

TRANSIT SECURITY GRANT PROGRAM
FLEXIBILITY ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

H.R. 1313

TO AMEND THE IMPLEMENTING RECOMMENDATIONS OF THE
9/11 COMMISSION ACT OF 2007 TO CLARIFY CERTAIN
ALLOWABLE USES OF FUNDS FOR PUBLIC TRANSPORTATION
SECURITY ASSISTANCE GRANTS AND ESTABLISH PERIODS OF
PERFORMANCE FOR SUCH GRANTS, AND FOR OTHER PURPOSES



DECEMBER 14, 2020.—Ordered to be printed

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SENATE

{ REPORT
{ 116-323

TRANSIT SECURITY GRANT PROGRAM FLEXIBILITY ACT

DECEMBER 14, 2020.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

[To accompany H.R. 1313]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (H.R. 1313) to amend the Implementing Recommendations of the 9/11 Commission Act of 2007 to clarify certain allowable use of funds for public transportation security assistance grants and establish periods of performance for such grants, 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.

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I. PURPOSE AND SUMMARY

H.R. 1313, the Transit Security Grant Program Flexibility Act, amends the Implementing Recommendations of the 9/11 Commission Act of 2007 (Implementing 9/11 Recommendations Act) to extend the period of time that public transportation security assistance grant awards are available to grant recipients.¹ Specifically, this Act allows these grants to remain available up to 36 months and grants for construction of security improvements to public transportation systems or improvements to public transportation

¹ See 6 U.S.C. 1135.

infrastructure to remain available for up to 48 months. It also allows grant funds to be used to backfill for staff during security trainings. Finally, the Act requires the Government Accountability Office (GAO) to complete an assessment of the types of projects funded by public transportation security assistance grants, how these projects address security threats, the impact of this Act on these projects, the management and administration of the grants, as well as provide recommendations to improve how these grants address public transportation vulnerabilities and recommendations on ways to improve management of these grants.

II. BACKGROUND AND THE NEED FOR LEGISLATION

The National Commission on Terrorist Attacks Upon the United States, better known as the 9/11 Commission, issued a report with numerous recommendations on ways to strengthen national security and prevent future terrorist attacks.² Multiple recommendations in the report addressed the need to improve security and fortify public transportation systems by focusing on risk-based assessments and directing funding and grant dollars towards higher-risk areas rather than spreading money across the totality of the public transportation system. Specifically, the report recommended that, “The U.S. Government should identify and evaluate the transportation assets that need to be protected, set risk-based priorities for defending them, select the most practical and cost-effective ways of doing so, and then develop a plan, budget, and funding to implement the effort.”³ Additionally, the report recommended that “Homeland security assistance should be based strictly on an assessment of risks and vulnerabilities It should supplement state and local resources based on the risk of vulnerabilities that merit additional support”⁴

Congress passed the Implementing 9/11 Recommendations Act to codify and establish many of the recommendations issued in the report, including creating the Transit Security Grant Program within the Department of Homeland Security (DHS).⁵ It states that allowable uses for grant funding include capital uses, such as tunnel protection systems, emergency response equipment, and security improvements for public transportation systems, as well as operating uses, such as security training for employees, public awareness campaigns, and canine patrols for chemical, radiological, biological, or explosives detection.⁶ Additionally, in order to be eligible for a public transportation security grant, the recipient must be addressing an item in a qualifying security assessment or produce a security plan.⁷

On January 9, 2020, the House Homeland Security Committee’s Subcommittee on Emergency Preparedness, Response, & Recovery conducted a hearing with experts on the importance of DHS pre-

²National Commission on Terrorist Attacks Upon the United States, The 9/11 Commission Report 367–428 (2004), <https://govinfo.library.unt.edu/911/report/911Report.pdf>.

³*Id.* at 391.

⁴*Id.* at 396.

⁵Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110–53, § 603, 121 Stat. 266, 376–77 (2007).

⁶*Id.* § 1406.

⁷*Id.*

paredness grants.⁸ In discussing grant programs, John Miller, the Deputy Commissioner for Intelligence and Counterterrorism, New York City Police Department, said Federal funding plays a significant part in state and locals' ability to prevent and prepare for attacks or other events.⁹ He also stated that if Federal funding is eliminated or reduced, it would “result in an erosion of our counterterrorism and intelligence capabilities, cessation of many of the initiatives . . . and a significant limitation of our overall emergency preparedness posture.”¹⁰

This Act makes several changes to the Transit Security Grant Program based feedback from grant recipients. First, the Act clarifies that monies can be used to pay for associated backfill when public transportation employees enroll in security training allowed under the operational uses of the grant funding. Second, the Act codifies the period of performance for the grant program. For most use cases, the grant funding period is 36 months, which is the current performance period. For grant funding for security improvements to public transportation systems in final design or under construction, and security improvements for stations and other public transportation infrastructure, the Act extends the funding period to 48 months. This change is being made to address feedback and concerns from grant recipients that large-capital projects enrolled in the grant program did not have sufficient time to spend the allotted funding to complete large-capital projects, such as construction on stations, and they had to return the money they were awarded and re-apply for grant funding.

III. LEGISLATIVE HISTORY

Representative Peter King (R–NY–2) introduced H.R. 1313 on February 19, 2019. Representative Donald Payne, Jr. (D–NJ–10) joined as co-sponsor on May 14, 2019. The House of Representatives passed H.R. 1313 by voice vote under suspension of the rules on May 14, 2019.

The Act was referred to the Committee on Homeland Security and Governmental Affairs on May 15, 2019. The Committee considered H.R. 1313 at a business meeting on July 22, 2020. During the business meeting, Chairman Ron Johnson offered an amendment in the nature of a substitute to change the duration of large-capital grant awards from 55 months to 48 months based on feedback the Committee received from stakeholders. The amendment was adopted by voice vote *en bloc*. Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Harris, and Rosen were present.

H.R. 1313, as amended by the substitute amendment, was reported favorably by voice vote *en bloc*. Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Harris, and Rosen were present. Senator Paul was recorded “No”.

⁸ *Understanding the Importance of DHS Preparedness Grants: Perspectives from the Field: Hearing Before the Subcomm. on Emergency Preparedness, Response, & Recovery of the H. Comm. on Homeland Sec.*, 116th Cong. (2020) (opening statements of Chairmen Payne and Thompson), https://homeland.house.gov/activities/hearings/understanding-the-importance-of-dhs-preparedness-grants_perspectives-from-the-field.

⁹ *Id.* (statement of John Miller, Deputy Commissioner, Intelligence and Counterterrorism, New York City Police Department).

¹⁰ *Id.*

IV. SECTION-BY-SECTION ANALYSIS OF THE ACT, AS REPORTED

Sec. 1. Short title

This section names the Act as the “Transit Security Grant Program Flexibility Act”.

Sec. 2. Allowable uses of funds for public transportation security assistance grants

This section allows the operational uses of the grants to be used for backfill when employees are attending security training for public transportation employees.

Sec. 3. Periods of performance for public transportation security assistance grants

This section amends the Implementing 9/11 Recommendations Act. Specifically, this section codifies the length of most public transportation security assistance grant allocations to 36 months. Any grants awarded related to security improvements for public transportation systems in final design or under construction, or security improvements for stations and other public transportation infrastructure, may be allowable up to 48 months.

Sec. 4. GAO review

This section requires the GAO to complete an assessment of the type of projects funded by public transportation security assistance grants, how these projects address security threats, the impact of this Act on these projects, the management and administration of the grants, provide recommendations to improve how these grants address public transportation vulnerabilities, and recommendations on ways to improve management of these grants. It also requires the GAO to submit a report on this assessment not later than one year after enactment of the Act, and again not later than five years after enactment.

Sec. 5. Determination of budgetary effects

This section states that the budgetary effects of this Act shall be determined by the latest statement of budgetary effects of PAYGO legislation submitted by the Chairman of the Senate Budget Committee.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this Act and determined that the Act will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s statement that the Act contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

CBO failed to provide the Committee with a cost estimate in time for the final reporting deadline of the 116th Congress.

VII. CHANGES IN EXISTING LAW MADE BY THE ACT, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Act, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

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TITLE 6—DOMESTIC SECURITY

* * * * *

CHAPTER 4—TRANSPORTATION SECURITY

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SUBCHAPTER III—PUBLIC TRANSPORTATION SECURITY

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SEC. 1135. PUBLIC TRANSPORTATION SECURITY ASSISTANCE

(a) * * *

(b) **USES OF FUNDS.**—A recipient of a grant under subsection (a) shall use the grant funds for one or more of the following:

(1) * * *

(2) Operating uses of funds, including—

(A) security training *and associated backfill*, including training under section 1408 and training developed by institutions of higher education and by nonprofit employee labor organizations, for public transportation employees, including frontline employees;

* * * * *

(m) **PERIODS OF PERFORMANCE.**—

(1) **IN GENERAL.**—*Except as provided in paragraph (2), funds provided pursuant to a grant awarded under this section for a use specified in subsection (b) shall remain available for use by a grant recipient for a period of not fewer than 36 months.*

(2) **EXCEPTION.**—*Funds provided pursuant to a grant awarded under this section for a use specified in subparagraph (M) or (N) of subsection (b)(1) shall remain available for use by a grant recipient for a period of not fewer than 48 months.*

[(m)] (n) AUTHORIZATION OF APPROPRIATIONS.—

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