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110–764

NEXT GENERATION RADIATION SCREENING ACT OF 2008

JULY 22, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. THOMPSON of Mississippi, from the Committee on Homeland Security, submitted the following

R E P O R T

[To accompany H.R. 5531]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 5531) to amend the Homeland Security Act of 2002 to clarify criteria for certification relating to advanced spectroscopic portal monitors, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Next Generation Radiation Screening Act of 2008".

SEC. 2. MEMORANDUM OF UNDERSTANDING REGARDING ADVANCED SPECTROSCOPIC PORTAL MONITORS.

(a) IN GENERAL.—Title XIX of the Homeland Security Act of 2002 is amended by adding at the end the following new sections:

"SEC. 1908. ADVANCED SPECTROSCOPIC PORTAL MONITORS.

"(a) FINDINGS.—Congress finds the following:

"(1) The consequences of radiological or nuclear terrorism would be catastrophic.

"(2) A system such as the Advanced Spectoscopic Portal (ASP) is intended to improve the process of screening passengers and cargo to prevent the illicit transport of radiological and nuclear material.

"(3) A system such as the ASP can always be improved, even after it is deployed.

"(4) There is no upper limit to the functionality that can be incorporated into an engineering project of this magnitude.

"(5) Delaying deployment of the ASP to increase functionality beyond what is minimally required for deployment may limit the ability of the United States to screen passengers and cargo for radiological and nuclear material.

"(6) There are operational differences between primary and secondary screening procedures. Consideration should be given to the implication these differences have on the minimum functionality for systems deployed for use in primary and secondary screening procedures.

"(b) AGREEMENT ON FUNCTIONALITY OF ADVANCED SPECTROSCOPIC PORTAL MONITORS.—The Director of the Domestic Nuclear Detection Office and the Commissioner of Customs and Border Protection shall enter into an agreement regarding the minimum required functionality for the deployment of ASP by United States Customs and Border Protection (CBP).

"(c) REPORT TO CONGRESS.—Not later than 60 days after the date of the enactment of this section, the Secretary shall provide Congress with the signed memorandum of understanding between the Office and CBP.

"SEC. 1909. CRITERIA FOR CERTIFICATION.

"(a) FINDINGS.—Congress finds the following:

"(1) In developing criteria for Advanced Spectroscopic Portal (ASP) performance, special consideration should be given to the unique challenges associated with detecting the presence of illicit radiological or nuclear material that may be masked by the presence of radiation from naturally occurring radioactive material or legitimate radioactive sources such as those associated with medical or industrial use of radiation.

"(2) Title IV of division E of the Consolidated Appropriations Act, 2008 (Public Law 110–161) requires the Secretary to submit to Congress a report certifying that 'a significant increase in operational effectiveness will be achieved' with the ASP before 'funds appropriated under this heading shall be obligated for full-scale procurement of Advanced Spectroscopic Portal Monitors', and requires that 'the Secretary shall submit separate and distinct certifications prior to the procurement of Advanced Spectroscopic Portal Monitors for primary and secondary deployment that address the unique requirements for operational effectiveness of each type of deployment.'.

"(b) SPECIFICATION OF SIGNIFICANT INCREASE IN OPERATIONAL EFFECTIVENESS.—

"(1) IN GENERAL.—The Secretary shall, in accordance with the requirements of title IV of division E of the Consolidated Appropriations Act, 2008, and in consultation with the National Academies, develop quantitative metrics that demonstrate any significant increased operational effectiveness (or lack thereof) of deploying the ASP in Primary and Secondary Screening sites, as determined by United States Customs and Border Protection (CBP).

"(2) METRICS.—The metrics referred to in paragraph (1) shall include the following:

"(A) A quantitative definition of 'significant increase in operational effectiveness'.

"(B) All relevant threat materials.

"(C) All relevant masking scenarios.

"(D) Cost benefit analysis in accordance with the Federal Accounting Standards Advisory Board Generally Accepted Accounting Principles.

"(E) Any other measure the Director and the Commissioner determine appropriate.

"(c) CONSIDERATION OF EXTERNAL REVIEWS IN THE DECISION TO CERTIFY.—In determining whether or not to certify that the ASP shows a significant increase in operational effectiveness, the Secretary may consider the following:

"(1) Relevant reports on the ASP from the Government Accountability Office.

"(2) An assessment of the ASP by the Independent Review Team led by the Homeland Security Institute.

"(3) An assessment of the ASP in consultation with the National Academies.

"(4) Any other information the Secretary determines relevant.

"SEC. 1910. AUTHORIZATION OF SECURING THE CITIES INITIATIVE.

"(a) FINDINGS.—Congress finds the following:

"(1) The Securing the Cities Initiative of the Department uses next generation radiation detection technology to detect the transport of nuclear and radiological material in urban areas by terrorists or other unauthorized individuals.

"(2) The technology used by partners in the Securing the Cities Initiative leverages Advanced Spectroscopic Portal (ASP) technology used at ports of entry.

"(3) The Securing the Cities Initiative has fostered unprecedented collaboration and coordination among its Federal, State, and local partners.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Director of the Domestic Nuclear Detection Office of the Department $40,000,000 for fiscal year 2009 and such sums as may be necessary for each subsequent fiscal year for the Securing the Cities Initiative.".

(b) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 is amended by inserting after the item relating to section 1907 the following new items:

"Sec. 1908. Advanced spectroscopic portal monitors.
"Sec. 1909. Criteria for certification.
"Sec. 1910. Authorization of Securing the Cities Initiative.".

Amend the title so as to read:

A bill to amend the Homeland Security Act of 2002 to clarify criteria for certification relating to Advanced Spectroscopic Portal monitors, and for other purposes.

PURPOSE AND SUMMARY

The purpose of H.R. 5531 is to amend the Homeland Security Act of 2002 to clarify criteria for certification relating to advanced spectroscopic portal monitors, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The detonation of an improvised nuclear device or a radiological dispersal device would have catastrophic consequences due to loss of life, destruction of property, or area deniability. As part of an overall strategy to prevent nuclear terrorism, the Committee recognizes that preventing illicit nuclear or radiological material from entering the country must be a top priority.

Since 2003, the Department of Homeland Security has deployed radiation detectors at our Nation's ports of entry. The Department has also engaged in an aggressive research and development program to test, evaluate, and deploy the next generation of radiation detection technology to detect and identify radioactive material. This technology, known as the Advanced Spectroscopic Portal (ASP), has the potential to provide improved detection capabilities while reducing the number of nuisance alarms caused by the legitimate transport of non-threat-related radioactive material.

HEARINGS

No hearings were held on H.R. 5531, however, the Committee held oversight hearings on Advanced Spectroscopic Portal technology listed below.

On March 14, 2007, the Subcommittee on Emerging Threats, Cybersecurity, and Science and Technology held a hearing entitled "Countering the Nuclear Threat to the Homeland: Evaluating the Procurement of Radiation Detection Technologies." The Sub-

committee received testimony from Dr. Vayl Oxford, Director, Domestic Nuclear Detection Office, Department of Homeland Security, and Mr. Gene Aloise, Director, Natural Resources and Environment, U.S. Government Accountability Office.

On March 21, 2007, the Subcommittee on Emerging Threats, Cybersecurity, and Science and Technology held a hearing entitled "Countering the Nuclear Threat to the Homeland: Evaluating the Deployment of Radiation Detection Technologies." The Subcommittee received testimony from Mr. Vayl Oxford, Director, Domestic Nuclear Detection Office, Department of Homeland Security, and Mr. Jayson Ahern, Assistant Commissioner, Office of Field Operations, Customs and Border Protection, Department of Homeland Security.

On March 5, 2008, the Subcommittee on Emerging Threats, Cybersecurity and Science and Technology held a hearing entitled "Nuclear Smuggling Detection: Recent Tests of Advanced Spectroscopic Portal Monitors." The Subcommittee received testimony from Mr. Vayl Oxford, Director, Domestic Nuclear Detection Office, Department of Homeland Security; Ms. Elaine C. Duke, Deputy Under Secretary for Management, Department of Homeland Security; and Mr. George E. Thompson, Deputy Director, Programs, Homeland Security Institute.

COMMITTEE CONSIDERATION

H.R. 5531 was introduced in the House on March 5, 2008, by Mr. King of New York and Mr. McCaul of Texas and referred solely to the Committee on Homeland Security. Within the Committee H.R. 5531 was referred to the Subcommittee on Emerging Threats, Cybersecurity, Science and Technology.

On June 26, 2008, the Chairman discharged the Subcommittee on Emerging Threats, Cybersecurity, Science and Technology from further consideration of H.R. 5531. The Committee then proceeded to the consideration of H.R. 5531 and ordered the measure to be reported to the House favorably, as amended, by voice vote.

The following amendment was offered:

> An amendment offered by Mr. King (#1); was AGREED TO 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.

No recorded votes were requested on H.R. 5531 during Committee consideration.

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. 5531, the Next Generation Radiation Screening Act of 2008, 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.

JULY 8, 2008.

Hon. BENNIE G. THOMPSON,
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. 5531, the Next Generation Radiation Screening Act of 2008.

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

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 5531—Next Generation Radiation Screening Act of 2008

Summary: H.R. 5531 would authorize the appropriation of $40 million for fiscal year 2009 and such sums as are necessary for each subsequent year for the Domestic Nuclear Detection Office in the Department of Homeland Security to fund the Securing the Cities Initiative, a program to detect illicit nuclear and radiological material in urban areas. CBO estimates that implementing the bill would cost about $180 million over the 2009–2013 period, subject to appropriation of the authorized amounts. Enacting H.R. 5531 would not affect direct spending or revenues.

H.R. 5531 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 5531 is shown in the following table. CBO assumes that the estimated authorization amounts will be appropriated near the start of each fiscal year and that outlays will follow the historical rate of spending for similar activities. We estimated the authorization levels for 2010 and subsequent years by adjusting the 2009 level for anticipated inflation. The costs of this legislation fall within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars—					
	2009	2010	2011	2012	2013	2009–2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	40	41	42	44	45	212

	By fiscal year, in millions of dollars—					
	2009	2010	2011	2012	2013	2009–2013
Estimated Outlays	20	33	42	43	44	182

Intergovernmental and private-sector impact: H.R. 5531 contains no intergovernmental or private-sector mandates as defined in UMRA. State, local, and tribal governments would benefit from funds authorized by this bill for the Securing the Cities Initiative.

Estimate prepared by: Federal Costs: Mark Grabowicz; Impact on State, Local, and Tribal Governments: Burke Doherty; Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine; 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. 5531 contains the following general performance goals, and objectives, including outcome related goals and objectives authorized.

This bill will guide the Department of Homeland Security in its efforts to deploy next generation radiation detection technology at the Nation's ports of entry by authorizing the Advanced Spectroscopic Portal (ASP) monitor program and the Security the Cities (STC) initiative—both programs currently being administered through the Department's Domestic Nuclear Detection Office (DNDO).

While the potential benefits of the ASP technology are still not fully realized, Congress intends to guide the Department's efforts through this legislation by addressing three areas: communication between DNDO and Customs and Border Protection (CBP), requirements of ASP certification, and authorization of the Securing the Cities Initiative. Finally, this bill does not authorize the research and development of any particular technology. References to the Advanced Spectroscopic Portal (ASP) monitor are intended to guide the Department in establishing quantitative metrics for certification as required by the previously-passed Consolidated Appropriations Act of 2008 (Public Law 110–161).

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(d), 9(e), or 9(f) 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.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 1, which grants Congress the power to provide for the common Defense of the United States.

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

Section 1 designates the bill as the "Next Generation Radiation Screening Act of 2008."

Section 2. Memorandum of Understanding regarding Advanced Spectroscopic Portal Monitors

Section 2 amends the Homeland Security Act of 2002 (Public Law 107–296) and establishes three new sections—sections 1908, 1909, and 1910.

Section 1908. Advanced Spectroscopic Portal Monitors

This section directs the Director of the Domestic Nuclear Detection Office (DNDO) and the Commissioner of United States Customs and Border Protection (CBP) to enter into an agreement regarding the minimum standards of operational functionality in order to deploy Advanced Spectroscopic Portal (ASP) systems. This agreement must be signed and provided to the Congress within 60 days of enactment of the bill.

The Committee perceives that one of the main sources of delay of the ASP program is the lack of communication or miscommunication between the agency preparing the ASP, the DNDO, and the agency responsible for using the ASP in the field, CBP. The required memorandum of understanding will clarify the minimum level of technical capabilities the ASP must possess in order to be accepted and deployed by CBP.

Section 1909. Criteria for certification

This section clarifies current law requirements for ASP certification. It requires the Secretary to develop a quantitative definition of "significant increase in operational effectiveness" and consideration of all relevant threat materials, not only highly enriched uranium (HEU), but all relevant masking scenarios, including but not limited to, naturally occurring radioactive materials (*e.g.* kitty litter, ceramic tiles) and illicit, fissile material encapsulated in legiti-

mate products (*e.g.* those for industrial or medical use). The Committee understands that the DNDO currently consults with the Department of Energy (DOE) and the National Laboratories in developing such metrics, and the Committee directs DNDO to continue this practice.

In determining whether or not to certify that the ASP shows a significant increase in operational effectiveness, the Secretary may consider relevant reports on the ASP from the Government Accountability Office, the Independent Review Team led by the Homeland Security Institute, the National Academies, or any other information the Secretary determines relevant.

Title IV of division E of the Consolidated Appropriations Act, 2008 (Public Law 110–161) requires the Secretary to submit to Congress a report certifying that "a significant increase in operational effectiveness will be achieved" with the ASP before "funds appropriated under this heading shall be obligated for full-scale procurement of Advanced Spectroscopic Portal Monitors" and requires that "the Secretary shall submit separate and distinct certifications prior to the procurement of Advanced Spectroscopic Portal Monitors for primary and secondary deployment that address the unique requirements for operational effectiveness of each type of deployment." Section 1909 will ensure appropriate considerations are included in the Secretary's decision to certify the ASP in order to avoid further delay of the ASP program.

Section 1910. Authorization of Securing the Cities Initiative

This section authorizes the appropriation of $40 million for the Securing the Cities Initiative in Fiscal Year 2009, and such sums as are necessary thereafter.

The Securing the Cities Initiative uses next generation radiation detection technology to detect the illicit transport of nuclear and radiological material in urban areas. The Securing the Cities Initiative has fostered unprecedented collaboration and coordination among its Federal, state, tribal, and local partners and has enhanced the security of the New York Metropolitan region. The Committee supports this vital program and authorizes $40 million for its continuation in Fiscal Year 2009.

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) * * *

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

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TITLE XIX—DOMESTIC NUCLEAR DETECTION OFFICE

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Sec. 1908. Advanced spectroscopic portal monitors.
Sec. 1909. Criteria for certification.
Sec. 1910. Authorization of Securing the Cities Initiative.

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TITLE XIX—DOMESTIC NUCLEAR DETECTION OFFICE

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SEC. 1908. ADVANCED SPECTROSCOPIC PORTAL MONITORS.

(a) FINDINGS.—Congress finds the following:

(1) The consequences of radiological or nuclear terrorism would be catastrophic.

(2) A system such as the Advanced Spectoscopic Portal (ASP) is intended to improve the process of screening passengers and cargo to prevent the illicit transport of radiological and nuclear material.

(3) A system such as the ASP can always be improved, even after it is deployed.

(4) There is no upper limit to the functionality that can be incorporated into an engineering project of this magnitude.

(5) Delaying deployment of the ASP to increase functionality beyond what is minimally required for deployment may limit the ability of the United States to screen passengers and cargo for radiological and nuclear material.

(6) There are operational differences between primary and secondary screening procedures. Consideration should be given to the implication these differences have on the minimum functionality for systems deployed for use in primary and secondary screening procedures.

(b) AGREEMENT ON FUNCTIONALITY OF ADVANCED SPECTROSCOPIC PORTAL MONITORS.—The Director of the Domestic Nuclear Detection Office and the Commissioner of Customs and Border Protection shall enter into an agreement regarding the minimum required functionality for the deployment of ASP by United States Customs and Border Protection (CBP).

(c) REPORT TO CONGRESS.—Not later than 60 days after the date of the enactment of this section, the Secretary shall provide Congress with the signed memorandum of understanding between the Office and CBP.

SEC. 1909. CRITERIA FOR CERTIFICATION.

(a) FINDINGS.—Congress finds the following:

(1) In developing criteria for Advanced Spectroscopic Portal (ASP) performance, special consideration should be given to the unique challenges associated with detecting the presence of illicit radiological or nuclear material that may be masked by the presence of radiation from naturally occurring radioactive material or legitimate radioactive sources such as those associated with medical or industrial use of radiation.

(2) Title IV of division E of the Consolidated Appropriations Act, 2008 (Public Law 110–161) requires the Secretary to sub-

mit to Congress a report certifying that "a significant increase in operational effectiveness will be achieved" with the ASP before "funds appropriated under this heading shall be obligated for full-scale procurement of Advanced Spectroscopic Portal Monitors", and requires that "the Secretary shall submit separate and distinct certifications prior to the procurement of Advanced Spectroscopic Portal Monitors for primary and secondary deployment that address the unique requirements for operational effectiveness of each type of deployment.".

(b) SPECIFICATION OF SIGNIFICANT INCREASE IN OPERATIONAL EFFECTIVENESS.—

(1) IN GENERAL.—The Secretary shall, in accordance with the requirements of title IV of division E of the Consolidated Appropriations Act, 2008, and in consultation with the National Academies, develop quantitative metrics that demonstrate any significant increased operational effectiveness (or lack thereof) of deploying the ASP in Primary and Secondary Screening sites, as determined by United States Customs and Border Protection (CBP).

(2) METRICS.—The metrics referred to in paragraph (1) shall include the following:

(A) A quantitative definition of "significant increase in operational effectiveness".

(B) All relevant threat materials.

(C) All relevant masking scenarios.

(D) Cost benefit analysis in accordance with the Federal Accounting Standards Advisory Board Generally Accepted Accounting Principles.

(E) Any other measure the Director and the Commissioner determine appropriate.

(c) CONSIDERATION OF EXTERNAL REVIEWS IN THE DECISION TO CERTIFY.—In determining whether or not to certify that the ASP shows a significant increase in operational effectiveness, the Secretary may consider the following:

(1) Relevant reports on the ASP from the Government Accountability Office.

(2) An assessment of the ASP by the Independent Review Team led by the Homeland Security Institute.

(3) An assessment of the ASP in consultation with the National Academies.

(4) Any other information the Secretary determines relevant.

SEC. 1910. AUTHORIZATION OF SECURING THE CITIES INITIATIVE.

(a) FINDINGS.—Congress finds the following:

(1) The Securing the Cities Initiative of the Department uses next generation radiation detection technology to detect the transport of nuclear and radiological material in urban areas by terrorists or other unauthorized individuals.

(2) The technology used by partners in the Securing the Cities Initiative leverages Advanced Spectroscopic Portal (ASP) technology used at ports of entry.

(3) The Securing the Cities Initiative has fostered unprecedented collaboration and coordination among its Federal, State, and local partners.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Director of the Domestic Nuclear Detection

Office of the Department $40,000,000 for fiscal year 2009 and such sums as may be necessary for each subsequent fiscal year for the Securing the Cities Initiative.

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