



## H.R. 5909 – Catching Operational Vulnerabilities by Ensuring Random Testing Act of 2008

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### FLOOR SITUATION

H.R. 5909 is being considered on the floor under suspension of the rules and will require a two-thirds majority vote for passage. This legislation was introduced by Representative Nita Lowey (D-NY) on April 24, 2008. The bill was ordered to be reported, as amended, by unanimous consent of the House Committee on Homeland Security on May 20, 2008.

H.R. 5909 is expected to be considered on the floor of the House on June 18, 2008.

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### SUMMARY

H.R. 5909 amends the Aviation and Transportation Security Act (P.L. 107-71) to prohibit advance notice to individuals, including security screeners of covert testing of transportation security screening procedures. The Assistant Secretary of the Department of Homeland Security (DHS), the Inspector General of DHS, and the Comptroller General are authorized to provide advance notice of covert testing to Federal officers and law enforcement officials.

*Note: The term "covert testing" refers to an exercise or activity conducted by a covert testing office, the Inspector General of DHS, or the Government Accountability Office, to intentionally test, compromise, or circumvent transportation security systems to identify vulnerabilities in such systems.*

This legislation also establishes a secondary cover team to monitor covert testing personnel and to ensure the security of the screeners, and the traveling public, as well as individuals conducting the test.

The Secretary is required to conduct an impact study including a summary of best practices on how to integrate covert testing into other testing and training programs, as well as an assessment of the results of covert testing as they relate to improving security. The Secretary must further report to the Congress on these findings within 270 days of enactment.

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### BACKGROUND

The Aviation and Transportation Security Act (P.L. 107-71) was enacted during the 107<sup>th</sup> Congress, in the aftermath of the September 11, 2001 attacks. This law led to the establishment of the Transportation Security Administration (TSA) within the Department of Homeland Security in 2001.

In the past few years, there have been several incidences of covert security testing being compromised by advance notification. In 2003 and 2004, for example, the DHS Inspector General (IG) found that TSA officials at San Francisco International Airport compromised covert IG tests by tracking testers and notifying screening personnel at security checkpoints in advance. Similarly, in February 2004, Transportation Security Officers at Jackson-Evers International Airport reported receiving advance notice of covert tests conducted by TSA's Office of Inspection.

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### COST

The Congressional Budget Office (CBO) estimates that "implementing H.R. 5909 would have no significant impact on the federal budget." [Full CBO Cost Estimate](#)

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### STAFF CONTACT

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