

ESSENTIAL TRANSPORTATION WORKER IDENTIFICATION
 CREDENTIAL ASSESSMENT ACT

JULY 17, 2014.—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. 3202]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 3202) to require the Secretary of Homeland Security to prepare a comprehensive security assessment of the transportation security card program, 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 all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Essential Transportation Worker Identification Credential Assessment Act”.

SEC. 2. COMPREHENSIVE SECURITY ASSESSMENT OF THE TRANSPORTATION SECURITY CARD PROGRAM.

(a) **IN GENERAL.**—Not later than one year after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committee on Homeland Security of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Comptroller General of the United States a comprehensive assessment of the effectiveness of the transportation security card program under section 70105 of title 46, United States Code, at enhancing security and reducing security risks for facilities and vessels regulated pursuant to section 102 of Public Law 107–295. Such assessment shall be conducted by a national laboratory that, to the extent practicable, is within the Department of Homeland Security laboratory network with expertise in maritime security or by a maritime security university-based center within the Department of Homeland Security centers of excellence network.

(b) **CONTENTS.**—The comprehensive assessment shall include—

- (1) an evaluation of the extent to which the program, as implemented, addresses known or likely security risks in the maritime environment;
- (2) an evaluation of the extent to which deficiencies identified by the Comptroller General have been addressed; and
- (3) a cost-benefit analysis of the program, as implemented.

(c) **CORRECTIVE ACTION PLAN; PROGRAM REFORMS.**—Not later than 60 days after the Secretary submits the assessment under subsection (a), the Secretary shall submit a corrective action plan to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate that responds to the assessment under subsection (b). The corrective action plan shall include an implementation plan with benchmarks, may include programmatic reforms, revisions to regulations, or proposals for legislation, and shall be considered in any rule making by the Department relating to the transportation security card program.

(d) **COMPTROLLER GENERAL REVIEW.**—Not later than 120 days after the Secretary issues the corrective action plan under subsection (c), the Comptroller General shall—

(1) review the extent to which such plan implements—

- (A) recommendations issued by the national laboratory or maritime security university-based center, as applicable, in the assessment submitted under subsection (a); and
- (B) recommendations issued by the Comptroller General before the enactment of this Act; and

(2) inform the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate as to the responsiveness of such plan to such recommendations.

(e) **TRANSPORTATION SECURITY CARD READER RULE.**—

(1) **IN GENERAL.**—The Secretary of Homeland Security may not issue a final rule requiring the use of transportation security card readers until—

- (A) the Comptroller General informs the Committees on Homeland Security of the House of Representatives and Commerce, Science and Transportation of the Senate that the submission under subsection (a) is responsive to the recommendations of the Comptroller General; and
- (B) the Secretary issues an updated list of transportation security card readers that are compatible with active transportation security cards.

(2) **LIMITATION ON APPLICATION.**—Paragraph (1) shall not apply with respect to any final rule issued pursuant to the notice of proposed rulemaking on Transportation Worker Identification Credential (TWIC)-Reader Requirements published by the Coast Guard on March 22, 2013 (78 Fed. Reg. 17781)

(f) **COMPTROLLER GENERAL OVERSIGHT.**—Not less than 18 months after the date of the issuance of the corrective action plan under subsection (c), and every six months thereafter during the 3-year period following the date of the issuance of the first report under this subsection, the Comptroller General shall report to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate regarding implementation of the corrective action plan.

PURPOSE AND SUMMARY

The purpose of H.R. 3202 is to require the Secretary of Homeland Security to prepare a comprehensive security assessment of the transportation security card program, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The Transportation Worker Identification Credential (TWIC) program was established by the Maritime Transportation Security Act of 2002 (MTSA) (Pub. L. 107-295) to ensure secure access control to port facilities and vessels by capturing biometric information of all transportation workers with unescorted access to secure areas. Currently, to obtain a TWIC card, an individual must pay \$129.75, undergo a name-based security threat assessment, and submit his or her fingerprints for a criminal history records check. There are approximately 3 million maritime workers with a TWIC.

Section 104 of the Security and Accountability for Every Port Act of 2006 (SAFE Port Act) (Pub. L. 109-347) required the Secretary of Homeland Security to complete a TWIC card reader pilot and issue a final rule for the deployment of TWIC card readers by April 13, 2009. However, due to several delays, biometric readers are not in place and a final rule regarding the reader has not been published. The failure of the Department of Homeland Security to implement a biometric card reader rule has resulted in the TWIC card being little more than an expensive “flash pass.”

Over the past 10 years, the Government Accountability Office (GAO) has issued a number of reports on the development and implementation of the TWIC program and made several recommendations. In GAO’s most recent report on the TWIC program and card reader pilot [GAO-13-198], GAO strongly questioned how, if at all, the TWIC program improves maritime security and recommended a security assessment of the TWIC program be conducted. GAO determined that the pilot data was incomplete, inaccurate, and unreliable to inform a final rulemaking, and recommended Congress halt the card reader rule until a comprehensive effectiveness assessment of the TWIC program was completed. The Committee remains concerned with the completeness, accuracy, and reliability of the pilot data to inform the final reader rule and agrees with GAO recommendation that an independent effectiveness assessment should be completed on the TWIC program and requires such an assessment through this legislation.

It has been more than a decade since the legislation that established the TWIC program was enacted into law. GAO recommended that an independent effectiveness assessment of the program be carried out in May 2013; to date, no such assessment has been completed. The goal of this legislation is to finally answer the question: “how, if at all, does the TWIC program improve maritime security?”

The manner in which the TWIC program has been implemented to date does not give the Committee the confidence that the program is on a proper course. The issuance of the assessment, as required under H.R. 3202, will help inform Congress as it makes decisions with regard to the future of the program.

HEARINGS

No hearings were held on H.R. 3202.

COMMITTEE CONSIDERATION

The Committee met on June 11, 2014, to consider H.R. 3202, and ordered the measure to be reported to the House with a favorable recommendation, amended, by voice vote. Prior to consideration, the Chair discharged the Subcommittee on Transportation Security from further consideration of H.R. 3202. The Committee took the following actions:

The following amendments were offered:

An Amendment in the Nature of a Substitute offered by MS. JACKSON LEE (#1); was AGREED TO, amended, by voice vote.

An en bloc amendment to the Amendment in the Nature of a Substitute to H.R. 3202 offered by MRS. MILLER of Michigan (#1A); was AGREED TO by voice vote.

Consisting of the following amendments:

An amendment:

In section 2(e), strike paragraph (2) and insert a new paragraph entitled “(2) Limitation on Application.”

An amendment:

Page 2, line 24, strike “and” and insert a comma.

Page 3, line 2, before the period insert “, and shall be considered in any rule making by the Department relating to the transportation security card program”.

The Subcommittee on Border and Maritime Security met on May 20, 2014, to consider H.R. 3202, and ordered the measure to be forwarded to the Full Committee with a favorable recommendation, amended, by voice vote. The Committee took the following actions:

The following amendments were offered:

An Amendment in the Nature of a Substitute offered by MS. JACKSON LEE (#1); was AGREED TO 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. 3202.

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. 3202, the Essential Transportation Worker Identification Credential Assessment 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, July 10, 2014.

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. 3202, the Essential Transportation Worker Identification Credential Assessment Act.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 3202—Essential Transportation Worker Identification Credential Assessment Act

H.R. 3202 would direct the Secretary of Homeland Security to assess the effectiveness of the Transportation Worker Identification Credential (TWIC) program. That program was established under the Maritime Transportation Security Act (MTSA), which requires the Secretary of Homeland Security to provide a biometric security credential for personnel who require unescorted access to secure areas of MTSA-regulated facilities and vessels and to all mariners who hold credentials issued by the U.S. Coast Guard. Based on the findings of the proposed assessment, H.R. 3202 would direct the Secretary to identify and implement corrective actions necessary to improve the effectiveness of the TWIC program and require the Government Accountability Office (GAO) to report to the Congress on the status of those efforts. Finally, H.R. 3202 would specify conditions that would pertain to certain rulemakings related to the TWIC program.

Based on information from the Coast Guard and GAO, CBO estimates that implementing H.R. 3202 would cost about \$1.5 million in 2015, assuming appropriation of the necessary amounts. That estimate is based on the historical cost of studies and analyses undertaken by those agencies that are similar in scope to those envisioned under the bill. Enacting H.R. 3202 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 3202 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on 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.

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. 3202 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

The performance goals and objectives of H.R. 3202 are the independent comprehensive assessment and corrective action plan required to determine the security value of the Transportation Worker Identification Credential (TWIC) program. The Committee believes that these objectives are essential so that Congress may be better informed as we determine the proper path forward for the TWIC program.

DUPLICATIVE FEDERAL PROGRAMS

The Committee finds that H.R. 3202 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. 3202 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 3202 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 “Essential Transportation Worker Identification Credential Assessment Act”.

*Sec. 2. Comprehensive security assessment of the Transportation Security Card Program**(a) In General.—*

This subsection requires the Secretary of Homeland Security to submit a comprehensive assessment of the effectiveness of the Transportation Worker Identification Credential (TWIC) Program. Specifically, the assessment must address how effective the TWIC program is at enhancing security and reducing security risk for facilities and vessels regulated by the Maritime Transportation Security Act (MTSA) (Pub. L. 107–295). Finally, H.R. 3202 requires that the assessment be conducted by a national laboratory within the DHS laboratory network or university based center in the DHS center of excellence network.

The requirements of this subsection are consistent with the recommendations made by the Government Accountability Office report “Transportation Worker Identification Credential: Card Reader Pilot Results Are Unreliable; Security Benefits Need to Be Reassessed” [GAO–13–198].

The Committee strongly believes it is appropriate for a third party that specializes in maritime security—such as a National Laboratory or a DHS Center of Excellence—to conduct this assessment. The Committee believes it is important that Congress receives an independent assessment of the effectiveness of the TWIC program to inform the future of the program.

(b) Contents.—

This subsection identifies the primary components required under the comprehensive assessment. These include: an evaluation of the extent to which the program currently addresses known or likely security threats in the maritime environment and the extent to which the deficiencies in the program identified by the GAO have been addressed. This section also requires a cost benefit analysis of the program as implemented. This assessment must address how, if at all, the TWIC program, as currently implemented, meets its stated mission, and should consider whether the Department’s assumptions about security vulnerability, which the TWIC was intended to mitigate, are valid. It is the Committee’s expectation that this effectiveness assessment will provide Congress and the Department a level of analysis necessary to make decisions about reforming the program to bolster the security of MTSA-regulated facilities and vessels.

The TWIC program, as originally envisioned by Congress, was to provide a tamper resistant biometric credential to be verified by a card reader with biometric capabilities for maritime workers who require unescorted access to MTSA-regulated secure areas of facilities and vessels. Twelve years after MTSA required a biometric enabled maritime worker identification card, the TWIC program still lacks the capability to provide real-time biometric verification of cardholders through use readers. Utilizing the TWIC card as a “flash pass” to grant unescorted access to a port or vessel intro-

duces a certain amount of risk. Should the final reader rule mandate the installation at less than all MTSA-regulated facilities and vessels, as was proposed in the Coast Guard's Notice of Proposed Rulemaking, the Committee expects the Department to engage Congress on proposed changes to the scope of workers that would be required to have a biometric card. The Committee also urges the Department, on an ongoing basis, to seek ways for the TWIC program to be made more affordable, particularly with respect to the costs incurred by transportation workers.

(c) Corrective Action Plan: Program Reforms.—

This subsection requires the Secretary of Homeland Security to submit a corrective action plan based on the results of the security assessment required under subsection (a). This plan shall include benchmarks for TWIC implementation and suggested program reforms, revisions to regulations, and proposals for legislation.

The Committee directs DHS to ensure the corrective action plan to address all recommendations made in the comprehensive assessment and also respond to all recommendations made by the GAO in previous reports about the TWIC program.

(d) Comptroller General Review.—

This subsection requires the GAO to review the corrective action plan and report to the appropriate Congressional Committees the extent the plan addresses the third party security assessment recommendations and previous GAO recommendations.

The Committee believes it is important for this additional layer of GAO review as this assessment comes at the behest of a significant GAO recommendation.

(e) Transportation Security Card Reader Rule.—

This subsection prohibits the Department from beginning any new rulemaking requiring transportation security card readers beyond the currently proposed rule, until the GAO reports to the appropriate Congressional Committees that the corrective action plan was responsive to the third party security assessment recommendations, and the Secretary issues updated list of card readers that are compatible with transportation security cards.

The Committee has been critical of the Department's delay in issuing a final rule for the use of card readers at MTSA regulated vessels and facilities and, at this time, the Committee believes that the current card reader rule should move forward. The Committee directs DHS to incorporate the results of this comprehensive assessment into any additional rule making or changes to existing rules.

(f) Comptroller General Oversight.—

This subsection would require the GAO to conduct a review of the corrective action plan every six months for a period of three years.

The GAO first issued a report raising concerns about the TWIC program in December 2004. Since then, the GAO has issued at least seven reports identifying flaws in the program and a number of recommendations to address those flaws. The Committee feels strongly that continued GAO review of the TWIC program will compliment Congressional oversight of this program going forward. The effectiveness assessment, coupled with continued reports from the GAO, will better inform the Committee on the need for the

TWIC program and provide the background necessary to make future changes to this troubled program.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

As reported, H.R. 3202 makes no changes to existing law.

COMMITTEE CORRESPONDENCE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
HOUSE OF REPRESENTATIVES,

Washington, DC, July 8, 2014.

Hon. MICHAEL T. McCAUL,
Chairman, Committee on Homeland Security,
Washington, DC.

DEAR MR. CHAIRMAN: I write concerning H.R. 3202, the Essential Transportation Worker Identification Credential Assessment Act, as ordered reported, with amendment, by the Committee on Homeland Security on June 11, 2014. This legislation includes matters that fall within the Rule X jurisdiction of the Committee on Transportation and Infrastructure.

In order to expedite floor consideration of H.R. 3202, the Committee on Transportation and Infrastructure will forgo action on this bill. However, this is conditional on our mutual understanding that forgoing consideration of the bill does not prejudice the Committee with respect to the appointment of conferees or to any future jurisdictional claim over the subject matters contained in the bill or similar legislation that fall within the Committee's Rule X jurisdiction. I request you urge the Speaker to name members of the Committee to any conference committee named to consider such provisions.

Please place a copy of this letter and your response acknowledging our jurisdictional interest into the committee report on H.R. 3202 and into the Congressional Record during consideration of the measure on the House floor.

Sincerely,

BILL SHUSTER,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
Washington, DC, July 8, 2014.

Hon. BILL SHUSTER,
Chairman, Committee on Transportation and Infrastructure,
Washington, DC.

DEAR CHAIRMAN SHUSTER: Thank you for your letter regarding the Committee on Transportation and Infrastructure's jurisdictional interest in H.R. 3202, the "Essential Transportation Worker Identification Credential Assessment Act."

I agree that the Committee on Transportation and Infrastructure has a jurisdictional interest in the United States Coast Guard, and that the Committee's jurisdiction will not be adversely affected by your decision to forgo consideration of H.R. 3202. Additionally, I will support your request for an appropriate appointment of outside conferees from your Committee in the event of a House-Senate con-

ference on this or similar legislation, should such a conference be convened.

Finally, I will include a copy of your letter and this response in the report accompanying H.R. 3202 and in the Congressional Record during consideration of this bill on the Floor. Thank you again for your cooperation.

Sincerely,

MICHAEL T. MCCAUL,
Chairman.

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