

109TH CONGRESS
1ST SESSION

H. R. 2649

To strengthen aviation security.

IN THE HOUSE OF REPRESENTATIVES

MAY 26, 2005

Mr. MARKEY introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committees on the Judiciary and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To strengthen aviation security.

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 “Strengthen Aviation
5 Security Act”.

6 **SEC. 2. INSPECTION OF CARGO CARRIED ABOARD PAS-**
7 **SENGER AIRCRAFT.**

8 Section 44901 of title 49, United States Code, is
9 amended—

1 (1) by redesignating subsections “(g)” and
2 “(h)” as subsections “(h)” and “(i)”, respectively;
3 and

4 (2) by inserting after subsection (f) the fol-
5 lowing:

6 “(g) Air Cargo on passenger aircraft—

7 “(1) IN GENERAL.—Not later than 3 years
8 after the date of enactment of the Strengthen Avia-
9 tion Security Act, the Secretary of Homeland Secu-
10 rity shall establish a system to inspect 100 percent
11 of the cargo transported on passenger aircraft to en-
12 sure the security of all passenger aircraft carrying
13 cargo operated by an air carrier or foreign air car-
14 rier in air transportation or intrastate air transpor-
15 tation.

16 “(2) MINIMUM STANDARDS.—The system re-
17 ferred to in paragraph (1) shall, at a minimum, re-
18 quire that—

19 “(A) equipment, technology, and personnel
20 meets the same standards established to inspect
21 passenger baggage;

22 “(B) 35 percent of cargo carried on pas-
23 senger aircraft is inspected by the end of fiscal
24 year 2006;

1 “(C) 65 percent of cargo carried on pas-
2 senger aircraft is inspected by the end of fiscal
3 year 2007; and

4 “(D) 100 percent of cargo carried on pas-
5 senger aircraft is inspected by the end of fiscal
6 year 2008.

7 “(3) REPORT.—Not later than 1 year after the
8 date of enactment of the Strengthen Aviation Secu-
9 rity Act, the Secretary shall transmit to Congress a
10 report that describes the system established pursu-
11 ant to paragraph (1).”.

12 **SEC. 3. REPORT ON KNOWN SHIPPING COMPANIES.**

13 Not later than the 180th day following the date of
14 establishment of the database of known shipping compa-
15 nies being established by the Department of Homeland Se-
16 curity, the Secretary of Homeland Security shall transmit
17 to Congress a report on the number of known shipping
18 companies in the database, the number of known shipping
19 companies for whom the Transportation Security Admin-
20 istration has conducted physical inspections of facilities
21 and paperwork of such companies to determine compliance
22 with security regulations that apply to those companies,
23 the number of companies that have applied to the Sec-
24 retary for known shipping company status and been de-
25 nied, and the number of known shipping companies that

1 have been removed from the database as a result of find-
2 ings by the Administration that such companies have
3 failed to comply with appropriate security regulations.

4 **SEC. 4. TRAINING PROGRAMS.**

5 (a) IN GENERAL.—For the purposes of deploying
6 Federal law enforcement officers not part of the Federal
7 Air Marshal Service as alternative security personnel on
8 commercial aircraft—

9 (1) the Secretary of Homeland Security, not
10 later than the 90th day following the date of enact-
11 ment of this Act, shall establish—

12 (A) training standards that all Federal law
13 enforcement officers must meet in order to re-
14 spond appropriately as law enforcement profes-
15 sionals to incidents aboard aircraft; and

16 (B) procedures by which law enforcement
17 personnel, authorized to carry a firearm or oth-
18 erwise prohibited items aboard a passenger
19 commercial aircraft may do so without indi-
20 cating, to the greatest extent practicable, either
21 deliberately or accidentally such personnel's sta-
22 tus to other passengers; and

23 (2) the head of the Federal Air Marshal Serv-
24 ice, in determining on which flights to place one or
25 more Federal air marshals, shall—

1 (A) have access to information on whether
2 Federal law enforcement officers meeting the
3 training standards established under paragraph
4 (1) are scheduled to travel on commercial
5 flights; and

6 (B) not substitute Federal law enforcement
7 officers that have not met such training stand-
8 ards established by the Federal Air Marshal
9 Service.

10 (b) WAIVER.—The Secretary may waive the require-
11 ment of subsection (a)(2)(B) for not to exceed 6 months
12 after the 90th day referred to in subsection (a) if nec-
13 essary for security purposes.

14 (c) REPORT.—The Secretary shall transmit to Con-
15 gress a report on the timeline for providing training re-
16 quired to carry out subsection (a)(2) and any additional
17 resources needed to implement this section.

18 **SEC. 5. FEDERAL AIR MARSHALS.**

19 The Secretary of Homeland Security shall ensure the
20 deployment of Federal air marshal officers on flights of
21 all-cargo air transportation for which the Secretary of
22 Homeland Security determines there to be sufficient risk
23 of terrorist activity.

1 **SEC. 6. FLIGHT COMMUNICATIONS.**

2 (a) IN GENERAL.—Section 4021 of the Intelligence
3 Reform and Terrorism Prevention Act of 2004 (Public
4 Law 108–458) is amended by adding at the end the fol-
5 lowing:

6 “(d) FLIGHT COMMUNICATION.—To expand the pur-
7 poses of the study under subsection (a), not later than
8 180 days after the date of enactment of this subsection,
9 the Assistant Secretary shall conduct a study on the viabil-
10 ity of devices to enable discreet, wireless communications
11 between flight attendants, pilots, Federal air marshals,
12 and ground-based personnel during a passenger commer-
13 cial aircraft flight to improve coordination of planning and
14 activities in the event of an act of terrorism and transmit
15 to Congress a report on the results of the study conducted
16 under this subsection.”.

17 (b) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated such sums as may be
19 necessary to carry out section 4021(d) of the Intelligence
20 Reform and Terrorism Prevention Act of 2004.

21 **SEC. 7. COMPREHENSIVE PREFLIGHT SCREENING.**

22 (a) STUDY.—

23 (1) IN GENERAL.—The Secretary shall conduct
24 a study to assess the current training provided to in-
25 dividuals who perform preflight security inspections
26 and to identify areas for improvement in such in-

1 inspections and training and make recommendations
2 regarding improving such inspections and training.

3 (2) REPORT.—Not later than 180 days after
4 the date of enactment of this Act, the Secretary
5 shall transmit to Congress a report on the results of
6 the study.

7 (b) REGULATIONS.—

8 (1) ISSUANCE.—Not later than 90 days after
9 the date of transmission of the reports under sub-
10 section (a), the Secretary of Homeland Security
11 shall issue regulations to improve preflight screening
12 of passenger aircraft for dangerous objects and
13 training of screeners of passenger aircraft and to re-
14 duce the time between preflight screening and the
15 departure time for a flight.

16 (2) SPECIFIC REQUIREMENTS.—The regulations
17 shall—

18 (A) require individuals who perform the
19 preflight security sweeps through the passenger
20 cabin and lavatories of passenger aircraft and
21 who are not members of the flight or cabin crew
22 to be physically screened for metallic objects,
23 have their personal bags inspected for prohib-
24 ited items such as chemical, biological, radio-
25 logical, or nuclear materials, be subject to

1 criminal history background checks, social secu-
2 rity checks, and checks against all terrorist
3 watch lists maintained by the Government; and

4 (B) incorporate the recommendations con-
5 tained in the report transmitted under sub-
6 section (a).

7 **SEC. 8. FLIGHT ATTENDANT TRAINING.**

8 The Secretary of Homeland Security, in consultation
9 with the Administrator of the Federal Aviation Adminis-
10 tration, shall finalize the development of a mandatory
11 basic security training program for flight attendants and
12 shall begin administration of the training program not
13 later than 30 days after the date of enactment of this Act.

14 **SEC. 9. SECURING COCKPIT DOORS.**

15 (a) CARGO AIRCRAFT.—Not later than 180 days
16 after the date of enactment of this Act, the Secretary of
17 Homeland Security shall—

18 (1) issue an order—

19 (A) requiring any aircraft engaged in cargo
20 air transportation or intrastate air transpor-
21 tation to have, not later than one year after the
22 date of issuance of such order, a door (and sur-
23 rounding partition) between the cargo and pilot
24 compartments that can be locked and cannot be
25 forced open from the cargo compartment;

1 (B) prohibiting access to the flight deck of
2 aircraft engaged in cargo air transportation or
3 intrastate air transportation, except by author-
4 ized persons; and

5 (C) requiring that such flight deck doors
6 remain locked while any such aircraft is in
7 flight except when necessary to permit access
8 and egress by authorized persons; and

9 (2) take such other action, including modifica-
10 tion of safety and security procedures and flight
11 deck redesign, as may be necessary to ensure the
12 safety and security of the aircraft.

13 (b) PASSENGER AIRCRAFT.—The Secretary shall
14 issue an order to modify requirements imposed pursuant
15 to section 104 of the Aviation and Transportation Security
16 Act (49 U.S.C. 44903 note; 115 Stat. 605) to ensure that
17 the wall surrounding the flight deck door on any aircraft
18 engaged in passenger air transportation or intrastate air
19 transportation is sufficient to secure the cockpit.

20 (c) GRANTS.—The Secretary may make grants or
21 other agreements with air carriers (including intrastate air
22 carriers) to assist such carriers in complying with the or-
23 ders issued under this section.

1 (d) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated such sums as may be
3 necessary to carry out this section.

4 **SEC. 10. SECURITY REQUIREMENTS FOR GENERAL AVIA-**
5 **TION.**

6 (a) NO FLY ZONES.—The Secretary of Homeland Se-
7 curity—

8 (1) shall establish for the duration of any high
9 threat level announced by the Secretary; and

10 (2) may establish for the duration of any other
11 threat level that is announced by the Secretary and
12 that the Secretary determines appropriate, no fly
13 zones around sensitive nuclear facilities, chemical fa-
14 cilities identified by the Administrator of the Envi-
15 ronmental Protection Agency at which a release of
16 the facility's hazardous materials could threaten the
17 health of more than 1,000,000 people, and any other
18 facilities the Secretary may designate.

19 (b) VULNERABILITY ASSESSMENTS.—The Secretary
20 shall—

21 (1) require the operators of airports that serve
22 general aviation aircraft and landing facilities for
23 such aircraft to complete vulnerability assessments
24 developed by the Secretary for evaluation of the
25 physical security of such airports and facilities and

1 of procedures, infrastructure, and resources used
2 with respect to such airports and facilities; and

3 (2) develop a plan for addressing vulnerabilities
4 identified by such assessments not later than the
5 365th day following the date of enactment of this
6 Act.

7 (c) USE OF IMMOBILIZING DEVICES; RECORDS
8 CHECKS.—The Secretary shall require airports that serve
9 operators of general aviation aircraft—

10 (1) to require that all general aviation aircraft,
11 while parked at such airports, are secured by a visi-
12 ble immobilizing device (such as a prop lock); and

13 (2) to ensure that any individual with access to
14 a general aviation aircraft at such airport is subject
15 to a social security check, a check of immigration
16 status, a check against all terrorist watch lists main-
17 tained by the Government, and a background check
18 comparable to a background check required under
19 section 44936 of title 49, United States Code.

20 (d) DEFINITION.—In this section, the following defi-
21 nitions apply:

22 (1) HIGH THREAT.—The term “high threat”
23 means an announcement by the Department of
24 Homeland Security of a terrorist threat level of code

1 orange or above or an equivalent designation of any
2 successor threat advisory system of the Department.

3 (2) SENSITIVE NUCLEAR FACILITY.—The term
4 “sensitive nuclear facility” means—

5 (A) a commercial nuclear power plant and
6 associated spent fuel storage facility;

7 (B) a decommissioned nuclear power plant
8 and associated spent fuel storage facility;

9 (C) a category I fuel cycle facility;

10 (D) a gaseous diffusion plant; and

11 (E) a Department of Energy nuclear weap-
12 ons materials production, processing, storage,
13 or research facility.

14 (3) SOCIAL SECURITY CHECK.—The term “so-
15 cial security check” means a check on the validity of
16 the social security number of an individual and a
17 verification that the number is assigned to the indi-
18 vidual.

19 **SEC. 11. CONTROL OVER ACCESS TO SECURED AREAS OF**
20 **AIRPORTS.**

21 (a) AIRPORT PERIMETER ACCESS SECURITY.—Sub-
22 title A of title IV of the Homeland Security Act of 2002
23 (6 U.S.C. 201 et seq.) is amended by adding at the end
24 the following:

1 **“SEC. 404. ACCESS SECURITY.**

2 “(a) AIRPORT PERIMETER.—Not later than 180 days
3 after the date of the enactment of this section, the Sec-
4 retary shall issue regulations—

5 “(1) to improve control over access to the se-
6 cure area of each airport in the United States de-
7 scribed in section 44903(c) of title 49, United States
8 Code; and

9 “(2) to prohibit any entity (other than an oper-
10 ator of such an airport) from issuing a security
11 badge to provide escorted or unescorted access to the
12 secure area of such airport, subject to such excep-
13 tions as the Secretary may establish, by regulation,
14 for Federal, State, and local governments and for
15 employees of air carriers.

16 “(b) BACKGROUND CHECKS FOR AIRPORT WORK-
17 ERS.—An individual employed in, or applying for, a posi-
18 tion described in section 44936 of title 49, United States
19 Code, or a position as an aircraft maintenance or catering
20 worker, aircraft cargo handler, aircraft worker with access
21 to an aircraft ramp, aircraft support facilities worker, or
22 employee of an airport vendor whether having escorted or
23 unescorted access to an aircraft or a secure area of an
24 airport, shall be subject to a social security check, a check
25 of immigration status, and a check against all terrorist

1 watch lists maintained by the Government in addition to
2 a background check required by such section.

3 “(c) SOCIAL SECURITY CHECK DEFINED.—In this
4 section, the term ‘social security check’ means a check on
5 the validity of the social security number of an individual
6 and a verification that the number is assigned to the indi-
7 vidual.”.

8 (b) SCREENING OF AIRPORT WORKERS USING
9 METAL DETECTORS.—Section 44903(h)(4)(B) of title 49,
10 United States Code, is amended by inserting before the
11 semicolon at the end the following: “, including, at a min-
12 imum, requiring each of such individuals to be physically
13 screened for metallic objects and to have their personal
14 bags inspected for prohibited items, such as chemical, bio-
15 logical, radiological, and nuclear materials, each time that
16 individual enters a secure area of the airport”.

17 **SEC. 12. WHISTLEBLOWER PROTECTION.**

18 (a) IN GENERAL.—No covered individual involved in
19 aviation security, including employees of the Transpor-
20 tation Security Administration, may be discharged, de-
21 moted, suspended, threatened, harassed, or in any other
22 manner discriminated against because of any lawful act
23 done by the person—

24 (1) to provide information, cause information to
25 be provided, or otherwise assist in an investigation

1 regarding any conduct which the person reasonably
2 believes constitutes a violation of any law, rule or
3 regulation related to aviation security or any other
4 threat to aviation security when the information or
5 assistance is provided to or the investigation is con-
6 ducted by—

7 (A) a Federal regulatory or law enforce-
8 ment agency;

9 (B) any Member of Congress or any com-
10 mittee of Congress; or

11 (C) a person with supervisory authority
12 over the covered individual (or such other per-
13 son who has the authority to investigate, dis-
14 cover, or terminate misconduct);

15 (2) to file, cause to be filed, testify, participate
16 in, or otherwise assist in a proceeding or action filed
17 or about to be filed relating to a violation of any
18 law, rule or regulation related to the security of pas-
19 senger airlines or any other threat to the security of
20 passenger airlines; or

21 (3) to refuse to violate or assist in the violation
22 of any law, rule, or regulation related to the security
23 of passenger airlines.

24 (b) ENFORCEMENT ACTION.—

1 (1) IN GENERAL.—A covered individual who al-
2 leges discharge or other discrimination by any per-
3 son in violation of subsection (a) may seek relief
4 under subsection (c), by—

5 (A) filing a complaint with the Secretary of
6 Labor; or

7 (B) if the Secretary has not issued a final
8 decision within 180 days of the filing of the
9 complaint and there is no showing that such
10 delay is due to the bad faith of the claimant,
11 bringing an action at law or equity for de novo
12 review in the appropriate district court of the
13 United States, which shall have jurisdiction
14 over such an action without regard to the
15 amount in controversy.

16 (2) PROCEDURE.—

17 (A) IN GENERAL.—An action under para-
18 graph (1)(A) shall be governed under the rules
19 and procedures set forth in section 42121(b) of
20 title 49, United States Code.

21 (B) EXCEPTION.—Notification made under
22 section 42121(b)(1) of title 49, United States
23 Code, shall be made to the person named in the
24 complaint and to the person's employer.

1 (C) BURDENS OF PROOF.—An action
2 brought under paragraph (1)(B) shall be gov-
3 erned by the legal burdens of proof set forth in
4 section 42121(b) of title 49, United States
5 Code.

6 (D) STATUTE OF LIMITATIONS.—An action
7 under paragraph (1) shall be commenced not
8 later than 90 days after the date on which the
9 violation occurs.

10 (c) REMEDIES.—

11 (1) IN GENERAL.—A covered individual pre-
12 vailing in any action under subsection (b)(1) shall be
13 entitled to all relief necessary to make the covered
14 individual whole.

15 (2) COMPENSATORY DAMAGES.—Relief for any
16 action under paragraph (1) shall include—

17 (A) reinstatement with the same seniority
18 status that the covered individual would have
19 had, but for the discrimination;

20 (B) the amount of any back pay, with in-
21 terest; and

22 (C) compensation for any special damages
23 sustained as a result of the discrimination, in-
24 cluding litigation costs, expert witness fees, and
25 reasonable attorney fees.

1 (d) RIGHTS RETAINED BY COVERED INDIVIDUAL.—
2 Nothing in this section shall be deemed to diminish the
3 rights, privileges, or remedies of any covered individual
4 under any Federal or State law, or under any collective
5 bargaining agreement.

6 (e) DEFINITIONS.—In this section, the following defi-
7 nitions apply:

8 (1) COVERED INDIVIDUAL.—The term “covered
9 individual” means a Federal employee as defined in
10 section 2105 of title 5, United States Code, any em-
11 ployee of a Federal contractor or subcontractor, or
12 any employee of a business entity.

13 (2) LAWFUL.—The term “lawful” means not
14 specifically prohibited by law and if such information
15 is not specifically required by Executive order to be
16 kept secret in the interest of national defense or the
17 conduct of foreign affairs. If communication of oth-
18 erwise covered information is specifically prohibited
19 by law and if such information is required by Execu-
20 tive order to be kept secret in the interest of na-
21 tional defense or the conduct of foreign affairs, it
22 may be communicated to any—

23 (A) Member of Congress or committee of
24 Congress; or

1 (B) any other recipient who is authorized
2 to receive such information.

3 (3) FEDERAL CONTRACTOR.—The term “Fed-
4 eral contractor” means a person who has entered
5 into a contract with the United States.

6 (4) EMPLOYEE.—The term “employee” means
7 any officer, partner, employee, or agent.

8 (5) SUBCONTRACTOR.—The term “subcon-
9 tractor”—

10 (A) means any person, other than the Fed-
11 eral contractor, who offers to furnish or fur-
12 nishes any supplies, materials, equipment, or
13 services of any kind under a Federal contract
14 or a subcontract entered into in connection with
15 such Federal contract; and

16 (B) includes any person who offers to fur-
17 nish or furnishes general supplies to the Fed-
18 eral contractor or a higher tier subcontractor.

19 (6) PERSON.—The term “person” means a cor-
20 poration, partnership, State entity, business associa-
21 tion of any kind, trust, joint-stock company, or indi-
22 vidual.

23 **SEC. 13. AIRPORT SCREENING.**

24 (a) FINDINGS.—Congress finds that—

1 (1) a Federal workforce of passenger and bag-
2 gage screeners is more responsive to the public than
3 the private sector;

4 (2) a recent poll indicates that a majority of re-
5 spondents feel better protected by a Federal work-
6 force of passenger and baggage screeners than by a
7 screener workforce employed by a private company;

8 (3) section 44920 of title 49, United States
9 Code, explicitly permits the Transportation Security
10 Administration to accept applications from airport
11 operators seeking to “opt out” of a Federal screen-
12 ing workforce;

13 (4) the Transportation Security Administration
14 has issued a directive prohibiting the Federal airport
15 security screener workforce from the right to collec-
16 tively bargain;

17 (5) the Transportation Security Administration
18 has issued guidance that would provide the
19 privatized screener workforce the right to join a
20 union and collectively bargain with their employer;
21 and

22 (6) a reversion to private company performance
23 of screener functions could reduce safety and erode
24 confidence in the Federal Government’s ability to

1 protect citizens from acts of terrorism, and, there-
2 fore, not be in the public interest.

3 (b) SENSE OF CONGRESS.—It is the sense of Con-
4 gress that—

5 (1) all airport screening functions should con-
6 tinue to be performed by Federal employees; and

7 (2) all employees of the Transportation Security
8 Administration, including Federal airport screeners,
9 should be permitted to engage in collective bar-
10 gaining and be represented in collective bargaining
11 by a representative or organization of their choosing.

12 **SEC. 14. NO-FLY LIST.**

13 (a) FINDINGS.—Congress finds that—

14 (1) aircraft passenger information currently is
15 transmitted from air carriers to the Department of
16 Homeland Security for comparison against a Gov-
17 ernment maintained watch list after departure of
18 international flights flying to or from the United
19 States;

20 (2) the diversion to Bangor, Maine, of an Air
21 France flight scheduled to travel from Paris,
22 France, to Boston, Massachusetts, on May 12, 2005,
23 and the diversion to Bangor, Maine of an Alitalia
24 flight scheduled to travel from Milan, Italy, to Bos-
25 ton, Massachusetts, on May 19, 2005, occurred

1 when, in the first instance, a passenger name was
2 mistakenly considered to match a name on the
3 watchlist and, in the second instance, a passenger
4 name matched a name on the watchlist;

5 (3) in both cases, the flights already had de-
6 parted the airports when the comparison with the
7 watchlist occurred;

8 (4) departure of international flights from air-
9 ports before passenger information has been com-
10 pared against the watchlist maintained by the Fed-
11 eral Government is a serious security loophole that
12 could enable a known terrorist to board, travel on,
13 and hijack an international flight en route to or de-
14 parting from the United States;

15 (5) the Intelligence Reform and Terrorism Pre-
16 vention Act of 2004 (P.L. 108-458) mandated that
17 the Secretary of Homeland Security, not later than
18 60 days after the date of enactment of that Act,
19 issue a notice of proposed rulemaking that would
20 allow the Department to compare passenger infor-
21 mation for any international flight to or from the
22 United States against the consolidated and inte-
23 grated terrorist watchlist maintained by the Federal
24 Government before departure of the flight; and

1 (6) the Department did not issue the notice of
2 proposed rulemaking by February 2005, the dead-
3 line specified in that Act.

4 (b) SENSE OF CONGRESS.—It is the sense of Con-
5 gress that—

6 (1) the Secretary of Homeland Security should
7 actively pursue the resolution of all issues that have
8 delayed the implementation of the mandate to check
9 passenger information against the Government
10 maintained watchlist before departures of inter-
11 national flights to or from the United States;

12 (2) the Secretary should promptly issue the re-
13 quired notice of proposed rulemaking to enable the
14 comparison of passenger information against the
15 Government maintained terrorist watchlist prior to
16 departure of international flights to or from the
17 United States; and

18 (3) until such time as the Secretary has issued
19 the notice of proposed rulemaking, the Secretary
20 should provide Congress with periodic reports that
21 describe the progress of the Department of Home-
22 land Security in resolving issues that have delayed
23 implementation of this mandate and explain when
24 the Department expects to issue the notice.

○