vulnerability shall be imple-  
8 mented by the Transportation Security Ad-  
9 ministration.

10 (4) RETESTING.—Not later than 180 days after  
11 the date on which measures to mitigate a vulner-  
12 ability are completed by the Transportation Security  
13 Administration pursuant to paragraph (3)(B)(ii), the  
14 Administrator shall conduct a covert test in accord-  
15 ance with subsection (a) of the aviation security op-  
16 eration with respect to which such vulnerability was  
17 identified to assess the effectiveness of such meas-  
18 ures to mitigate such vulnerability.

19 (c) COMPILATION OF LISTS.—

20 (1) IN GENERAL.—Not later than 60 days after  
21 completing a covert testing protocol under sub-  
22 section (a), the Administrator of the Transportation  
23 Security Administration shall compile a list (includ-  
24 ing a classified annex if necessary) of the  
25 vulnerabilities identified and assessed pursuant to

1 such testing. Each such list shall contain, at a min-  
2 imum, the following:

3 (A) A brief description of the nature of  
4 each vulnerability so identified and assessed.

5 (B) The date on which each vulnerability  
6 was so identified and assessed.

7 (C) Key milestones appropriate for the  
8 level of effort required to mitigate each vulner-  
9 ability, as well as an indication of whether each  
10 such milestone has been met.

11 (D) An indication of whether each vulner-  
12 ability has been mitigated or reduced and, if so,  
13 the date on which each such vulnerability was  
14 so mitigated or reduced.

15 (E) If a vulnerability has not been fully  
16 mitigated, the date by which the Administrator  
17 shall so mitigate such vulnerability or a deter-  
18 mination that it is not possible to fully mitigate  
19 such vulnerability.

20 (F) The results of any subsequent covert  
21 testing undertaken to assess whether mitigation  
22 efforts have eliminated or reduced each vulner-  
23 ability.

24 (2) SUBMISSION TO CONGRESS.—The Adminis-  
25 trator shall submit to the Committee on Homeland

1 Security of the House of Representatives and the  
2 Committee on Commerce, Science, and Transpor-  
3 tation of the Senate a comprehensive document  
4 tracking the status of the information required  
5 under paragraph (1) together with the Transpor-  
6 tation Security Administration's annual budget re-  
7 quest.

8 (d) GAO REVIEW.—Not later than three years after  
9 the date of the enactment of this Act, the Comptroller  
10 General of the United States shall review and submit to  
11 the Administrator of the Transportation Security Admin-  
12 istration and the Committee on Homeland Security of the  
13 House of Representatives and the Committee on Com-  
14 merce, Science, and Transportation of the Senate a report  
15 on the effectiveness of the Transportation Security Admin-  
16 istration's processes for conducting covert testing projects  
17 that yield statistically valid data that can be used to assess  
18 the nature and extent of vulnerabilities to aviation security  
19 operations that are not effectively mitigated by current se-  
20 curity operations.