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114TH CONGRESS }
2d Session }

SENATE

{ REPORT
114-234 }

**BORDER SECURITY TECHNOLOGY
ACCOUNTABILITY ACT OF 2015**

R E P O R T

OF THE

**COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE**

TO ACCOMPANY

S. 1873

TO STRENGTHEN ACCOUNTABILITY FOR DEPLOYMENT OF
BORDER SECURITY TECHNOLOGY AT THE DEPARTMENT OF
HOMELAND SECURITY, AND FOR OTHER PURPOSES



APRIL 4, 2016.—Ordered to be printed

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**BORDER SECURITY TECHNOLOGY ACCOUNTABILITY ACT
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Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1873]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1873) to strengthen accountability for deployment of border security technology at the Department of Homeland Security, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 1873, the Border Security Technology Accountability Act of 2015, is to strengthen accountability for the deployment of border security technology at the Department of Homeland Security (DHS or “the Department”). This bill will enhance accountability by requiring managers at the Department to demonstrate that each major acquisition program for border security technology is meeting approved baseline cost, schedule, and performance thresholds. The bill also requires that the Department evaluate—internally and through the use of independent verification and validation resources—the effectiveness of the technology in securing the border.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Earlier this Congress, the Committee received testimony on the importance of technology as a force multiplier in border security enforcement.¹ For example, the Government Accountability Office (GAO) testified that the United States Customs and Border Protection (CBP) “has identified the mission benefits of its surveillance technologies, such as improved situational awareness and agent safety.”² Those technologies include remote surveillance of unoccupied territory and advanced detection capabilities.

However, CBP has struggled to procure technological capabilities for border security enforcement at an appropriate cost or on an appropriate schedule. Since 2005, the GAO has included DHS’s acquisition management on their “High Risk List,” meaning it is at a high risk of fraud, waste, and abuse.³ As an example, in 2005, DHS attempted to deploy the Secure Border Initiative-network (SBI-net)—a networked system of highly integrated sensors, radars, and tactical communications that would form a virtual border across the southwest border.⁴ However, in 2011, “after repeated technical problems, cost overruns, and scheduled delays,” then-Secretary of Homeland Security Janet Napolitano cancelled the program, except for the pre-existing deployment in Arizona.⁵ Today, after spending approximately \$1 billion, SBI-net covers only 53 miles of the 387-mile Mexico-Arizona border.⁶

The Alternative [Southwest] Border Technology Plan, or Arizona Technology Plan, replaced SBI-net in 2011.⁷ The plan called for seven technology capabilities across Arizona, including Integrated Fixed Towers (IFT), Remote Video Surveillance Systems (RVSS), Mobile Surveillance Capability (MSC), Mobile Video Surveillance Systems, Agent-Portable Surveillance Systems, Thermal Imaging Devices, and Unattended Ground Sensors.⁸ The IFT, RVSS, and MSC technologies constituted approximately 97 percent of the plan’s estimated costs.⁹

In March 2014, GAO reported that although CBP had a schedule for the seven technology capabilities within the Arizona Technology Plan, “four of the programs would not meet their originally planned completion dates.”¹⁰ Additionally, the date for the IFT program to

¹ *Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2015) (statement of Ronald Vitiello, Deputy Chief, Office of Border Patrol, U.S. Customs and Border Prot.).

² *Id.* (statement of Rebecca Gambler, Director, Homeland Sec. and Justice, Gov’t Accountability Office).

³ GOV’T ACCOUNTABILITY OFFICE, GAO-15-171SP, HOMELAND SECURITY ACQUISITIONS: MAJOR PROGRAM ASSESSMENTS REVEAL ACTIONS NEEDED TO IMPROVE ACCOUNTABILITY 1 (2015).

⁴ GOV’T ACCOUNTABILITY OFFICE, GAO-14-411T, ARIZONA BORDER SURVEILLANCE TECHNOLOGY PLAN ADDITIONAL ACTIONS NEEDED TO STRENGTHEN MANAGEMENT AND ASSESS EFFECTIVENESS 1 (2014).

⁵ *After SBI-net- The Future of Technology on the Border: Hearing Before the House Subcomm. on Border and Maritime Sec. of the House Comm. on Homeland Sec.*, 112th Cong. (2011) (statement of Mark Borkowski, Michael Fisher, and Nicole Kostelnik, U.S. Dep’t of Homeland Sec.).

⁶ GOV’T ACCOUNTABILITY OFFICE, GAO-14-411T, ARIZONA BORDER SURVEILLANCE TECHNOLOGY PLAN ADDITIONAL ACTIONS NEEDED TO STRENGTHEN MANAGEMENT AND ASSESS EFFECTIVENESS 1 (2014).

⁷ GOV’T ACCOUNTABILITY OFFICE, GAO-12-22, ARIZONA BORDER SURVEILLANCE TECHNOLOGY MORE INFORMATION ON PLANS AND COSTS IS NEEDED BEFORE PROCEEDING 7 (2011).

⁸ *See id.*

⁹ GOV’T ACCOUNTABILITY OFFICE, GAO-15-595T, BORDER SECURITY: PROGRESS AND CHALLENGES IN DHS’S EFFORTS TO IMPLEMENT AND ASSESS INFRASTRUCTURE AND TECHNOLOGY 3 (2015) in *Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2015) (statement of Rebecca Gambler, Director, Homeland Sec. and Justice, Gov’t Accountability Office).

¹⁰ *Id.*

become operational moved from the end of fiscal year (FY) 2013 to the end of FY2015.¹¹ Full operational capability for the Arizona Technology Plan, which was scheduled to occur by September 2015, is now slated to occur in March 2022, seven years after the originally projected date.¹² These and other findings caused GAO to caution, in subsequent testimony, that, “CBP needs to develop and implement performance measures and analyze data it is now collecting to be able to fully assess the contributions of its technologies to border security.”¹³

The Border Security Technology Accountability Act of 2015 would implement GAO’s recommendation by ensuring cost control mechanisms for new border technology projects, safeguarding taxpayer dollars, and improving the oversight of major DHS acquisitions programs for border security technology. Specifically, S. 1873 requires that major acquisition programs for border security technologies have an acquisition program baseline before moving to the next phase of the acquisition lifecycle, adhere to internal control standards identified by the Comptroller General of the United States, and have a testing and evaluation plan and independent verification and validation.

III. LEGISLATIVE HISTORY

Representative Martha McSally introduced H.R. 1634, the Border Security Technology Accountability Act of 2015, on March 25, 2015, which was referred to the House Committee on Homeland Security. The House Committee on Homeland Security considered the bill and reported it with amendments on July 27, 2015. The bill passed the House on the same day under suspension, by voice vote. The following day, July 28, 2015, the Senate received the engrossed act and referred it to the Committee on Homeland Security and Governmental Affairs.

On the same day—July 28, 2015—Senator John McCain introduced S. 1873, the Senate companion to H.R. 1634, which was also referred to the Committee on Homeland Security and Governmental Affairs. The Committee considered S. 1873 at a business meeting on October 7, 2015.

Senator McCain offered an amendment in the nature of a substitute, to conform it to H.R. 1634, as engrossed in the House. The Committee adopted the amendment and ordered the bill, as amended, reported favorably, both by voice vote. Senators present for both votes were: Johnson, Portman, Lankford, Enzi, Ernst, Sasse, Carper, McCaskill, Baldwin, Heitkamp, and Booker.

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

Section 1. Short title

This section provides the bill’s short title, the “Border Security Technology Accountability Act of 2015.”

¹¹*Id.* at 4.

¹²*Id.*

¹³*Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2015) (statement of Rebecca Gambler, Director, Homeland Sec. and Justice, Gov’t Accountability Office).

Section 2. Border security technology accountability

This section amends the Homeland Security Act of 2002 by creating a new section 434, “Border Security Technology Program Management.”

Subsection (a) requires that for each border security technology acquisition program that is determined to be a major acquisition program, the Secretary of Homeland Security shall ensure that the program has a written acquisition program baseline approved by the relevant acquisition decision authority; document that each program is meeting cost, schedule, and performance thresholds specified in the baseline; and create a plan for meeting implementation objectives.

Subsection (b) requires the Secretary, acting through both the Under Secretary for Management and the Commissioner of CBP, to ensure border security managers adhere to relevant internal control standards.

Subsection (c) requires the Secretary to submit to Congress a plan for testing and evaluation, as well as the use of independent verification and validation resources, for border security technology to ensure that all new border security technologies are evaluated through a series of assessments, processes, and audits.

Subsection (d) defines “Major Acquisition Program” as an acquisition program that will require a life-cycle cost of at least \$300,000,000 (based on fiscal year 2015 constant dollars).

Subsection (e) provides a clerical amendment to the table of contents of the Homeland Security Act of 2002.

Section 3. Prohibition of additional authorization of appropriations

This section clarifies that no additional funds are authorized to be appropriated to carry out the requirements of this bill.

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 act and determined that the act will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s statement that the act 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

OCTOBER 19, 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. 1873, the Border Security Technology Accountability 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. 1873—Border Security Technology Accountability Act of 2015

S. 1873 would direct the Department of Homeland Security (DHS) to improve the planning, documentation, and management of certain programs to acquire border security technology. The bill also would require DHS to submit a plan to the Congress to ensure that such programs comply with federal acquisition policies.

Based on the cost of similar activities, CBO estimates that implementing S. 1873 would cost less than \$500,000, subject to the availability of appropriated funds. There are ongoing efforts within DHS to carry out the actions required by the bill and improve the overall management of technology programs for border security. Because enacting the legislation would not affect direct spending or revenues, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 1873 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2026.

S. 1873 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.

On July 24, 2015, CBO transmitted a cost estimate for H.R. 1634, the Border Security Technology Accountability Act of 2015, as ordered reported by the House Committee on Homeland Security on June 25, 2015. The two bills are similar, and CBO's estimates of their budgetary effects are the same.

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

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1873 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

* * * * *

TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

* * * * *

Subtitle C—Miscellaneous Provisions

Sec. 434. Border security technology program management.

* * * * *

**TITLE IV—DIRECTORATE OF BORDER AND
TRANSPORTATION SECURITY**

* * * * *

SEC. 434. BORDER SECURITY TECHNOLOGY PROGRAM MANAGEMENT.

(a) *PLANNING DOCUMENTATION.*—For each border security technology acquisition program of the Department that is determined to be a major acquisition program, the Secretary shall—

(1) ensure that each such program has a written acquisition program baseline approved by the relevant acquisition decision authority;

(2) document that each such program is meeting cost, schedule, and performance thresholds as specified in such baseline, in compliance with relevant departmental acquisition policies and the Federal Acquisition Regulation; and

(3) have a plan for meeting program implementation objectives by managing contractor performance.

(b) *ADHERENCE TO STANDARDS.*—The Secretary, acting through the Under Secretary for Management and the Commissioner of U.S. Customs and Border Protection, shall ensure border security technology acquisition program managers who are responsible for carrying out this section adhere to relevant internal control standards identified by the Comptroller General of the United States. The Commissioner shall provide information, as needed, to assist the Under Secretary in monitoring proper program management of border security technology acquisition programs under this section.

(c) *PLAN.*—The Secretary, acting through the Under Secretary for Management, in coordination with the Under Secretary for Science and Technology and the Commissioner of U.S. Customs and Border Protection, shall submit to the appropriate congressional committees a plan for testing and evaluation, as well as the use of independent verification and validation resources, for border security technology so that new border security technologies are evaluated through a series of assessments, processes, and audits to ensure compliance with relevant departmental acquisition policies and the Federal Acquisition Regulation, as well as the effectiveness of taxpayer dollars.

(d) *MAJOR ACQUISITION PROGRAM DEFINED.*—In this section, the term “major acquisition program” means a Department acquisition program that is estimated by the Secretary to require an eventual total expenditure of at least \$300,000,000 (based on fiscal year 2015 constant dollars) over its life cycle cost.

* * * * *