

Calendar No. 642

115TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 115-355

DHS FIELD ENGAGEMENT ACCOUNTABILITY
ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

H.R. 5079

TO AMEND THE HOMELAND SECURITY ACT OF 2002 TO
REQUIRE THE DEPARTMENT OF HOMELAND SECURITY TO
DEVELOP AN ENGAGEMENT STRATEGY WITH FUSION CENTERS,
AND FOR OTHER PURPOSES



NOVEMBER 13, 2018.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

89-010

WASHINGTON : 2018

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

RON JOHNSON, Wisconsin, *Chairman*

JOHN McCAIN, Arizona	CLAIRE McCASKILL, Missouri
ROB PORTMAN, Ohio	THOMAS R. CARPER, Delaware
RAND PAUL, Kentucky	HEIDI HEITKAMP, North Dakota
JAMES LANKFORD, Oklahoma	GARY C. PETERS, Michigan
MICHAEL B. ENZI, Wyoming	MAGGIE HASSAN, New Hampshire
JOHN HOEVEN, North Dakota	KAMALA D. HARRIS, California
STEVE DAINES, Montana	DOUG JONES, Alabama

CHRISTOPHER R. HIXON, *Staff Director*
GABRIELLE D'ADAMO SINGER, *Chief Counsel*
MICHAEL J. LUEPTOW, *Chief Counsel for Homeland Security*
MARGARET E. DAUM, *Minority Staff Director*
CHARLES A. MOSKOWITZ, *Minority Senior Legislative Counsel*
SUBHASRI RAMANATHAN, *Minority Counsel*
LAURA W. KILBRIDE, *Chief Clerk*

Calendar No. 642

115TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 115-355

DHS FIELD ENGAGEMENT ACCOUNTABILITY ACT

NOVEMBER 13, 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 H.R. 5079]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (H.R. 5079) to amend the Homeland Security Act of 2002 to require the Department of Homeland Security to develop an engagement strategy with fusion centers, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute), and recommends that the bill, as amended, do pass.

CONTENTS

	Page
I. Purpose and Summary	1
II. Background and Need for the Legislation	2
III. Legislative History	4
IV. Section-by-Section Analysis	4
V. Evaluation of Regulatory Impact	5
VI. Congressional Budget Office Cost Estimate	5
VII. Changes in Existing Law Made by the Act, as Reported	6

I. PURPOSE AND SUMMARY

The purpose of H.R. 5079, the DHS Field Engagement Accountability Act, is to require the Secretary of the Department of Homeland Security (DHS or the Department) to develop an engagement strategy with fusion centers and update it at least every five years. It also requires the DHS Under Secretary for Intelligence and Analysis (I&A) to develop and disseminate performance metrics for field personnel assigned to fusion centers. It authorizes the Department's Chief Information Officer (CIO) and Under Secretary for

I&A to develop policies and metrics to improve utilization of the Homeland Security Information Network (HSIN) and authorizes technical improvements to the network.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Strategy on DHS engagement with fusion centers

Fusion centers were created by states and Federally subsidized in response to the 9/11 Commission Report finding a lack of coordination between Federal agencies and state and local law enforcement to counter threats to the homeland.¹ The centers are a structured partnership between DHS and state and local first responders.² They encourage information sharing and greater threat awareness from the Federal level down to the local level and from the local level up to the Federal level.³ The collaborative environment informs crime fighting and counterterrorism decision-making.⁴

Congress has scrutinized the Department's engagement with fusion centers and the Federal resources expended on the programs. A 2012 U.S. Senate Permanent Subcommittee on Investigations staff report raised questions about fusion center support of the Federal counterterrorism mission.⁵ A 2016 review of the Homeland Security Intelligence Enterprise by the House Committee on Homeland Security majority staff found a lack of engagement between DHS and fusion centers.⁶ The 2016 review found that, other than I&A which received appropriations specific to fusion center deployments, DHS components with expertise relevant to fusion center mission priorities were disincentivized from deploying personnel to such centers.⁷ The report further noted that components do not necessarily have policies for deployment of their personnel to fusion centers.⁸

This legislation would require a formal strategy for DHS engagement with fusion centers, including setting goals for information sharing and collecting performance metrics to measure progress towards those goals. Specifically, it will encourage DHS components other than I&A to develop policies to better engage with fusion centers and leverage state and local information to secure the homeland. The legislation also requires DHS to create performance metrics for field personnel assigned to fusion centers to assist Congress with determining how successful the field engagements are and attempt to address concerns about fusion center support of the counterterrorism mission in the homeland.⁹

¹9/11 Commission Report 265, *available at* <https://www.9-11commission.gov/report/911Report.pdf>.

²Pub. L. No. 107-296 (Nov. 25, 2002); see also Dep't of Homeland Sec., National Network of Fusion Centers Fact Sheet (June 21, 2017), <https://www.dhs.gov/national-network-fusion-centers-fact-sheet>.

³*Id.*

⁴*Id.*

⁵PSI Staff Report, Federal Support For and Involvement in State and Local Fusion Centers (Oct. 3, 2012), *available at* <https://www.hsgac.senate.gov/imo/media/doc/10-3-2012%20PSI%20STAFF%20REPORT%20re%20FUSION%20CENTERS.2.pdf>.

⁶House Homeland Security Committee Majority Staff Report, Reviewing the Department of Homeland Security's Intelligence Enterprise, 40-42, *available at* <https://homeland.house.gov/wp-content/uploads/2016/12/Reviewing-DHS-Intelligence-Enterprise-Report.pdf>.

⁷*Id.*

⁸*Id.*

⁹Press Release, S. Comm. on Homeland Sec. and Gov't Affairs Ranking Member Coburn, Value of Terrorism Prevention Centers Remains Unproven (Nov. 10, 2014), <https://www.hsgac.senate.gov/media/minority-media/value-of-terrorism-prevention-centers-remains->

Improving HSIN

A 2017 joint audit by the Department of Justice and DHS Inspectors General found that fusion center personnel believe using HSIN is a best practice for information sharing.¹⁰ Following recent terrorist attacks, HSIN provided critical support to Federal, state, local, tribal, and territorial partners.¹¹ In particular, HSIN's National Situational Awareness Room (SitAware) provides first responders with real-time crisis monitoring capabilities and raw data via "a centralized, 24/7 virtual information sharing room."¹² The Committee learned from the National Fusion Center Association that SitAware was often the quickest way for first responders to learn whether active shooter events involved terrorism.¹³

A 2013 DHS Inspector General audit found limited and sporadic HSIN use and effectiveness across the homeland security enterprise.¹⁴ The audit found duplication between critical infrastructure protection information shared on HSIN and on the Federal Bureau of Investigation's InfraGard system.¹⁵ Users told auditors they were unable to find specific documents they knew were on the network and the search function did not provide useful results.¹⁶ In addition, users were concerned that, rather than streamlining sharing, the large number of communities of interest on the network created stovepipes.¹⁷ Users in at least one state found it easier to bypass HSIN and make phone calls to request information from other states.¹⁸

The 2013 audit determined that not all states effectively used HSIN, but those that did credited effective HSIN mission advocates that helped them integrate the network into their business processes.¹⁹ The DHS Inspector General forecast that cuts to the mission advocate program would undermine HSIN user satisfaction.²⁰

unproven; see also U.S. Gov't Accountability Off., GAO-15-155, Information Sharing: DHS is Assessing Fusion Center Capabilities and Results, but Needs to More Accurately Account for Federal Funding Provided to Centers (2014), available at <https://www.gao.gov/assets/670/666760.pdf>; see also S. Permanent Subcommittee on Investigations Majority and Minority Staff Report, Federal Support for and Involvement in State and Local Fusion Centers, available at <https://www.hsgac.senate.gov/imo/media/doc/10-3-2012%20PSI%20STAFF%20REPORT%20re%20FUSION%20CENTERS.2.pdf>.

¹⁰ Intelligence Community, Dep't of Homeland Sec., Dep't of Justice Inspectors General, Review of Domestic Sharing of Counterterrorism Information 7 (2017), available at <https://oig.justice.gov/reports/2017/a1721.pdf>.

¹¹ *Id.*
¹² Fact Sheet: Homeland Security Information Network-Intelligence (last accessed Nov. 1, 2018), <https://www.dhs.gov/sites/default/files/publications/HSIN-Fact%20Sheet-HSIN-Intel.pdf>; Supporting Crisis Communications, Off. of the Dir. of Nat'l Intelligence (Aug. 26, 2015), <https://www.dni.gov/index.php/who-we-are/organizations/ise/ise-archive/ise-mission-stories/2162-supporting-crisis-communications>.

¹³ National Fusion Center Association, 2015 *National Fusion Center Association Annual Training Event* (Nov. 3, 2015).

¹⁴ Dep't of Homeland Sec. Off. of Inspector General, Homeland Security Information Network Improvements and Challenges 13-17 (2013), available at https://www.oig.dhs.gov/assets/Mgmt/2013/OIG_13-98_Jun13.pdf.

¹⁵ *Id.* at 18.

¹⁶ *Id.* at 19.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 14; the DHS HSIN mission advocate program consists of functional experts who provide training and technical assistance tailored to HSIN user needs according to the official website of the Homeland Security Information Network. *Dep't of Homeland Sec. Homeland Sec. Information Network*, Operational Support: HSIN Mission Advocates, <https://www.dhs.gov/xlibrary/hsin-annual-report-2017/operations/operational-support/hsin-mission-advocates.html>.

²⁰ Dep't of Homeland Sec. Off. of Inspector General, Homeland Security Information Network Improvements and Challenges 20 (2013), available at https://www.oig.dhs.gov/assets/Mgmt/2013/OIG_13-98_Jun13.pdf.

This legislation requires policies and metrics that improve usage of HSIN and authorizes technical improvements to the network to improve its usefulness.

III. LEGISLATIVE HISTORY

Representative Don Bacon (R–NE–2) introduced H.R. 5079 on February 23, 2018. The House passed the Act by voice vote on March 19, 2018, and it was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered H.R. 5079 at a business meeting on June 13, 2018. Chairman Ron Johnson offered a substitute amendment that reflected technical edits from the Department of Homeland Security. The Committee adopted the amendment and ordered the Act, as amended, reported favorably, both by voice vote. Senators present for both the vote on the amendment and the vote on the Act as amended were: Johnson, Portman, Lankford, Enzi, McCaskill, Carper, Peters, Hassan, Harris, and Jones.

Consistent with Committee Rule 11, the Committee reports the Act with a technical amendment by mutual agreement of the Chairman and Ranking Member.

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

Section 1. Short title

This section provides the Act’s short title, the “DHS Field Engagement Accountability Act.”

Section 2. Engagement strategy with fusion centers

This section amends the Homeland Security Act of 2002 to require DHS to develop an engagement strategy with fusion centers and update it at least every five years. It specifies that engagement with fusion centers through DHS intelligence personnel deployments and information sharing systems shall be included in such strategy. It also requires measurable performance metrics for successful engagement and information sharing with fusion centers to be included in such strategy.

Section 3. Office of Intelligence and Analysis field personnel support to fusion centers

Subsection (a) requires the Under Secretary for I&A to develop and disseminate performance metrics for field personnel assigned to fusion centers and regional directors within 180 days of enactment.

Subsection (b) requires the Under Secretary for I&A to consult with the Department’s CIO to develop and implement training modules on the use of relevant classified homeland security information sharing systems for fusion center personnel.

Subsection (c) defines “fusion center.”

Section 4. DHS component usage of the Homeland Security Information Network

Subsection (a) authorizes the Department’s CIO, in consultation with the Under Secretary for I&A, to develop policies and metrics to improve usage of the Homeland Security Information Sharing Network.

Subsection (b) authorizes the Department's CIO, in consultation with the Chief Intelligence Officer, to make appropriate technical improvements to the Homeland Security Information Network.

Section 5. Report

This section requires the Secretary to report to Congress on DHS's implementation of the strategies, policies, and metrics described in the previous sections within 18 months of enactment.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 23, 2018.

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 H.R. 5079, the DHS Field Engagement Accountability Act.

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.

H.R. 5079—DHS Field Engagement Accountability Act

H.R. 5079 would direct the Department of Homeland Security (DHS) to improve the training and preparation of department personnel assigned to fusion centers, which facilitate information sharing among federal, state, and local authorities and are supported by DHS. The act also would require the department to enhance an information sharing computer network available to its personnel and to certain other federal and nonfederal employees.

Using information from DHS and assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 5079 would cost \$15 million over the 2019–2023 period, as shown in the following table.

	By fiscal year, in millions of dollars—						
	2018	2019	2020	2021	2022	2023	2019–2023
INCREASES IN SPENDING SUBJECT TO APPROPRIATION							
Estimated Authorization Level	0	7	2	2	2	2	15
Estimated Outlays	0	7	2	2	2	2	15

Most of these costs would be for upgrading and maintaining the information network used by DHS and other agencies as required by the legislation, including enhanced document sharing and search capabilities. That information network is used by about 100,000 personnel at federal, state, local, and nongovernmental agencies that are involved in homeland security activities.

Enacting H.R. 5079 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 5079 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 5079 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

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

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

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by H.R.3361 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

* * * * *

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

* * * * *

Subtitle A—Information and Analysis and Infrastructure Protection; Access to Information

* * * * *

SEC. 210A. DEPARTMENT OF HOMELAND SECURITY STATE, LOCAL, AND REGIONAL INFORMATION FUSION CENTER INITIATIVE

(a) * * *

* * * * *

(j) *FUSION CENTER INFORMATION SHARING STRATEGY.*—Not later than 1 year after the date of the enactment of this subsection, and not less frequently than once every 5 years thereafter, the Secretary shall develop or update a strategy for Department engagement with fusion centers. Such strategy shall be developed and updated in con-

sultation with the heads of intelligence components of the Department, the Chief Privacy Officer, the Officer for Civil Rights and Civil Liberties, officials of fusion centers, officers designated as Homeland Security Advisors, and the heads of other relevant agencies, as appropriate. Such strategy shall include the following:

(1) Specific goals and objectives for sharing information and engaging with fusion centers—

(A) through the direct deployment of personnel from intelligence components of the Department;

(B) through the use of Department unclassified and classified information sharing systems, including the Homeland Security Information Sharing Network and the Homeland Secure Data Network, or any successor systems; and

(C) through any additional means.

(2) The performance metrics to be used to measure success in achieving the goals and objectives referred to in paragraph (1).

(3) A 5-year plan for continued engagement with fusion centers.

[(j)] *(k) DEFINITIONS.—In this section—*

(1) the term “fusion center” means a collaborative effort of 2 or more Federal, State, local, or tribal government agencies that combines resources, expertise, or information with the goal of maximizing the ability of such agencies to detect, prevent, investigate, apprehend, and respond to criminal or terrorist activity;

(2) the term “information sharing environment” means the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485);

(3) the term “intelligence analyst” means an individual who regularly advises, administers, supervises, or performs work in the collection, gathering, analysis, evaluation, reporting, production, or dissemination of information on political, economic, social, cultural, physical, geographical, scientific, or military conditions, trends, or forces in foreign or domestic areas that directly or indirectly affect national security;

(4) the term “intelligence-led policing” means the collection and analysis of information to produce an intelligence end product designed to inform law enforcement decision making at the tactical and strategic levels; and

(5) the term “terrorism information” has the meaning given that term in section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485).

[(k)] *(l) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated \$10,000,000 for each of fiscal years 2008 through 2012, to carry out this section, except for subsection (i), including for hiring officers and intelligence analysts to replace officers and intelligence analysts who are assigned to fusion centers under this section.*

* * * * *