

Kelly A. Ayotte

AMENDMENT NO. _____

Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—113th Cong., 2d Sess.

H. R. 2719

To require the Transportation Security Administration to implement best practices and improve transparency with regard to technology acquisition programs, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Ms. AYOTTE

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Transportation Secu-
5 rity Acquisition Reform Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The Transportation Security Administration
9 has not consistently implemented Department of
10 Homeland Security policies and Government best
11 practices for acquisition and procurement.

1 (2) The Transportation Security Administration
2 has only recently developed a multiyear technology
3 investment plan, and has underutilized innovation
4 opportunities within the private sector, including
5 from small businesses.

6 (3) The Transportation Security Administration
7 has faced challenges in meeting key performance re-
8 quirements for several major acquisitions and pro-
9 curements, resulting in reduced security effective-
10 ness and wasted expenditures.

11 **SEC. 3. TRANSPORTATION SECURITY ADMINISTRATION AC-**
12 **QUISITION REFORM.**

13 (a) IN GENERAL.—Title XVI of the Homeland Secu-
14 rity Act of 2002 (Public Law 107–296; 116 Stat. 2312)
15 is amended to read as follows:

16 **“TITLE XVI—TRANSPORTATION**
17 **SECURITY**

18 **“Subtitle A—General Provisions**

19 **“SEC. 1601. DEFINITIONS.**

20 “In this title:

21 “(1) ADMINISTRATION.—The term ‘Administra-
22 tion’ means the Transportation Security Administra-
23 tion.

1 “(2) ADMINISTRATOR.—The term ‘Adminis-
2 trator’ means the Administrator of the Transpor-
3 tation Security Administration.

4 “(3) PLAN.—The term ‘Plan’ means the stra-
5 tegic 5-year technology investment plan developed by
6 the Administrator under section 1611.

7 “(4) SECURITY-RELATED TECHNOLOGY.—The
8 term ‘security-related technology’ means any tech-
9 nology that assists the Administration in the preven-
10 tion of, or defense against, threats to United States
11 transportation systems, including threats to people,
12 property, and information.

13 **“Subtitle B—Transportation Secu-
14 rity Administration Acquisition
15 Improvements**

16 **“SEC. 1611. 5-YEAR TECHNOLOGY INVESTMENT PLAN.**

17 “(a) IN GENERAL.—The Administrator shall—

18 “(1) not later than 180 days after the date of
19 the enactment of the Transportation Security Acqui-
20 sition Reform Act, develop and submit to Congress
21 a strategic 5-year technology investment plan, that
22 may include a classified addendum to report sen-
23 sitive transportation security risks, technology
24 vulnerabilities, or other sensitive security informa-
25 tion; and

1 “(2) to the extent possible, publish the Plan in
2 an unclassified format in the public domain.

3 “(b) CONSULTATION.—The Administrator shall de-
4 velop the Plan in consultation with—

5 “(1) the Under Secretary for Management;

6 “(2) the Under Secretary for Science and Tech-
7 nology;

8 “(3) the Chief Information Officer; and

9 “(4) the aviation industry stakeholder advisory
10 committee established by the Administrator.

11 “(c) APPROVAL.—The Administrator may not publish
12 the Plan under subsection (a)(2) until it has been ap-
13 proved by the Secretary.

14 “(d) CONTENTS OF PLAN.—The Plan shall include—

15 “(1) an analysis of transportation security risks
16 and the associated capability gaps that would be
17 best addressed by security-related technology, includ-
18 ing consideration of the most recent quadrennial
19 homeland security review under section 707;

20 “(2) a set of security-related technology acquisi-
21 tion needs that—

22 “(A) is prioritized based on risk and asso-
23 ciated capability gaps identified under para-
24 graph (1); and

1 “(B) includes planned technology programs
2 and projects with defined objectives, goals,
3 timelines, and measures;

4 “(3) an analysis of current and forecast trends
5 in domestic and international passenger travel;

6 “(4) an identification of currently deployed se-
7 curity-related technologies that are at or near the
8 end of their lifecycles;

9 “(5) an identification of test, evaluation, mod-
10 eling, and simulation capabilities, including target
11 methodologies, rationales, and timelines necessary to
12 support the acquisition of the security-related tech-
13 nologies expected to meet the needs under paragraph
14 (2);

15 “(6) an identification of opportunities for pub-
16 lic-private partnerships, small and disadvantaged
17 company participation, intragovernment collabora-
18 tion, university centers of excellence, and national
19 laboratory technology transfer;

20 “(7) an identification of the Administration’s
21 acquisition workforce needs for the management of
22 planned security-related technology acquisitions, in-
23 cluding consideration of leveraging acquisition exper-
24 tise of other Federal agencies;

1 “(8) an identification of the security resources,
2 including information security resources, that will be
3 required to protect security-related technology from
4 physical or cyber theft, diversion, sabotage, or at-
5 tack;

6 “(9) an identification of initiatives to streamline
7 the Administration’s acquisition process and provide
8 greater predictability and clarity to small, medium,
9 and large businesses, including the timeline for test-
10 ing and evaluation;

11 “(10) an assessment of the impact to commer-
12 cial aviation passengers;

13 “(11) a strategy for consulting airport manage-
14 ment, air carrier representatives, and Federal secu-
15 rity directors whenever an acquisition will lead to the
16 removal of equipment at airports, and how the strat-
17 egy for consulting with such officials of the relevant
18 airports will address potential negative impacts on
19 commercial passengers or airport operations; and

20 “(12) in consultation with the National Insti-
21 tutes of Standards and Technology, an identification
22 of security-related technology interface standards, in
23 existence or if implemented, that could promote
24 more interoperable passenger, baggage, and cargo
25 screening systems.

1 “(e) LEVERAGING THE PRIVATE SECTOR.—To the
2 extent possible, and in a manner that is consistent with
3 fair and equitable practices, the Plan shall—

4 “(1) leverage emerging technology trends and
5 research and development investment trends within
6 the public and private sectors;

7 “(2) incorporate private sector input, including
8 from the aviation industry stakeholder advisory com-
9 mittee established by the Administrator, through re-
10 quests for information, industry days, and other in-
11 novative means consistent with the Federal Acquisi-
12 tion Regulation; and

13 “(3) in consultation with the Under Secretary
14 for Science and Technology, identify technologies in
15 existence or in development that, with or without ad-
16 aptation, are expected to be suitable to meeting mis-
17 sion needs.

18 “(f) DISCLOSURE.—The Administrator shall include
19 with the Plan a list of nongovernment persons that con-
20 tributed to the writing of the Plan.

21 “(g) UPDATE AND REPORT.—Beginning 2 years
22 after the date the Plan is submitted to Congress under
23 subsection (a), and biennially thereafter, the Adminis-
24 trator shall submit to Congress—

25 “(1) an update of the Plan; and

1 “(2) a report on the extent to which each secu-
2 rity-related technology acquired by the Administra-
3 tion since the last issuance or update of the Plan is
4 consistent with the planned technology programs
5 and projects identified under subsection (d)(2) for
6 that security-related technology.

7 **“SEC. 1612. ACQUISITION JUSTIFICATION AND REPORTS.**

8 “(a) ACQUISITION JUSTIFICATION.—Before the Ad-
9 ministration implements any security-related technology
10 acquisition, the Administrator, in accordance with the De-
11 partment’s policies and directives, shall determine whether
12 the acquisition is justified by conducting an analysis that
13 includes—

14 “(1) an identification of the scenarios and level
15 of risk to transportation security from those sce-
16 narios that would be addressed by the security-re-
17 lated technology acquisition;

18 “(2) an assessment of how the proposed acqui-
19 sition aligns to the Plan;

20 “(3) a comparison of the total expected lifecycle
21 cost against the total expected quantitative and
22 qualitative benefits to transportation security;

23 “(4) an analysis of alternative security solu-
24 tions, including policy or procedure solutions, to de-
25 termine if the proposed security-related technology

1 acquisition is the most effective and cost-efficient so-
2 lution based on cost-benefit considerations;

3 “(5) an assessment of the potential privacy and
4 civil liberties implications of the proposed acquisition
5 that includes, to the extent practicable, consultation
6 with organizations that advocate for the protection
7 of privacy and civil liberties;

8 “(6) a determination that the proposed acquisi-
9 tion is consistent with fair information practice prin-
10 ciples issued by the Privacy Officer of the Depart-
11 ment;

12 “(7) confirmation that there are no significant
13 risks to human health or safety posed by the pro-
14 posed acquisition; and

15 “(8) an estimate of the benefits to commercial
16 aviation passengers.

17 “(b) REPORTS AND CERTIFICATION TO CONGRESS.—

18 “(1) IN GENERAL.—Not later than the end of
19 the 30-day period preceding the award by the Ad-
20 ministration of a contract for any security-related
21 technology acquisition exceeding \$30,000,000, the
22 Administrator shall submit to the Committee on
23 Commerce, Science, and Transportation of the Sen-
24 ate and the Committee on Homeland Security of the
25 House of Representatives—

1 “(A) the results of the comprehensive ac-
2 quisition justification under subsection (a); and

3 “(B) a certification by the Administrator
4 that the benefits to transportation security jus-
5 tify the contract cost.

6 “(2) EXTENSION DUE TO IMMINENT TERRORIST
7 THREAT.—If there is a known or suspected immi-
8 nent threat to transportation security, the Adminis-
9 trator—

10 “(A) may reduce the 30-day period under
11 paragraph (1) to 5 days to rapidly respond to
12 the threat; and

13 “(B) shall immediately notify the Com-
14 mittee on Commerce, Science, and Transpor-
15 tation of the Senate and the Committee on
16 Homeland Security of the House of Representa-
17 tives of the known or suspected imminent
18 threat.

19 **“SEC. 1613. ACQUISITION BASELINE ESTABLISHMENT AND**
20 **REPORTS.**

21 “(a) BASELINE REQUIREMENTS.—

22 “(1) IN GENERAL.—Before the Administration
23 implements any security-related technology acquisi-
24 tion, the appropriate acquisition official of the De-

1 partment shall establish and document a set of for-
2 mal baseline requirements.

3 “(2) CONTENTS.—The baseline requirements
4 under paragraph (1) shall—

5 “(A) include the estimated costs (including
6 lifecycle costs), schedule, and performance mile-
7 stones for the planned duration of the acquisi-
8 tion;

9 “(B) identify the acquisition risks and a
10 plan for mitigating those risks; and

11 “(C) assess the personnel necessary to
12 manage the acquisition process, manage the on-
13 going program, and support training and other
14 operations as necessary.

15 “(3) FEASIBILITY.—In establishing the per-
16 formance milestones under paragraph (2)(A), the
17 appropriate acquisition official of the Department, to
18 the extent possible and in consultation with the
19 Under Secretary for Science and Technology, shall
20 ensure that achieving those milestones is techno-
21 logically feasible.

22 “(4) TEST AND EVALUATION PLAN.—The Ad-
23 ministrator, in consultation with the Under Sec-
24 retary for Science and Technology, shall develop a
25 test and evaluation plan that describes—

1 “(A) the activities that are expected to be
2 required to assess acquired technologies against
3 the performance milestones established under
4 paragraph (2)(A);

5 “(B) the necessary and cost-effective com-
6 bination of laboratory testing, field testing,
7 modeling, simulation, and supporting analysis
8 to ensure that such technologies meet the Ad-
9 ministration’s mission needs;

10 “(C) an efficient planning schedule to en-
11 sure that test and evaluation activities are com-
12 pleted without undue delay; and

13 “(D) if commercial aviation passengers are
14 expected to interact with the security-related
15 technology, methods that could be used to
16 measure passenger acceptance of and famil-
17 iarization with the security-related technology.

18 “(5) VERIFICATION AND VALIDATION.—The ap-
19 propriate acquisition official of the Department—

20 “(A) subject to subparagraph (B), shall
21 utilize independent reviewers to verify and vali-
22 date the performance milestones and cost esti-
23 mates developed under paragraph (2) for a se-
24 curity-related technology that pursuant to sec-

1 tion 1611(d)(2) has been identified as a high
2 priority need in the most recent Plan; and

3 “(B) shall ensure that the use of inde-
4 pendent reviewers does not unduly delay the
5 schedule of any acquisition.

6 “(6) STREAMLINING ACCESS FOR INTERESTED
7 VENDORS.—The Administrator shall establish a
8 streamlined process for an interested vendor of a se-
9 curity-related technology to request and receive ap-
10 propriate access to the baseline requirements and
11 test and evaluation plans that are necessary for the
12 vendor to participate in the acquisitions process for
13 that technology.

14 “(b) REVIEW OF BASELINE REQUIREMENTS AND
15 DEVIATION; REPORT TO CONGRESS.—

16 “(1) REVIEW.—

17 “(A) IN GENERAL.—The appropriate ac-
18 quisition official of the Department shall review
19 and assess each implemented acquisition to de-
20 termine if the acquisition is meeting the base-
21 line requirements established under subsection
22 (a).

23 “(B) TEST AND EVALUATION ASSESS-
24 MENT.—The review shall include an assessment
25 of whether—

1 “(i) the planned testing and evalua-
2 tion activities have been completed; and

3 “(ii) the results of that testing and
4 evaluation demonstrate that the perform-
5 ance milestones are technologically feasible.

6 “(2) REPORT.—Not later than 30 days after
7 making a finding described in clause (i), (ii), or (iii)
8 of subparagraph (A), the Administrator shall submit
9 a report to the Committee on Commerce, Science,
10 and Transportation of the Senate and the Com-
11 mittee on Homeland Security of the House of Rep-
12 resentatives that includes—

13 “(A) the results of any assessment that
14 finds that—

15 “(i) the actual or planned costs exceed
16 the baseline costs by more than 10 per-
17 cent;

18 “(ii) the actual or planned schedule
19 for delivery has been delayed by more than
20 180 days; or

21 “(iii) there is a failure to meet any
22 performance milestone that directly im-
23 pacts security effectiveness;

24 “(B) the cause for such excessive costs,
25 delay, or failure; and

1 “(C) a plan for corrective action.

2 **“SEC. 1614. INVENTORY UTILIZATION.**

3 “(a) IN GENERAL.—Before the procurement of addi-
4 tional quantities of equipment to fulfill a mission need,
5 the Administrator, to the extent practicable, shall utilize
6 any existing units in the Administration’s inventory to
7 meet that need.

8 “(b) TRACKING OF INVENTORY.—

9 “(1) IN GENERAL.—The Administrator shall es-
10 tablish a process for tracking—

11 “(A) the location of security-related equip-
12 ment in the inventory under subsection (a);

13 “(B) the utilization status of security-re-
14 lated technology in the inventory under sub-
15 section (a); and

16 “(C) the quantity of security-related equip-
17 ment in the inventory under subsection (a).

18 “(2) INTERNAL CONTROLS.—The Administrator
19 shall implement internal controls to ensure up-to-
20 date accurate data on security-related technology
21 owned, deployed, and in use.

22 “(c) LOGISTICS MANAGEMENT.—

23 “(1) IN GENERAL.—The Administrator shall es-
24 tablish logistics principles for managing inventory in
25 an effective and efficient manner.

1 “(2) LIMITATION ON JUST-IN-TIME LOGIS-
2 TICS.—The Administrator may not use just-in-time
3 logistics if doing so—

4 “(A) would inhibit necessary planning for
5 large-scale delivery of equipment to airports or
6 other facilities; or

7 “(B) would unduly diminish surge capacity
8 for response to a terrorist threat.

9 **“SEC. 1615. SMALL BUSINESS CONTRACTING GOALS.**

10 “Not later than 90 days after the date of enactment
11 of the Transportation Security Acquisition Reform Act,
12 and annually thereafter, the Administrator shall submit
13 a report to the Committee on Commerce, Science, and
14 Transportation of the Senate and the Committee on
15 Homeland Security of the House of Representatives that
16 includes—

17 “(1) the Administration’s performance record
18 with respect to meeting its published small-business
19 contracting goals during the preceding fiscal year;

20 “(2) if the goals described in paragraph (1)
21 were not met or the Administration’s performance
22 was below the published small-business contracting
23 goals of the Department—

24 “(A) a list of challenges, including devi-
25 ations from the Administration’s subcontracting

1 plans, and factors that contributed to the level
2 of performance during the preceding fiscal year;

3 “(B) an action plan, with benchmarks, for
4 addressing each of the challenges identified in
5 subparagraph (A) that—

6 “(i) is prepared after consultation
7 with the Secretary of Defense and the
8 heads of Federal departments and agencies
9 that achieved their published goals for
10 prime contracting with small and minority-
11 owned businesses, including small and dis-
12 advantaged businesses, in prior fiscal
13 years; and

14 “(ii) identifies policies and procedures
15 that could be incorporated by the Adminis-
16 tration in furtherance of achieving the Ad-
17 ministration’s published goal for such con-
18 tracting; and

19 “(3) a status report on the implementation of
20 the action plan that was developed in the preceding
21 fiscal year in accordance with paragraph (2)(B), if
22 such a plan was required.

1 **“SEC. 1616. CONSISTENCY WITH THE FEDERAL ACQUI-**
2 **SION REGULATION AND DEPARTMENTAL**
3 **POLICIES AND DIRECTIVES.**

4 “The Administrator shall execute the responsibilities
5 set forth in this subtitle in a manner consistent with, and
6 not duplicative of, the Federal Acquisition Regulation and
7 the Department’s policies and directives.”.

8 (b) **CONFORMING AMENDMENT.**—The table of con-
9 tents in section 1(b) of the Homeland Security Act of
10 2002 is amended by striking the items relating to title
11 XVI and inserting the following:

“TITLE XVI—TRANSPORTATION SECURITY

“Subtitle A—General Provisions

“Sec. 1601. Definitions.

“Subtitle B—Transportation Security Administration Acquisition
Improvements

“Sec. 1611. 5-year technology investment plan.

“Sec. 1612. Acquisition justification and reports.

“Sec. 1613. Acquisition baseline establishment and reports.

“Sec. 1614. Inventory utilization.

“Sec. 1615. Small business contracting goals.

“Sec. 1616. Consistency with the Federal acquisition regulation and depart-
mental policies and directives.”.

12 (c) **PRIOR AMENDMENTS NOT AFFECTED.**—Nothing
13 in this section may be construed to affect any amendment
14 made by title XVI of the Homeland Security Act of 2002
15 as in effect before the date of enactment of this Act.

16 **SEC. 4. GOVERNMENT ACCOUNTABILITY OFFICE REPORTS.**

17 (a) **IMPLEMENTATION OF PREVIOUS RECOMMENDA-**
18 **TIONS.**—Not later than 1 year after the date of enactment

1 of this Act, the Comptroller General of the United States
2 shall submit a report to Congress that contains an assess-
3 ment of the Transportation Security Administration's im-
4 plementation of recommendations regarding the acquisi-
5 tion of security-related technology that were made by the
6 Government Accountability Office before the date of the
7 enactment of this Act.

8 (b) IMPLEMENTATION OF SUBTITLE B OF TITLE
9 XVI.—Not later than 1 year after the date of enactment
10 of this Act and 3 years thereafter, the Comptroller Gen-
11 eral of the United States shall submit a report to Congress
12 that contains an evaluation of the Transportation Security
13 Administration's progress in implementing subtitle B of
14 title XVI of the Homeland Security Act of 2002, as
15 amended by section 3, including any efficiencies, cost sav-
16 ings, or delays that have resulted from such implementa-
17 tion.

18 **SEC. 5. REPORT ON FEASIBILITY OF INVENTORY TRACK-**
19 **ING.**

20 Not later than 90 days after the date of enactment
21 of this Act, the Administrator of the Transportation Secu-
22 rity Administration shall submit a report to Congress on
23 the feasibility of tracking security-related technology, in-
24 cluding software solutions, of the Administration through
25 automated information and data capture technologies.

1 **SEC. 6. GOVERNMENT ACCOUNTABILITY OFFICE REVIEW**
2 **OF TSA'S TEST AND EVALUATION PROCESS.**

3 Not later than 1 year after the date of enactment
4 of this Act, the Comptroller General of the United States
5 shall submit a report to Congress that includes—

6 (1) an evaluation of the Transportation Secu-
7 rity Administration's testing and evaluation activi-
8 ties related to security-related technology;

9 (2) information on the extent to which—

10 (A) the execution of such testing and eval-
11 uation activities is aligned, temporally and oth-
12 erwise, with the Administration's annual budget
13 request, acquisition needs, planned procure-
14 ments, and acquisitions for technology pro-
15 grams and projects; and

16 (B) security-related technology that has
17 been tested, evaluated, and certified for use by
18 the Administration but was not procured by the
19 Administration, including the reasons the pro-
20 curement did not occur; and

21 (3) recommendations—

22 (A) to improve the efficiency and efficacy
23 of such testing and evaluation activities; and

24 (B) to better align such testing and evalua-
25 tion with the acquisitions process.

1 **SEC. 7. NO ADDITIONAL AUTHORIZATION OF APPROPRIA-**
2 **TIONS.**

3 No additional funds are authorized to be appro-
4 priated to carry out this Act or the amendments made
5 by this Act.