

HB

321

<TARGET><BILL>HB 321</BILL><SUBJECT>HB
321</SUBJECT><COMM>HTRA27</COMM></TARGET>

Alaska State Legislature
House of Representatives

Alaska State Capitol
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Representative Sharon Cissna
District 22

Sponsor Statement

HB 321: State/Muni Airport Security Screening

Early December of 2012, the U.S. Department of Homeland Security's Transportation Security Administration (TSA) began the installation and use of full-body scanners at four Alaska hub airports.

Initial installations of invasive scanning machinery and physical hand-examination of passengers began in late October 2010 throughout the lower 48 States. Concerns have risen since that time of scanning equipment, not proven safe from radiation danger. Certain groups of passengers (those with physical changes from aging, health, diseases, military, accident, work, assault) have reported severe impacts from the current intensive touch of intimate body parts by insufficiently trained personnel.

During the many months since imposition of new airport screening procedures, first in the lower United States, and since December 2011 in Alaska, constituents have communicated to Legislators. They have reported personal losses of carry-on items, embarrassment, harm to themselves, their necessary medical equipment, of the inappropriate touch and treatment by TSA personnel.

Alaskans fly eight times more often than the national average. In addition, TSA has greater impact on Alaskan transportation mobility given the necessity to use commercial airlines for intra- and inter-state Alaskan travel.

HB 321: Adds a new section to Alaska's unmodified law to require all Alaska airports covered by TSA invasive screening to apply for participation in the U.S. authorized Screening Partnership Program (SPP) by December 31, 2013. Created by the federal government, the SPP has an application that is a simple three-page form. Inclusion in the SPP allows airports to opt out of TSA management of screening by specifically enabling privatization for airport screening. It will return high quality local control of the airport-managed passenger security screening. The bill also requires Alaska Department of Transportation to reimburse reasonable costs incurred by airports to complete the SPP application.

Opting out of TSA by participating in SPP will enhance security, bring local oversight, local accountability and local jobs to Alaskan residents to the state's key airports.

E-mail: Representative_Sharon_Cissna@legis.state.ak.us

LEGAL SERVICES

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MEMORANDUM

February 10, 2012

SUBJECT: Sectional summary of draft requiring certain airports in the state to apply for the TSA opt-out program (Work Order No. 27-LS1300\A)

TO: Representative Sharon Cissna

FROM: Hilary Martin
Legislative Counsel

You have requested a sectional summary of the above-described bill draft.

As a preliminary matter, note that a sectional summary of a bill draft should not be considered an authoritative interpretation of the bill draft and the bill draft itself is the best statement of its contents.

Section 1 adds a new section to uncodified law requiring the Department of Transportation and Public Facilities to apply for the federal security screening opt-out program by December 31, 2013. Section 1(b) requires any airport operated by a municipality in the state to apply for the opt-out program by December 31, 2013.

Section 2 requires the Department of Transportation and Public Facilities to reimburse a municipality the reasonable costs of applying for the opt-out program. This section also states that if there is not sufficient funds to fully reimburse the municipalities, the reimbursement shall be distributed pro rata among eligible recipients.

Section 3 provides an immediate effective date.

HVM:ljw
12-113.ljw



LEGISLATIVE RESEARCH SERVICES

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Memorandum

TO: Representative Sharon Cissna
FROM: Susan Haymes, Legislative Analyst *Haymes*
DATE: February 1, 2012
RE: TSA Screening - Opt-Out Provision
LRS Report 12.172

You wished to know if airports in the United States can opt out of using the Transportation Security Administration (TSA) security model and if so, what the application process involves. Specifically, you wished to know which airports have opted out of the TSA program.

In 2001, Congress passed the Aviation and Transportation Security Act (ATSA), which required the newly created Transportation Security Administration (TSA) to, among other things, screen air travelers to ensure certain items and passengers do not board commercial airliners (P.L. 107-71). The law also required the TSA to conduct a two-year pilot program to allow private companies, rather than TSA employees, to screen passengers and baggage at airports under federal supervision and regulation. The ATSA further provided that after two years the choice to "opt-out" of the TSA-operated program would become available to all airports. At the conclusion of the pilot program, which was conducted from 2002 to 2004 at five airports, the TSA created the Screening Partnership Program (SPP), to manage the private companies that provide screening services at eligible airports.¹ There are currently 16 airports that have successfully applied to participate in the SPP: Charles M. Schultz-Sonoma County (CA); Greater Rochester International (NY); Jackson Hole (WY); Kansas City International (MO); Key West International (FL); Roswell Industrial Air Center (NM); San Francisco International (CA); Sioux Falls Regional (SD); Tupelo Regional (MS); and seven airports in Montana: Dawson Community; Frank Wiley Field; Havre City County; Lewiston Municipal; L.M. Clayton; Sidney Richland Regional; and Wokal Field.²

The TSA continues to set the security protocols and standards for all commercial airports nationwide, including airports participating in SPP. Thus, private companies are required to comply with all federal screening procedures—including advanced imaging technology and enhanced pat downs. In other words, passengers are subject to the same screening process whether administered by private or TSA screeners.³

The Screening Partnership Program Application Process

All commercial airports with federal security screening are eligible to apply to participate in the SPP. The decision to approve an application and to award a private screening contract is at the discretion of the TSA administrator.⁴ Once an application is approved, the TSA through a competitive bid process contracts with a private screening company to provide screening services at the eligible airport. The ATSA requires contract screeners to meet all of the requirements applicable to TSA screeners. The ATSA further mandates that private screening companies provide compensation and other benefits to their screeners that are not less than the level of compensation and other benefits provided to comparable federal employees.

In January 2011, TSA administrator John Pistole announced that he would not expand the SPP beyond the current 16 airports, and for the first time since the program began, denied the five airport applications—Bert Mooney (MT), Glacier Park

¹ More information on the SPP can be accessed at http://www.tsa.gov/what_we_do/optout/index.shtm.

² The five airports that participated in the pilot program are Greater Rochester International, Jackson Hole, Kansas City International, San Francisco International, and Tupelo Regional.

³ The TSA's Federal Security Directors (FSDs) remain at SPP airports as federal employees and continue to be responsible for overseeing all screening operations at SPP airports. The mandate and role of the FSD is the same regardless of whether the screening workforce is composed of federal or private employees.

⁴ We include a copy of the application as Attachment A. The application can be accessed at http://www.tsa.gov/what_we_do/optout/spp_program_application.shtm.

International (MT), Missoula International (MT), Springfield Branson National (MO), and Yellowstone (MT)—pending before the SPP. Mr. Pistole stated that he denied the applications because he did not “see any clear or substantial advantage” to expand the program. Subsequently, the TSA amended the application instructions as follows:

Given the level of participation in the current program, and in order to maximize TSA’s effectiveness as a Federal counterterrorism security agency, TSA is not inclined at this time to expand the Screening Partnership Program unless there are clear and substantial advantages to do so. Therefore, your application must explain how private screening at your airport will provide those clear and substantial advantages, while maintaining our high standards and meeting the threats of today and the future.⁵

In response to the TSA’s decision to deny the applications, which appeared to be out of compliance with the ATSA, staff to the House Committee on Transportation and Infrastructure prepared a report on the SPP, which included a detailed comparison of security at San Francisco International Airport, a SPP participant, and the Los Angeles International Airport, which uses TSA employees.⁶ The June 2011 report found that SSP screeners were more efficient, screening 65 percent more passengers for each employee than their government counterparts, and estimated that the government could save \$1 billion over five years by using private screeners at the nation’s 35 largest airports. The report further found that most countries separate oversight of aviation security—a government responsibility—and screening operations at airports, which are generally managed by private companies. Additionally, the report concluded the SPP application process was flawed and clear and substantial advantage existed to approve the applications denied by TSA.⁷ All of the airports have since reapplied to participate in the SPP; as of today, no decision has been made on the applications.

Proponents of the private security program note that in addition to cost savings, private screeners provide better customer service and are more accountable. In a recent article in *The New York Times*, Mark VanLoh, director of the Kansas City aviation department, which uses private screeners for Kansas City International Airport, notes that if there is a problem at a checkpoint, he can make one call to the person in charge and get a response to the incident in minutes. He also cites cost savings, lower employee turnover, and better treatment of passengers as reasons Kansas City has fought to keep the private screener option.⁸

Screening Procedures at U.S. Airports

In 2010, the TSA introduced whole body imaging systems at airport checkpoints around the country. The systems, referred to as advanced imaging technology (AIT) systems, capture an image of what lies underneath an individual’s clothing. Critics have referred to this as a “virtual strip search.” If an individual considers this screening method too invasive or revealing or prefers not to undergo AIT imaging for any other reason, TSA provides the option of submitting to a pat-down search instead. As you are well aware, the new pat-down procedures are clearly more invasive.

⁵ We include a copy of the application instructions as Attachment B. The application can be accessed at http://www.tsa.gov/assets/pdf/Application_Instructions.pdf.

⁶ The chair of the House Committee on Transportation and Infrastructure, Representative John Mica (R-FL), is a vocal critic of the TSA screening program and has encouraged airports to become SPP participants. He argues, among other things, that the TSA is too large and unwieldy to provide efficient and quality customer service. Scott Powers, “U.S. Rep. John Mica supports Sanford airport’s plan to ditch TSA,” *Orlando Sentinel*, November 16, 2010.

⁷ The report found that if federal screeners were able to process the same number of passengers as private screeners, 7,601 screeners could be cut from the Federal workforce, resulting in at least \$1 billion in savings. The report discusses the applications of the five denied airports and the application of the Orlando Sanford International Airport in Florida. Orlando Sanford submitted an application on February 1, 2011, just days after Mr. Pistole’s announcement. The airport resubmitted its application in December 2011, under the new clear and substantial standard. The 135-page report, “TSA Ignores More Cost-Effective Screening Model,” June 3, 2011, can be accessed at http://republicans.transportation.house.gov/Media/file/112th/Aviation/2011-06-03-TSA_SPP_Report.pdf.

⁸ Susan Stellan, “Gatekeepers Under Scrutiny,” *The New York Times*, January 30, 2012. The article can be accessed at <http://www.nytimes.com/2012/01/31/business/lawmakers-push-for-more-private-screeners-at-airports.html?pagewanted=all>.

The TSA uses two types of imaging technology, millimeter wave and backscatter.⁹ Backscatter technology, which projects low-level X-ray beams over the body and creates a reflection of the body displayed on the monitor. In response to health and privacy concerns regarding the first AIT system, the TSA began using millimeter wave technology, which bounces electromagnetic waves off of the body to create the same generic image for all passengers. The TSA has installed this new technology in several Alaska airports including Anchorage Fairbanks, Juneau, and Ketchikan. According to a recent article in the *Juneau Empire*, the new technology does not scan or x-ray inside the body, so that passengers with joint replacements, for example, can go through the new machines without a problem. We note that that the Government Accounting Office is scheduled to soon release a report on the effectiveness of AIT scanners.¹⁰

We hope this is helpful. If you have questions or need additional information, please let us know.

⁹ The millimeter wave technology bounces electromagnetic waves off the body to create the same generic image for all passengers.) Backscatter technology projects low-level X-ray beams over the body to create a reflection of the body displayed on the monitor.)

¹⁰ We include a copy of Congressional Research Service Report, "Changes in Airport Passenger Screening Technologies and Procedures: Frequently Asked Questions," Bart Elias, January 26, 2011 as Attachment C.

TRANSPORTATION SECURITY ADMINISTRATION



Application to Participate in the Screening Partnership Program

This application notifies the Transportation Security Administration (TSA) of an airport's intent to participate in the Screening Partnership Program (SPP). Airport operators may submit this application at any time.

The SPP was created in part to spur new and innovative ideas and opportunities to manage TSA operations more efficiently. Per the FAA Modernization and Reform Act of 2012 (P.L. 112-95), TSA is required to evaluate all SPP applications to determine if participation by an airport would affect the cost-efficiency or the effectiveness of screening of passengers or property at that airport and if participation by an airport would compromise security at that airport. TSA will make a determination on these points as part of the evaluation of responses from potential offerors prior to a contract award.

Acceptance of this application does not guarantee the requesting airport that a contract for private security screening will be awarded. In accordance with the Aviation and Transportation Security Act (ATSA), the decision to award a private security screening contract is at the discretion of the TSA Assistant Secretary.

TSA intends to select private security screening companies through an impartial competitive process. Airports granted privatization must transition to the private security screening company selected.

GENERAL INSTRUCTIONS:

- A separate application must be submitted for each individual airport location.
- An authorized representative of the airport or the airport owner must execute the application.
- The application requisite documentation must be completed in full to be considered for acceptance by TSA. Incomplete applications will delay the process. Questions 5 and 6 are optional.
- The application must be received at TSA Screening Partnership Program (SPP). (see Application Process Information)
- Please provide a copy of your application to the Federal Security Director for your airport.
- If your application includes Sensitive Security Information or confidential business information, please indicate in writing so that the information will be protected from public disclosure as appropriate. Further information regarding TSA policies and procedures for safeguarding and control of SSI is available at www.tsa.gov or <http://www.tsa.gov>.

TRANSPORTATION SECURITY ADMINISTRATION
Application to Participate in the Screening Partnership Program



APPLICATION PROCESS INFORMATION

The application can be submitted at any time, it is open enrollment. To download a copy of the **Screening Partnership Program Application** from the TSA website, please visit the following link: <http://www.tsa.gov>.

If completing the application electronically, be sure to save this data file locally with a unique name before e-mailing the application. The application can be submitted by several different methods, all shown below. Adobe Professional will be needed to save the application.

Submission methods:

- **Electronic submissions (electronic mail / e-mail):**
Submit the application to: opt-out@tsa.dhs.gov

- **Paper submissions:** Send the original signed copy of the application to this address:
Randy Webb
Transportation Security Administration (TSA)
Attn: Screening Partnership Program
601 South 12th Street, E9-138S (TSA-29)
Arlington, VA 20598-6029

- **Facsimile submission:**
Submit application to the following e-fax number (571) 227-1941

- **Application assistance:**
To obtain telephone assistance regarding the application contact (571) 227-1861

Date: XXX

From: Airport Operator
Airport Name
Address
City, State Zip

To: Randy Webb
Transportation Security Administration (TSA)
Attn: Screening Partnership Program
601 South 12th Street, E9-138S (TSA-29)
Arlington, VA 20598-6029

Encl: Opt Out Application for XXX Airport

Subject: Request to Participate in the Screening Partnership Program for XXX Airport,
City, State

This letter is to request participation of the XXX Airport in the Transportation Security Administration (TSA) Screening Partnership Program (SPP). I have enclosed the application required by TSA to begin the process of transitioning to a private screening workforce. I understand that TSA will evaluate this application and is not obligated to proceed with transitioning the XXX Airport to SPP if the application is not approved by the agency, or does not meet the criteria specified in section 44920 of Title 49, United States Code. Should additional information be required, I can be reached at the following:

Work phone:
Cellular phone:
Fax number:
Email address, if applicable:

Thank you for your consideration in this manner.

Sincerely,

Name



Application to Participate in the Screening Partnership Program

Application date: _____

Application pages submitted: _____

AIRPORT APPLICATION INFORMATION

Attach all supporting documentation to the application; use separate sheets if more detail is needed.

Basic Airport Information

Airport name _____

FAA airport identifier _____

Airport address _____

Airport operator _____

(Entity authorized to submit application)

Primary Airport Operator Contact

Name _____

Contact position _____

Contact telephone number & cellular number _____

Contact mailing address _____

Contact facsimile number _____

Contact e-mail address _____

Alternate Airport Operator Contact

Name _____

Contact position _____

Contact telephone number & cellular number _____

Contact mailing address _____

Contact facsimile number _____

Contact e-mail address _____



Application to Participate in the Screening Partnership Program

1. Indicate if the requesting airport operator seeks to be considered for providing the private security screening services at the airport. Airports interested in providing their own private security screening services must qualify according to criteria determined by TSA.
 - a. YES, the airport operator seeks to provide the private security screening services at the airport.
 - b. NO, the airport operator does not seek to provide the private security screening services at the airport.

2. Per the FAA Modernization and Reform Act of 2012 (P.L. 112-95), the operator shall provide a recommendation as to which company would best serve the security screening and passenger needs of the airport, along with a statement explaining the basis of the airport operator's recommendation. *Note: The recommendation provided below is for application purposes only. TSA is under no obligation to contract with the airport operator / authority's recommended vendor.*
 - a. Airport operator's recommended company. Provide the company name and address.

 - b. Statement explaining the basis of the operator's recommendation. Additional pages may be attached. *Note: In making the recommendation, the operator must consider that cost efficiency will normally be judged upon how the contract cost and cost of conversion compares to the cost of the federal operation for the airport.*

3. Will the airport operator seek a formal business relationship with the company identified in 2.a. (or any offeror) for passenger and property screening services? *Note: If the airport is seeking to partner with the recommended company, the airport cannot participate as an advisor in source selection activities.*
 - a. YES, the airport operator does seek a formal business relationship with this company (or any offeror) for passenger and property screening services. Explain the nature of the relationship below.

 - b. NO, the airport operator does not seek a formal business relationship with this vendor (or any offeror) for passenger and property screening services.

Application to Participate in the Screening Partnership Program

4. Does the airport operator have any scheduled activities planned within the next five years, such as, major construction? Does the city plan on hosting a major event that might require increased staffing at the airport (e.g., major sporting event, political convention, etc.) in the next five years?

a. YES, the following scheduled activities are planned within the next five years.

b. NO, the airport operator does not have any scheduled activities planned within the next five years.

5. Per the FAA Modernization and Reform Act of 2012 (P.L. 112-95), TSA is required to evaluate all SPP applications to determine if participation by an airport would compromise security at that airport. To assist TSA in evaluating your application, discuss how participating in SPP would not compromise security at the airport. *Note: The response to this question is optional.*

6. Per the FAA Modernization and Reform Act of 2012 (P.L. 112-95), TSA is required to evaluate all SPP applications to determine if participation by an airport would affect the cost-efficiency or the effectiveness of screening of passengers or property at that airport. To assist TSA in determining cost-efficiency and the effectiveness of screening of passengers and property at your airport, include potential areas where cost savings or efficiencies may be realized. Additional information may be attached. *Note: The response to this question is optional. TSA will make a determination on these points as part of the evaluation of responses from potential offerors prior to a contract award.*

7. Provide any additional information you would like TSA to consider during the evaluation of this application. Additional information may be attached.



Application to Participate in the Screening Partnership Program

Upon execution of this application, the authorized representative, (specified as the primary contact in this document), of the operator of the airport, (specified under Airport Application Information in this document) hereby requests the TSA Administrator to approve this application to have the screening of passengers and property at the airport, as cited under section 44901 of the Aviation and Transportation Security Act, to be carried out by the screening personnel of a qualified private screening company under a contract entered into with the TSA Administrator.

The airport operator understands that submission of this application is the first step in the process for acquiring private screening at the airport. If the application is accepted, the airport operator understands that any potential contract resulting from the submission of this application will be awarded and administered by TSA in accordance with the Competition in Contracting Act and the Federal Acquisition Regulation.

Signature

Date

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

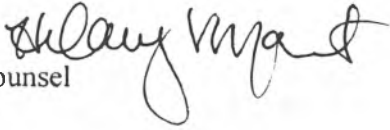
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Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 6, 2012

SUBJECT: Opt out of TSA security program (Work Order No. 27-LS1300)

TO: Representative Sharon Cissna

FROM: Hilary Martin 
Legislative Counsel

You have asked for a bill draft that would remove Alaska from the Transportation Security Administration's (TSA) administration and use a private security vendor. Through my research, I have come across some issues related to your request, and need more information before I can draft your requested bill.

49 U.S.C. § 44920 allows airports to opt-out of TSA screening and use a private screening company. The statute requires the airport operator to submit an application to the Under Secretary of Transportation for Security. The private screening company must meet the federal government screening standards and provide compensation and benefits not less than those offered by the federal government. The private screening company must also provide screening services equal or greater to those provided by TSA employees. The federal government would also provide supervisors to oversee screening of the private contractor.

Because the program is one that requires application to the federal government to get in the program and then approval of the application by the federal government, I'm not sure what direction I should take in drafting your bill. The state owns and operates the Anchorage and Fairbanks airports. I could draft a bill that would require the state Department of Transportation and Public Facilities to commence the process to opt out and start the procurement process to obtain a contractor. This would require the two airports to apply for the program, but the federal government could deny the application. Other airports with carrier services (and therefore subject to the TSA screening requirements, such as Juneau and Ketchikan), are mostly municipal owned or operated. The bill could require those airports to apply for the program, and perhaps the state could provide a grant program to cover the cost of the application as an incentive for the airports to apply.

A further complication is that even if an airport applies for opt-out and the application is approved, the airport would not be able to manage and run the screening. The federal statutes requires that the private screening company must be "owned and controlled by a citizen of the United States." 42 U.S.C. § 44920(d)(2). The airports in Alaska that are required to have screening are operated by either the state or a municipality. The state or

Representative Sharon Cissna
February 6, 2012
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municipality is not a private citizen, and therefore would not be eligible to run the screening services. A separate private company would be used to run the screening services, so the airport (or the state or municipality) would not be running the screening.

The TSA Administrator, John Pistole, stated in January 2011 that the TSA would not expand the opt-out program beyond the current 16 airports "unless there are clear and substantial advantages to doing so." This means that any application by an airport in the state would likely be denied.

There is currently a federal bill, H.R. 1586, that would propose changes to the opt-out program to make it easier for airports to take advantage of the program. The bill would require that the Secretary approve an application unless the Secretary determines that the "approval would compromise security, detrimentally affect the efficiency or effectiveness of the screening of passengers or property at the airport, or otherwise adversely affect the mission of the [TSA]." While this new language would certainly make it easier to opt-out of TSA screening, it is far from certain that this bill will pass.

Please let me know how you would like to proceed on this request.

HVM:ljw
12-089.ljw



U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

John L. Mica
Chairman

Mick F. Rahall, III
Ranking Member

March 13, 2012

James W. Coon II, Chief of Staff

James H. Zola, Democrat Chief of Staff

[REDACTED]

Dear [REDACTED]:

As you may know, Congress recently passed the FAA Modernization and Reform Act of 2012 (H.R. 658), and it was signed into law by the President on February 14, 2012. In addition to providing long-term funding and policy direction to the Federal Aviation Administration and aviation industry, this law also reforms the Screening Partnership Program (SPP) of the Transportation Security Administration (TSA). The SPP allows airports to opt-out of the "all-Federal" screening model, and instead use qualified private screeners under Federal supervision.

Given the newly enacted changes to the SPP and the importance of good customer service and efficiency for airport operators, the Act provides you with the opportunity to consider converting to a certified private screening operation. Our Committee is pleased to offer support should you consider such action at your airport.

As you may know, San Francisco International Airport is the largest airport participating in the Screening Partnership Program. It has developed an outstanding reputation, and is a place where many true innovations, both in terms of security and customer service, were first developed and deployed. As is the case at San Francisco and other participating airports, screening services are provided by qualified private screening companies with strong TSA oversight and at no additional cost to the airports. This model is highly effective, provides true flexibility to respond to the changing needs of the airport, and has been praised by the airports currently participating in the SPP.

March 13, 2012

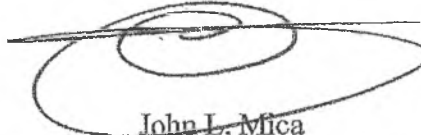
Page Two

The reforms to the SPP included in the FAA reauthorization law that improve the program are quite specific. First, the Act states that the TSA shall approve SPP applications if the newly-enacted standards are met. Second, it allows each airport to provide greater input regarding the airport's preferred vendor when applying for this program. Third, it establishes clear standards by which SPP applications must be fairly and equitably measured. Fourth, it requires a timely review of SPP applications by the TSA. Fifth, it requires that the TSA provide transparency and constructive feedback to the airports, as well as to Congress, regarding the merits of each SPP application and the basis for any decision made by the TSA, including, if denied, how each application could be improved. It requires the TSA to reconsider airport applications denied last year by applying the new review process and standards. Finally, the TSA will continue to be responsible for all costs and liability protection for airports participating in the SPP. The Committee has asked TSA to provide specific guidelines on the new application process and criteria that must be met for the approval of an airport's application.

I strongly encourage you to look closely at this program and to consider what participating in the SPP can do for your airport and the travelers that you serve. Should your airport decide to pursue this course of action, I will lend my full support to your effort. I believe that opting to have screening services provided by a certified private screening company under TSA oversight will result in better customer service, improved employee morale, greater flexibility, and superior operational efficiencies. In addition, security will not be compromised while screening costs and oversight will continue to be the responsibility of the TSA.

It is both the intent and spirit of the law that the TSA should cooperate fully with airports that are applying to participate in the SPP and/or transitioning to the SPP. The Committee will be closely monitoring the actions of the TSA. Should any employee or official of the TSA take any action to thwart the intent of Congress, we encourage you to contact the Oversight and Investigations staff of the Committee to report such activities. My Aviation Subcommittee staff stands ready to assist you should you move forward with a decision to participate in this program. Please feel free to contact me, or the Aviation Subcommittee Staff Director Holly Woodruff Lyons at 202-226-3220, should you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "John L. Mica", written over a horizontal line.

John L. Mica
Chairman

<http://www.nytimes.com/2012/03/16/us/airports-with-new-law-are-freer-to-split-from-tsa.html>

March 15, 2012

New Law Clears the Way for Airports to Drop T.S.A. Screeners

By RON NIXON

WASHINGTON — A new law makes it easier for airports to replace federal screeners with private contractors, and several airports, after years of passenger complaints, are lining up to make the change.

The law was welcome news to Larry Dale, president and chief executive of Orlando Sanford International Airport, who said his airport's request to opt out of using Transportation Security Administration officers last year was denied by the federal government.

Mr. Dale said his desire to use private screeners in place of T.S.A. personnel was motivated by hundreds of complaints from passengers, and added that he had his own problems with the agency's screeners.

"We've visited a number of airports who have opted out of the T.S.A. screenings, and no one wants to go back," Mr. Dale said. "We think this will be more efficient and customer-friendly for us."

Since 2001, a little-known law has let airports seek permission to stop using federal screeners. But airport officials said that the T.S.A. had been slow in allowing the switch, and last year the agency said it would stop accepting additional requests.

That angered Representative John L. Mica, Republican of Florida, whose district includes the Orlando Sanford airport. Mr. Mica, the chairman of the House transportation committee, included a provision in aviation legislation strengthening the ability of airports to use private screeners. The law passed last month.

A committee report found that private contractors could be more cost-effective than federal screeners. If the nation's top 35 airports switched to private contractors, the report said, taxpayers would save \$1 billion over five years.

In its own report last year, the agency estimated that private screeners would cost 3 percent more than federal ones. The Government Accountability Office, an investigative arm of Congress, said the agency had overstated the financial benefits of using its own workers.

Douglas R. Laird, an aviation security consultant in Reno, Nev., said it was difficult to say whether T.S.A. officers had made air travel safer compared with private screeners.

“My gut feeling that it is a little bit better, but the jury is still out,” Mr. Laird said, referring to the T.S.A. “But it does cost more. So is it worth the additional dollars? I haven’t seen any empirical data that shows that it is.”

Justin Harclerode, a spokesman for the House transportation committee, said the T.S.A.’s studies showed that the use of private contractors did not pose a security risk.

“They exceeded or provided the same level of security as T.S.A. screeners,” he said.

Sixteen of the nation’s 450 airports use private contractors, including larger ones like San Francisco International Airport as well as smaller ones like Jackson Hole Airport in Wyoming.

Those that want to leave the agency’s screening program must prove to the federal government that contractors are more cost-effective and would not be detrimental to security. The private screeners have to follow T.S.A. guidelines and fall under its supervision, although the agency will not conduct private screeners’ training. The T.S.A. will pay for the private screeners.

Officials at some of nation’s busiest airports, including in the New York and Washington areas, said they had no desire to change.

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The agency said it did not expect a flood of applications requesting a change to private screeners. It said it had 28 applications pending, which included just two since new law was approved last month.

The agency has grown less and less popular since it was created as passengers told horror stories about screenings by the workers. Earlier this year, it had to defend itself after stopping a passenger at McCarran International Airport in Las Vegas who tried to board a plane with a cupcake packaged in a jar. The agency said the icing on the cupcake was considered a gel and exceeded the amount allowed in carry-on luggage.

The agency’s decision to use full-body scanners at many airports also brought a negative reaction amid concerns of radiation exposure, although the T.S.A says the machines are safe.

**United States House of Representatives
Committee on Transportation and Infrastructure
OVERSIGHT AND INVESTIGATIONS STAFF REPORT**



TSA Ignores More Cost-Effective Screening Model

**Prepared for Chairman John L. Mica
U.S. House of Representatives
Committee on Transportation and Infrastructure
112th Congress**

June 3, 2011

Key Findings

1. ***Taxpayers would save \$1 billion over five years if the Nation's top 35 airports operated as efficiently as SFO does under the SPP model.*** 35 airports account for 75 percent of commercial passengers in the United States.¹ 34 of these airports operate under the federal model, while SFO operates under the SPP model. If federal screeners at each of these airports were able to process the same number of passengers that private screeners screen at SFO, then 7,601 screeners could be cut from the Federal workforce, resulting in at least \$1 billion in savings from salaries alone.
2. ***SPP screeners are 65 percent more efficient than their federal counterparts.*** Private screeners at SFO process 65 percent more passengers per screener than their Federal counterparts at LAX. If federal screeners at LAX operated as efficiently as private screeners at SFO, the LAX screener workforce could be reduced by 867 full time equivalent (FTEs) positions (see Appendix 2).²
3. ***Taxpayers would save more than \$38.6 million a year if LAX joined the SPP (see Table 1).*** A reduction of 867 FTEs at LAX would result in approximately \$33.3 million in savings from salary alone.³ \$635,800 would be saved because the National Deployment Force would not need to be deployed to fill staffing gaps.⁴ \$4.6 million would be saved in reduced training and recruitment costs due to lower attrition rates. Total savings would exceed \$38.6 million a year. This assessment did not take into account higher overtime and injury rates that are unique to the federal model because TSA officials refused to provide that information to Committee staff. Savings will increase once these factors are also considered.
4. ***TSA concealed significant cost factors unique to the federal screening model.*** Committee staff found that TSA dismissed significant cost factors unique to the all-federal model when conducting past cost comparisons of the SPP and federal models.⁵ Specifically, TSA did not consider cost savings that would result from increased screener efficiencies or removing the need to deploy the NDF. In addition to these metrics, the Committee recommends that future cost comparisons also include an analysis of the rate of screener overtime charged due to poor scheduling, and costs paid out due to injury rates.⁶

¹ FAA Aerospace Forecast: Fiscal Years 2011-2031, at 26.

² This number is calculated by dividing the annual number of passengers screened at LAX by the annual number of passengers-per-screener at SFO, and subtracting that number from the 2010 total number of FTE screeners at LAX.

³ Committee staff used the average base screener salary for private screeners at SFO, or \$38,480, as the base annual salary for screeners at both SFO and LAX.

⁴ The National Deployment Force (NDF) is a team of mobile TSA screeners whose mission is to respond to emergencies at the Nation's airports due to heightened security or increased traffic. Increasingly, TSA has deployed the NDF to backfill staffing shortages at airports due to high attrition and poor screener allocation models. The NDF has never been deployed to a SPP airport.

⁵ GAO: TSA Cost and Performance Study; GAO: TSA Revised Cost Comparison.

⁶ Committee staff requested this information from TSA in order to include it in the report, however TSA officials refused the request.

5. ***TSA has hired 137,100 staff⁷ since the agency's creation and spent more than \$2 billion on recruiting and training costs (see Appendix 3).⁸*** Due to high attrition, TSA has spent so much time managing itself that it has been unable to focus necessary resources on oversight and regulation of U.S. transportation security, in general. The SPP allows TSA to function as its creators in Congress originally intended—as a government regulator.
6. ***Clear and substantial advantage existed to approve five airport applications denied by TSA.*** Interviews with each of the five denied airport authorities found that significant advantages would have resulted from SPP participation including cost-savings, greater flexibility and responsiveness of screening staff, and improved customer service.
7. ***TSA's SPP application and evaluation process is flawed.*** The SPP application requires only a simple, one-sentence response from the airport operator to provide rationale for applying to the program. TSA officials did not communicate with or seek additional information from any of the airport authorities that were denied participation (see Appendix 5).
8. ***TSA does not have clear criteria to determine if a "clear or substantial advantage" exists to approve SPP applications.*** TSA officials could not have had sufficient information to determine if advantage existed to allow airport participation in the SPP. TSA refused to release the metrics used to evaluate SPP applications and TSA officials claim that applications were denied based on the "discretion of the Administrator."⁹
9. ***There is evidence that TSA officials erroneously claimed no communication with union representatives about the SPP.*** On February 1, 2011, Chairman Mica requested that Administrator Pistole provide all communications between DHS and TSA with labor union organizations and their representatives related to the SPP (see Appendix 6). Administrator Pistole responded on February 28, 2011, that "there are no such communications" (see Appendix 7).¹⁰ However, there is a public history of union meetings and communications with DHS and TSA officials regarding the program, including an in-person meeting between American Federation of Government Employees (AFGE) representatives and DHS Secretary Janet Napolitano, where AFGE urged "the SPP program and policies be reviewed by senior leaders."¹¹ TSA officials also noted in an internal presentation that impact on the TSO workforce is a "justifiable reason" to end or limit the SPP program, stating that "TSOs at potential SPP airports face uncertainty about their job status."¹²
10. ***TSA officials recommended abolishing the SPP.*** Although the SPP is mandated statutorily through ATSA, documents obtained by the Committee confirm that TSA officials

⁷ E-mail from Tomeika Blackwell, Legislative Affairs, TSA, to Rachel Weaver, T&I Comm. (March 23, 2011).

⁸ TSA officials did not comply with requests from Committee staff to provide the cost of recruiting and training screeners. Information obtained by the Committee related to these costs is all publicly available, and does not provide a complete representation, therefore this estimate is conservative.

⁹ Briefing with TSA SPP Program Office (March 22, 2010).

¹⁰ Letter from John S. Pistole, Administrator, TSA, to John L. Mica, Chairman, T&I Comm. (Feb. 28, 2011).

¹¹ AFL-CIO, *AFGE's Efforts Put SPP on Ice: TSA Ends Expansion of Airport Privatization Program*, The TSO Voice, Jan. 29, 2011 [hereinafter *AFGE's Efforts Put SPP on Ice*].

¹² TSA SPP Power Point.

recommended awarding new contracts at existing SPP airports for one year while the agency “resume(d) federalization efforts.”¹³

11. ***Most of the rest of the world utilizes a SPP-like screening model at airports.*** The United States is one of the only countries in the world, along with governments in the Middle East and Africa that operates as security operator, administrator, regulator, and auditor at airports (see Appendix 1). Most international governments contract the role of airport security “operator” to qualified private screening companies, allowing the government to focus on setting standards, performing oversight, and enforcing regulations. International stakeholders report that this private-federal model drives innovation, increases performance, and lowers costs.

¹³ *Id.*

NEWS » PRESS RELEASES

HOUSE LEADERS PUT TSA ON NOTICE FOR IMPLEMENTING REFORMS

March 13, 2012

Washington, DC – House Committee leaders today put the Transportation Security Administration (TSA) on notice that they expect the agency to implement reforms included in a new aviation law ensuring that airports can opt out of all-federal security screening.

House Transportation and Infrastructure Committee Chairman John L. Mica (R-FL), Oversight and Government Reform Committee Chairman Darrell Issa (R-CA), and National Security, Homeland Defense and Foreign Operations Subcommittee Chairman Jason Chaffetz (R-UT) **wrote** to TSA Administrator John Pistole today regarding the opt-out provision in the FAA Modernization and Reform Act of 2012 (H.R. 658). Mica introduced this legislation in the House, and the President signed it into law in February.

The new law protects and strengthens the rights of airports to select the security screening model in which certified private operators provide screening under federal standards and oversight. This opt-out program is known as the Screening Partnership Program.

“TSA attempted to shut down this cost-effective and more efficient screening model for airports,” Mica said. “The private sector almost always performs more effectively and efficiently than the federal government, and Congress intended airports to have the option between all-TSA screening and private-federal screening. However TSA attempted to thwart the opt-out program established by Congress when it created the agency in 2001.”

Last year, TSA denied applications from six airports that applied to opt out: Orlando Sanford International Airport, Springfield-Branson National Airport, Missoula International Airport, Glacier Park International Airport, Bert Mooney Airport, and West Yellowstone Montana Airport (the latter was able to successfully opt out last month).

A **report** released by the Transportation Committee in 2011 found the opt-out program to be 65% more efficient and would increase taxpayer savings by at least 42%. If the nation’s top 35 airports opted out, taxpayers would save \$1 billion over five years.

The new FAA law establishes clear criteria for TSA when considering opt-out applications, requires the agency to reconsider applications it baselessly denied, and ensures the rights of airports to select the private-federal screening model.

"Today, we have written to TSA Administrator Pistole citing his recent testimony to 'absolutely' work with Congress to improve the opt-out program through the implementation of this new law," Mica said.

To read the entire Mica/Issa/Chaffetz letter, click [here](#).

In a separate letter, Mica also wrote today to airports across the country to ensure they know that under the newly signed aviation legislation, they have the right to opt out, and that the burden of proof is now on TSA to establish legitimate reasons why any airport's request should be denied.

Sixteen airports currently successfully operate under the opt-out program, and others are interested. Benefits of opting out, as reported by airports and by the investigative work of the U.S. Government Accountability Office and the Transportation Committee, include greater screening efficiencies and innovation, improved cost effectiveness, better customer service, improved employee morale, and greater flexibility for airports.

"TSA is a bloated bureaucracy of more than 65,000 federal workers with a track record of security blunders and failures," Mica said. "This agency has lost its way and has strayed from its security mission. It is top-heavy with 9,656 administrators in the field and 3,986 headquarters staff in Washington, DC making an average of \$103,852 per year. The agency is too focused on personnel management on a massive scale, and not on setting the most effective security standards and analyzing intelligence. Ensuring that TSA can no longer arbitrarily deny airport requests to opt out is a critical reform. This agency must get out of the personnel business and into the security business."

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Congress of the United States

Washington, DC 20515

March 13, 2012

The Honorable John S. Pistole
Administrator
Transportation Security Administration
601 South 12th Street
Arlington, VA 20598

Dear Administrator Pistole:

On February 7, 2012, you testified at a hearing before the House Homeland Security Subcommittee on Transportation Security to discuss the Transportation Security Administration's (TSA) Screening Partnership Program (SPP). One recurring topic at the hearing was the SPP reform language found in section 830 of the Conference Report to H.R. 658, the FAA Modernization and Reform Act of 2012, P.L. 112-95 (Act), as passed by both chambers of Congress and signed into law by the President on February 14, 2012. At the hearing, you testified that you would "absolutely" work with Congress and with us to improve the SPP through your implementation of this law. Your commitment to comply with both the spirit and intent of the new law is welcomed. We again offer our assistance as the TSA implements this vitally important reform to the SPP.

The newly enacted reform to the SPP improves the program in a number of ways. First, the Act states that the TSA shall approve an SPP application if the newly-enacted standards are met. Second, it allows each airport to provide greater input regarding the airport's preferred vendor when applying for this program. Third, it establishes clear standards by which SPP applications must be fairly and equitably measured. Fourth, it requires a timely review of SPP applications by the TSA. Fifth, it requires that the TSA provide transparency and constructive feedback to the airports, as well as to Congress, regarding the merits of each SPP application and the basis for any decision made by the TSA, including, if denied, how each application could be improved. Finally, it requires the TSA to reconsider airport applications denied last year by applying the new review process and standards.

In the Act, it was the intent of Congress that the Screening Partnership Program be a viable option for airports wishing to opt-out of the all-Federal screening model. Airport operators have expressed tremendous interest in the SPP and that expansion beyond the small fraction of U.S. airports that currently participate in the SPP will allow the TSA to focus on security and oversight activities. The SPP reform language reinforces the original intent of Congress, when we created the opt-out program in the Aviation and Transportation Security Act, P.L. 107-71. Specifically, the standard for an airport's participation in the SPP is whether a qualified private company can provide screening services that are "equal to or better than those provided by the TSA" (49 U.S.C. 44920(d)), *not* whether screening by a qualified private company would provide a "clear or substantial advantage." This "equal to or better than standard" is reinforced in the SPP reform language, which states that SPP applications shall be approved if "[it] would not compromise security or detrimentally affect the cost-efficiency or the effectiveness of the screening of passengers or property at the airport."

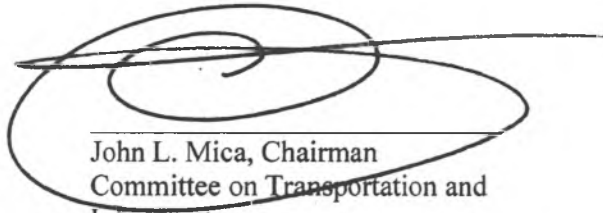
John S. Pistole
March 13, 2012
Page Two

It is important that TSA take steps to immediately reopen the SPP, reissue guidelines in compliance with the law, and begin the process of converting the screening program from its current model to the SPP operations under federal supervision as directed by H.R. 658. Please provide the Committees with a time table and outline to achieve this transition.

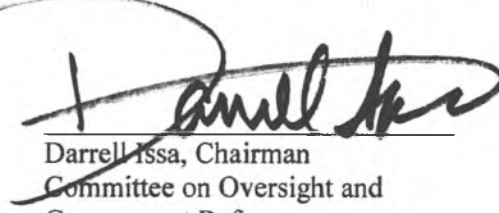
We thank you for your commitment to work with Congress to ensure the improvement of the SPP in accordance with the FAA Modernization and Reform Act of 2012, and we look forward to working with you to ensure the utmost efficiency and effectiveness of the Transportation Security Administration and the general welfare of our transportation security system.

If you have any questions, please contact Shant Boyajian of the Transportation and Infrastructure Committee staff at (202) 225-9446; or Mitchell Kominsky or Tom Alexander of the Oversight and Government Reform Committee staff at (202) 225-5074.


Sincerely,



John L. Mica, Chairman
Committee on Transportation and
Infrastructure



Darrell Issa, Chairman
Committee on Oversight and
Government Reform



Jason Chaffetz, Chairman
Subcommittee on National Security,
Homeland Defense, and Foreign
Operations

- cc: The Honorable Peter T. King, Chairman
Committee on Homeland Security
- The Honorable Mike D. Rogers, Chairman
Subcommittee on Transportation Security
- The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform
- The Honorable Nick J. Rahall, II, Ranking Minority Member
Committee on Transportation and Infrastructure
- The Honorable Bennie G. Thompson, Ranking Minority Member
Committee on Homeland Security
- The Honorable Sheila Jackson Lee, Ranking Minority Member
Subcommittee on Transportation Security

http://www.nytimes.com/2012/03/16/us/airports-with-new-law-are-freer-to-split-from-tsa.html?_r=1&emc=eta1

March 15, 2012

New Law Clears the Way for Airports to Drop T.S.A. Screeners

By **RON NIXON**

WASHINGTON — A new law makes it easier for airports to replace federal screeners with private contractors, and several airports, after years of passenger complaints, are lining up to make the change.

The law was welcome news to Larry Dale, president and chief executive of Orlando Sanford International Airport, who said his airport's request to opt out of using Transportation Security Administration officers last year was denied by the federal government.

Mr. Dale said his desire to use private screeners in place of T.S.A. personnel was motivated by hundreds of complaints from passengers, and added that he had his own problems with the agency's screeners.

"We've visited a number of airports who have opted out of the T.S.A. screenings, and no one wants to go back," Mr. Dale said. "We think this will be more efficient and customer-friendly for us."

Since 2001, a little-known law has let airports seek permission to stop using federal screeners. But airport officials said that the T.S.A. had been slow in allowing the switch, and last year the agency said it would stop accepting additional requests.

That angered Representative John L. Mica, Republican of Florida, whose district includes the Orlando Sanford airport. Mr. Mica, the chairman of the House transportation committee, included a provision in aviation legislation strengthening the ability of airports to use private screeners. The law passed last month.

A committee report found that private contractors could be more cost-effective than federal screeners. If the nation's top 35 airports switched to private contractors, the report said, taxpayers would save \$1 billion over five years.

In its own report last year, the agency estimated that private screeners would cost 3 percent more than federal ones. The Government Accountability Office, an investigative arm of Congress, said the agency had overstated the financial benefits of using its own workers.

Douglas R. Laird, an aviation security consultant in Reno, Nev., said it was difficult to say whether T.S.A. officers had made air travel safer compared with private screeners.

“My gut feeling that it is a little bit better, but the jury is still out,” Mr. Laird said, referring to the T.S.A. “But it does cost more. So is it worth the additional dollars? I haven’t seen any empirical data that shows that it is.”

Justin Harclerode, a spokesman for the House transportation committee, said the T.S.A.’s studies showed that the use of private contractors did not pose a security risk.

“They exceeded or provided the same level of security as T.S.A. screeners,” he said.

Sixteen of the nation’s 450 airports use private contractors, including larger ones like San Francisco International Airport as well as smaller ones like Jackson Hole Airport in Wyoming.

Those that want to leave the agency’s screening program must prove to the federal government that contractors are more cost-effective and would not be detrimental to security. The private screeners have to follow T.S.A. guidelines and fall under its supervision, although the agency will not conduct private screeners’ training. The T.S.A. will pay for the private screeners.

Officials at some of nation’s busiest airports, including in the New York and Washington areas, said they had no desire to change.

Airlines or airports used to have private security companies to screen passengers. But questions were raised in 2001, after the attacks of Sept. 11, and federal inquires found that many private companies had hired untrained security guards. The T.S.A. was established, taking over screening at all airports.

The agency said it did not expect a flood of applications requesting a change to private screeners. It said it had 28 applications pending, which included just two since new law was approved last month.

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TSA

TSA shuts door on private airport screening program

January 29, 2011 | By Mike M. Ahlers and Jeanne Meserve, CNN

A program that allows airports to replace government screeners with private screeners is being brought to a standstill, just a month after the Transportation Security Administration said it was "neutral" on the program.

TSA chief John Pistole said Friday he has decided not to expand the program beyond the current 16 airports, saying he does not see any advantage to it.

Though little known, the Screening Partnership Program allowed airports to replace government screeners with private contractors who wear TSA-like uniforms, meet TSA standards and work under TSA oversight. Among the airports that have "opted out" of government screening are San Francisco and Kansas City.

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Travelers go through a security checkpoint at Reagan National Airport in Arlington, Virginia.

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The push to "opt out" gained attention in December amid the fury over the TSA's enhanced pat downs, which some travelers called intrusive.

Rep. John Mica, a Republican from Florida, wrote a letter encouraging airports to privatize their airport screeners, saying they would be more responsive to the public.

At that time, the TSA said it neither endorsed nor opposed private screening.

"If airports chose this route, we are going to work with them to do it," a TSA spokesman said in late December.

But on Friday, the TSA denied an application by Springfield-Branson Airport in Missouri to privatize its checkpoint workforce, and in a statement, Pistole indicated other applications likewise will be denied.

"I examined the contractor screening program and decided not to expand the program beyond the current 16 airports as I do not see any clear or substantial advantage to do so at this time," Pistole said.

He said airports that currently use contractor screening will continue to be allowed to.

Pistole said he has been reviewing TSA policies with the goal of helping the agency "evolve into a more agile, high-performance organization."

Told of the change Friday night, Mica said he intends to launch an investigation and review the matter.

"It's unimaginable that TSA would suspend the most successfully performing passenger screening program we've had over the last decade," Mica said Friday night. "The agency should concentrate on cutting some of the more than 3,700 administrative personnel in Washington who concocted this decision, and reduce the army of TSA employees that has ballooned to more than 62,000."

"Nearly every positive security innovation since the beginning of TSA has come from the contractor screening program," Mica said.



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