

Calendar No. 255

114TH CONGRESS }
1st Session }

SENATE

{ REPORT
114-152

DEPARTMENT OF HOMELAND SECURITY
BORDER SECURITY METRICS ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1864

TO IMPROVE NATIONAL SECURITY BY DEVELOPING METRICS TO
MEASURE THE EFFECTIVENESS OF SECURITY BETWEEN
PORTS OF ENTRY, AT POINTS OF ENTRY, AND ALONG THE
MARITIME BORDER



OCTOBER 8, 2015.—Ordered to be printed

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DEPARTMENT OF HOMELAND SECURITY BORDER
SECURITY METRICS ACT

OCTOBER 8, 2015.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1864]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1864), to improve national security by developing metrics to measure the effectiveness of security between ports of entry, at ports of entry, and along the maritime border, having considered the same, reports favorably with an amendment and an amendment to the title and recommends that the bill as amended do pass.

CONTENTS

I. Purpose and Summary	Page 1
II. Background and Need for the Legislation	2
III. Legislative History	3
IV. Section-by-Section Analysis	4
V. Evaluation of Regulatory Impact	6
VI. Congressional Budget Office Cost Estimate	6
VII. Changes in Existing Law Made by the Bill, as Reported	7

I. PURPOSE AND SUMMARY

The purpose of S. 1864, the Department of Homeland Security Border Security Metrics Act of 2015, is to enhance the ability of the Department of Homeland Security (DHS or Department) to assess its progress in securing the border by using consistent, regular, and robust border security performance measures across all of our borders—between the ports of entry, at ports of entry, and along the maritime border. The bill directs the Department to work with other agencies when developing its metrics and requires DHS to make its data available to the public and academic research and

law enforcement communities, subject to applicable privacy laws. The Government Accountability Office (GAO) will biennially evaluate the suitability and statistical validity of the data and methodology of the metrics. Finally, the Department will provide Congress with an annual “State of the Border” report that provides trends for each metric.

II. BACKGROUND AND THE NEED FOR LEGISLATION

More than ten years after the creation of DHS, the Department still lacks reliable metrics to measure the status of border security. Since the attacks of September 11, 2001, Congress has appropriated billions of dollars to enhance border security, primarily through new investments in personnel, technology, and infrastructure.¹ Despite billions of dollars and decades of policy debates, the border is not secure.² Illegal entries into this country persist and criminal enterprises have continued to exploit our weaknesses to get drugs, weapons, and other illicit goods into our communities.³

For example, the Committee has heard testimony that the U.S. is only interdicting 5 to 10 percent of drugs crossing our land borders.⁴ As to our sea borders, the U.S. Coast Guard has testified that it is only able to interdict 11 to 18 percent of the estimated drug flow entering the U.S. from our maritime borders.⁵ At another Committee hearing on the northern border, the Committee heard that ecstasy and high-potency marijuana move south while cocaine, firearms, and cash move north, crossing the border without detection.⁶ As to people, at a Committee hearing examining transnational crime on the southwest border, a Border Patrol agent estimated apprehension rates of only 30 to 40 percent.⁷

¹ See, e.g., Jeh Johnson, Sec’y, Dep’t of Homeland Sec., Address at the Center for Strategic and International Studies: Border Security in the 21st Century (Oct. 9, 2014), available at <http://www.dhs.gov/news/2014/10/09/remarks-secretary-homeland-security-jeh-johnson-border-security-21st-century>; Jeh Johnson, Sec’y, Dep’t of Homeland Sec., Address at Rice University: Immigration: Perception Versus Reality (June 8, 2015), available at <http://www.dhs.gov/news/2015/06/08/remarks-secretary-johnson-immigration-perception-versus-reality>.

² See, e.g., *Securing the Southwest Border: Perspectives from Beyond the Beltway: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2015); *Securing the Border: Assessing the Impact of Transnational Crime: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2015); *Securing the Border: Understanding and Addressing the Root Causes of Central American Migration to the United States: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2015); *Securing the Border: Defining the Current Population Living in the Shadows and Addressing Future Flows: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2015); *Securing the Border: Understanding Threats and Strategies for the Northern Border: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2015); *Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2015); *The 2014 Humanitarian Crisis at our Border: A Review of the Government’s Response to Unaccompanied Minors One Year Later: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2015); *Securing the Border: Understanding Threats and Strategies for the Maritime Border: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2015).

³ *Id.*

⁴ *Securing the Border: Assessing the Impact of Transnational Crime: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. 17 (2015) (statement of General Barry R. McCaffrey, USA (RET.), Former Director, Office of National Drug Control Policy).

⁵ *Securing the Border: Understanding Threats and Strategies for the Maritime Border: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. 31 (2015) (statement of Rear Admiral Peter J. Brown, Assistant Commander for Response Policy, U.S. Coast Guard).

⁶ *Securing the Border: Understanding Threats and Strategies for the Northern Border: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. 33 (2015) (statement of Richard S. Hartunian, United States Attorney, Northern District of New York, U.S. Department of Justice).

⁷ *Securing the Southwest Border: Perspectives from Beyond the Beltway: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. 15–16 (2015) (statement of

Despite the investments made across our borders, the Federal Government has also failed to develop performance indicators to measure the effectiveness of its efforts.⁸ In the past, DHS has relied on incomplete or inconsistent measures of border security progress, such as the resources sent to the border or the number of people apprehended.⁹ Over time, agencies have adopted and then dropped various measures to track border security, failing to settle on one consistent framework that can measure long term trends.¹⁰ Moreover, government data has not always been publicly reported or made available to the academic community for their independent research and examination.¹¹

Border security progress must be assessed based on consistent, reliable, verifiable data.¹² The development of border security metrics at and between the ports of entry, and in the maritime environment, will increase confidence that the nation's border security efforts are based on measurable data. Because metrics and methodologies can be subject to various interpretations, this data must also be made available to third parties, including the academic and law enforcement communities. While the metrics prescribed in this bill are designed to be objective and outcome-based, an evaluation by the GAO of their statistical validity as well as recommendations for improvements to the metrics will provide additional oversight and transparency. Finally, an annual DHS "State of the Border" report to Congress will ensure that the Department is developing a consistent framework to measure year-to-year security performance trends.

The metrics required in the bill reflect input from Committee hearings, employees of the Department, and assistance from academia to provide an objective, outcome-based perspective of the state of security along the border. While there is no single metric that can show the totality of border security, each of these metrics provides a different data point to develop a more holistic picture of the state of border security. The Committee intends that these metrics be used as an objective way to measure border security efforts.

III. LEGISLATIVE HISTORY

Senators Ron Johnson and John McCain introduced S. 1864 on July 27, 2015, which was referred to the Committee on Homeland Security and Governmental Affairs. The Committee considered S. 1864 at a business meeting on July 29, 2015, and ordered the bill reported favorably by voice vote. Senator Ben Sasse was recorded for the record as voting "no." Senators present for the vote were: Johnson, Portman, Lankford, Ernst, Sasse, Carper, Baldwin, Heitkamp, and Peters. Consistent with the Committee's order on

Chris Cabrera, Border Patrol Agent, Rio Grande Valley Sector, U.S. Customs and Border Protection).

⁸See Bipartisan Policy Center, *Measuring the Metrics: Grading the Government on Immigration Enforcement 1* (2015).

⁹See U.S. Dep't of Homeland Security, Remarks by Secretary Johnson, *supra* note 1.

¹⁰Bipartisan Policy Center, *Measuring the Metrics*, *supra* note 4 at 10–13 (citing at least four different core measures agencies have utilized in the context of border control for the southwest border in the past fifteen years).

¹¹See *id.* at 1.

¹²See S. Rep. No. 114–68, at 10, 31 (2015) (noting that the "Border Patrol must move away from solely using input measures—such as the amount of funding spent, the number of agents deployed, and the numbers of miles of fencing—and begin to use outcome measures to determine the overall efficacy of enforcement efforts and to identify the most effective mix of resources.").

technical and conforming changes at the meeting, the Committee reports the bill with a technical amendment and a technical amendment to the title by mutual agreement of the full Committee majority and minority staff.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section provides the bill's short title, the "Department of Homeland Security Border Security Metrics Act of 2015."

Section 2. Definitions

This section defines several terms, including "appropriate congressional committees," "consequence delivery system," "got away," "known migrant flow," "major violator," "situational awareness," "transit zone," "turn back," and "unlawful entry."

Section 3. Metrics for securing the border between ports of entry

The Secretary of Homeland Security is required to submit and implement eight separate metrics for securing the border between the ports of entry not later than 120 days after enactment. These metrics include: estimates, using alternative methodologies, of total attempted unlawful border crossings, the rate of apprehension, and the inflow of inadmissible border crossers who evade apprehension; a situational awareness achievement metric; an unlawful border crossing effectiveness rate; a probability of detection; an illicit drugs seizure rate; a weight-to-frequency rate; estimates of the impact the Border Patrol's Consequence Delivery System has on the rate of unlawful border crossing recidivism; and an individual examination of each consequence. All data shall be collected and reported in a consistent and standardized manner.

In developing the metrics required in this section, the Secretary shall consult with appropriate DHS components. The Committee understands that offices within the Department have significant expertise developing and calculating valid performance metrics. The Committee expects that the metrics implemented by the Secretary shall include all available data developed through coordination and consultation among applicable government agencies, particularly the Office of Refugee Resettlement of the Department of Health and Human Services and the Executive Office for Immigration Review of the Department of Justice.

Section 4. Metrics for securing the border at ports of entry

The Secretary of Homeland Security is required to develop and submit seven separate metrics for securing the border at the ports of entry not later than 120 days after enactment. These metrics include: estimates, using alternative methodologies, of total attempted inadmissible border crossings, the rate of apprehension, and the inflow of inadmissible border crossers who evade apprehension; the amount and type of illicit drugs seized by the Office of Field Operations at each land, air, and sea port; an illicit drugs seizure rate; a cocaine seizure effectiveness rate; the number of infractions related to personnel and cargo committed by major violators at ports of entry; a measurement of how border security operations

affect crossing times; and a cargo scanning rate. All data shall be collected and reported in a consistent and standardized manner.

In developing the metrics required in this section, the Secretary shall consult with appropriate DHS components. The Committee expects that the metrics implemented by the Secretary shall include all available data developed through coordination and consultation among applicable government agencies.

Section 5. Metrics for securing the maritime border

The Secretary of Homeland Security is required to develop and submit six separate metrics for securing the border in the maritime environment not later than 120 days after enactment. These metrics include: situational awareness achieved in the maritime environment; an undocumented migrant interdiction rate; an illicit drugs removal rate inside and outside a transit zone; a cocaine removal effectiveness rate inside and outside a transit zone; a maritime security response rate; and an intergovernmental response rate. All data shall be collected and reported in a consistent and standardized manner.

In developing the metrics required in this section, the Secretary shall consult with appropriate DHS components. The Committee expects that the metrics implemented by the Secretary shall include all available data developed through coordination and consultation among applicable government agencies, including the Drug Enforcement Agency, Department of Defense, and Department of Justice.

Section 6. Air and marine security metrics in the land domain

The Secretary of Homeland Security is required to develop and submit eight separate metrics for securing the border through the use of air assets not later than 120 days after enactment. These metrics include: an effectiveness rate; a funded flight hours effectiveness rate; an aviation mission readiness rate; the number of missions cancelled due to weather; the number of subjects detected through the use of unmanned and manned aircraft; the number of apprehensions assisted through the use of unmanned and manned aircraft; the number and quantity of illicit drugs seizures assisted through the use of unmanned and manned aircraft; and the number of times that useable intelligence related to border security was obtained through the use of unmanned and manned aircraft. All data shall be collected and reported in a consistent and standardized manner.

In developing the metrics required in this section, the Secretary shall consult with appropriate DHS components. The Committee expects that the metrics implemented by the Secretary shall include all available data developed through coordination and consultation among applicable government agencies.

Section 7. Data transparency

The Secretary of Homeland Security shall make data related to the metrics outlined above available to the public, academic research, and law enforcement communities, subject to applicable privacy laws. The DHS Office of Immigration Statistics shall have unfettered access to this data. Nothing in this section is intended to restrict access to this data by Members of Congress.

Section 8. Evaluation by the Government Accountability Office and the Secretary of Homeland Security

The Secretary of Homeland Security shall submit an annual report containing all metrics listed above to Congress and the Comptroller General of the United States. The Secretary may also submit the annual report to the National Center for Border Security and Immigration; the head of a national laboratory within the DHS laboratory network, including the Department of Energy national laboratories, with prior expertise in border security; or a Federally Funded Research and Development Center sponsored by DHS.

GAO is required to submit a report to Congress, not later than 270 days after receiving the data, and biennially thereafter for 10 years, on the statistical validity of the metrics submitted by DHS, as well as make recommendations to the Secretary on the feasibility of other suitable metrics to measure border security effectiveness and any necessary improvements to the metrics.

Not later than sixty days after the end of each fiscal year, through fiscal year 2025, the Secretary shall submit a "State of the Border" report to Congress that provides trends for each metric, provides selected analysis into related aspects of illegal flow rates, as well as other information.

After submitting the final report to GAO, the Secretary may re-evaluate and update any of the required metrics. The Secretary shall notify Congress not later than 30 days before updating its metrics, to ensure that the metrics meet DHS's performance management needs and are suitable to measure the effectiveness of border security.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

AUGUST 24, 2015.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1864, the Department of Homeland Security Border Security Metrics Act of 2015.

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

Sincerely,

KEITH HALL.

Enclosure.

S. 1864—Department of Homeland Security Border Security Metrics Act of 2015

S. 1864 would require the Department of Homeland Security (DHS), within 120 days of the bill's enactment, to develop and use various metrics to evaluate the effectiveness of security measures at the United States border and to evaluate the operations of the Office of Air and Marine in DHS. The bill would direct the department to submit annual reports to the Congress on the new measurement methods and would require the Government Accountability Office (GAO) to submit biannual reports to the Congress on the suitability and validity of the metrics used by DHS.

In recent years, DHS has made considerable planning and operational efforts to secure U.S. borders, including the use of selected metrics to gauge the success of those efforts. Based on information from DHS, CBO estimates that it would cost less than \$500,000 annually for the department to meet the bill's reporting requirements and deadlines. Based on the cost of similar activities, we estimate that it would cost GAO less than \$500,000 every other year (beginning in 2017) to prepare reports as required by the bill. Thus, CBO estimates that implementing S. 1864 would cost a total of about \$2 million over the 2016–2020 period; such spending would be subject to the availability of appropriated funds. Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 1864 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Because S. 1864 would not repeal or amend any provision of current law, it would make no changes in existing law within the meaning of clauses (a) and (b) of paragraph 12 of rule XXVI of the Standing Rules of the Senate.