

**BORDER SECURITY TECHNOLOGY
ACCOUNTABILITY ACT OF 2017**

R E P O R T

OF THE

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

TO ACCOMPANY

S. 146

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



APRIL 16, 2018.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

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{ REPORT
115-230

BORDER SECURITY TECHNOLOGY ACCOUNTABILITY
ACT OF 2017

APRIL 16, 2018.—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. 146]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 146) 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 without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

S. 146, the Border Security Technology Accountability Act of 2017, codifies higher accountability standards for the deployment of technology with a nexus to border security.¹ This bill requires the Secretary of the Department of Homeland Security (DHS or the

¹ In the 114th Congress the Committee approved S. 1873, the Border Security Technology Accountability Act of 2015. The bill did not pass the Senate. This committee report is substantially similar to Chairman Johnson's committee report for S. 1873, S. Rep. No. 114-234.

Department) to submit a detailed report demonstrating that each major acquisition program—defined as a program with an eventual total expenditure of \$300 million or more over its life cycle cost—is aligned with approved baseline cost, schedule, and performance thresholds. Further, S. 146 requires the Secretary to report to Congress on the use of independent verification and validation processes, adding a layer of audits that may help identify cost overruns or delays.

II. BACKGROUND AND THE NEED FOR LEGISLATION

During the 114th and 115th Congresses, the Committee has held a series of hearings designed to examine border security, with particular attention given to the unique challenges of securing our borders, present shortcomings in addressing border security, and the consequences of our unsecured borders.² While testifying during a hearing, entitled *Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers*, Ronald Vitiello, Deputy Chief of the U.S. Customs & Border Protection’s (CBP) Border Patrol, described how his component views border technology as a force multiplier helping frontline personnel accomplish their core mission.³ Further, in several reports, the Government Accountability Office (GAO) has shed light on how technologies providing remote surveillance of unoccupied territories and advanced detection capabilities improve the Border Patrol’s situational awareness in between the ports of entry.⁴

However, CBP has faced challenges in procuring and managing technology used to implement its border security policy. For example, in 2011, the Department had to cancel CBP’s *SBI*net program, initially intended to be a comprehensive technological border surveillance program, due to significant cost overruns and schedule delays.⁵

According to GAO, until DHS and its components, like CBP, take necessary steps to mitigate existing accountability gaps, more acquisition projects are at risk of fraud, waste, and abuse.⁶

This bipartisan bill seeks to codify practices that DHS should already be implementing under its internal control standards. This bill requires the Secretary of DHS to ensure all acquisition pro-

²See, i.e., *The Effects of Border Insecurity and Lax Immigration Enforcement on American Communities: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 115th Cong. (2017); *Fencing Along the Southwest Border: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 115th Cong. (2017); *Improving Border Security and Public Safety: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 115th Cong. (2017); *Border Insecurity: The Rise of MS-13 and Other Transnational Criminal Organizations: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 115th Cong. (2017); *Border Security and America’s Heroin Epidemic: The Impact of the Trafficking and Abuse of Heroin and Prescription Opioids in Wisconsin: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2016); *America’s Heroin Epidemic at the Border: Local, State, and Federal Law Enforcement Efforts to Combat Illicit Narcotic Trafficking: 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).

³*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, U.S. Border Patrol, U.S. Customs & Border Protection).

⁴*Id.* (statement of Rebecca Gambler, Director, Homeland Sec. and Justice, Gov’t Accountability Office).

⁵*Id.* (statement of Ronald Vitiello, Deputy Chief, U.S. Border Patrol, U.S. Customs & Border Protection).

⁶U.S. Gov’t Accountability Office, GAO-15-171SP, *Homeland Security Acquisitions: Major Program Assessments Reveal Actions Needed to Improve Accountability 1* (2015), available at <https://www.gao.gov/products/GAO-15-171SP>.

grams have an approved written baseline; all programs are meeting cost, schedule, and performance thresholds in compliance with departmental acquisition policies and the Federal Acquisition Regulation. In addition, this bill requires the Secretary to submit a plan for testing and evaluation for border security technology. The purpose of the plan is to ensure new border technologies are evaluated through a series of assessments, processes, and audits to ensure compliance and effectiveness of taxpayer dollars. Due to the amount of government resources and taxpayer money at stake, as well as the significance of border security to our homeland security, allotting greater oversight for the testing and evaluation of border security technologies is necessary to ensure their effective and efficient implementation.

III. LEGISLATIVE HISTORY

Senator John McCain (R-AZ) introduced S. 146, the Border Security Technology Accountability Act of 2017, on January 12, 2017. The bill was referred to the Committee on Homeland Security and Governmental Affairs. Senators Claire McCaskill (D-MO) and Margaret Hassan (D-NH) joined as cosponsors on October 3, 2017.

The Committee considered S. 146 at a business meeting on October 4, 2017. The Committee ordered S. 146 reported favorably by voice vote *en bloc* with Senators Johnson, Lankford, Daines, McCaskill, Tester, Heitkamp, Hassan, and Harris present.

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

Section 1. Short title

This section provides the bill's short title, the "Border Security Technology Accountability Act of 2017."

Section 2. Border security technology accountability

Subsection (a) includes additional accountability standards to the Homeland Security Act of 2002 by requiring that each major acquisition program has a written baseline approved by proper supervising authorities, ensuring the required baselines comply with relevant Federal Acquisition Regulations, and setting a blueprint to meet implementation objectives.

Subsection (b) requires the Secretary of DHS to ensure all major acquisition programs meet internal control standards certified by the Comptroller General of the United States.

Subsection (c) requires the Secretary of DHS to submit a report to Congress on the use of independent verification and validation processes to ensure taxpayer's dollars are being used effectively when deploying additional border security technology.

Subsection (d) provides a definition for "major acquisition program."

Section 3. Prohibition on additional authorization of appropriations

This section clarifies that Congress does not authorize new appropriations for DHS to implement the provisions included in 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 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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 12, 2017.

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. 146, the Border Security Technology Accountability Act of 2017.

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,
Director.

Enclosure.

S. 146—Border Security Technology Accountability Act of 2017

S. 146 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. 146 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.

Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 146 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 146 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

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 146, 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):

UNITED STATES CODE

* * * * *

TITLE 6—DOMESTIC SECURITY

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CHAPTER 1—HOMELAND SECURITY ORGANIZATION

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Subchapter IV—Border, Maritime, and Transportation Security

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PART C—MISCELLANEOUS PROVISIONS

* * * * *

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 that 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, and in coordination with the Under Secretary for Science and Technology and the Commissioner of U.S. Customs and Border Protection, shall submit a plan to the appropriate congressional committees for testing and evaluation, and 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—

- (1) compliance with relevant departmental acquisition policies and the Federal Acquisition Regulation; and*
- (2) 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 \$300,000,00 (based on fiscal year 2017 constant dollars) over its life cycle cost.