

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5913

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 28, 2012

Received; read twice and referred to the Committee on Homeland Security and  
Governmental Affairs

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## AN ACT

To create an independent advisory panel to comprehensively assess the management structure and capabilities related to the Department of Homeland Security and make recommendations to improve the efficiency and effectiveness of the management of the Department.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “DHS Accountability  
3 Act of 2012”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that the Subcommittee on Oversight,  
6 Investigations, and Management of the Committee on  
7 Homeland Security of the House of Representatives held  
8 a series of four hearings related to the management of  
9 the Department of Homeland Security. The key findings  
10 from such hearings were the following:

11 (1) The Department of Homeland Security has  
12 not prioritized the missions outlined in its key stra-  
13 tegic planning documents. This lack of prioritization  
14 may hinder the Department’s efforts to effectively  
15 manage risks to the United States. Since 2003, the  
16 Government Accountability Office designated the  
17 transformation of the Department as high risk be-  
18 cause the Department had to transform 22 agen-  
19 cies—several with major management challenges—  
20 into one department, and failure to effectively ad-  
21 dress the Department’s management and mission  
22 risks could have serious consequences to United  
23 States national and economic security. The Govern-  
24 ment Accountability Office continues to designate  
25 the transformation of the Department as high risk.

1           (2) The Department has considerable work  
2 ahead to achieve actions and outcomes critical to ad-  
3 dressing persistent management challenges. For ex-  
4 ample, a significant number of acquisition programs  
5 proceeded without component or departmental ap-  
6 proval of essential planning documents. These re-  
7 views are important to ensure the success of an ac-  
8 quisition program. The Department also continues  
9 to face challenges implementing key human capital  
10 initiatives. Integrating financial data essential to ef-  
11 fectively managing the Department also remains a  
12 challenge.

13           (3) Areas of duplicative effort have also been  
14 identified within the Department. For example, some  
15 Federal Government agencies are paying fees to the  
16 Department's Federal Protective Service for facility  
17 risk assessments that are not being performed, while  
18 at the same time performing their own risk assess-  
19 ments. The Department also lacks robust acquisition  
20 practices in place to position programs for success.  
21 Federal Government auditors questioned U.S. Cus-  
22 toms and Border Protection's plan to secure the Ari-  
23 zona border because the agency could not justify the  
24 specific types, quantities, cost, and deployment loca-  
25 tions of its surveillance technologies.

1           (4) Investigators continue to identify cases of  
2           employee corruption within the Department. Inves-  
3           tigations by the Department’s Inspector General led  
4           to over 400 arrests of employees in 2011. Examples  
5           include Border Patrol agents accepting bribes, thefts  
6           by airport screeners, and immigration officers  
7           complicit in fraud. In addition, overall employee mo-  
8           rale in the Department remains one of the lowest in  
9           the Federal Government.

10 **SEC. 3. ESTABLISHMENT.**

11           There is established in the legislative branch an inde-  
12           pendent advisory panel to—

13           (1) comprehensively assess the management  
14           structure and capabilities related to the Department  
15           of Homeland Security; and

16           (2) make recommendations to improve the effi-  
17           ciency and effectiveness of the management of the  
18           Department.

19 **SEC. 4. MEMBERSHIP.**

20           (a) IN GENERAL.—The independent advisory panel  
21           (in this Act referred to as the “Panel”) established under  
22           section 3 shall be composed of eight members as follows:

23           (1) Two members shall be appointed by the  
24           Speaker of the House of Representatives, in coordi-  
25           nation with the Chairman of the Committee on

1 Homeland Security of the House of Representatives.  
2 Only one of such members may be from the same  
3 political party as the Speaker of the House of Rep-  
4 resentatives.

5 (2) Two members shall be appointed by the ma-  
6 jority leader of the Senate, in coordination with the  
7 Chairman of the Committee on Homeland Security  
8 and Governmental Affairs of the Senate. Only one of  
9 such members may be from the same political party  
10 as the majority leader of the Senate.

11 (3) One member shall be appointed by the mi-  
12 nority leader of the House of Representatives, in co-  
13 ordination with the Ranking Minority Member of the  
14 Committee on Homeland Security of the House of  
15 Representatives.

16 (4) One member shall be appointed by the mi-  
17 nority leader of the Senate, in coordination with the  
18 Ranking Minority Member of the Committee on  
19 Homeland Security and Governmental Affairs of the  
20 Senate.

21 (5) Two members shall be appointed by the  
22 President, in consultation with the Secretary of  
23 Homeland Security. Only one of such members may  
24 be from the same political party as the President.

1 (b) PROHIBITION.—Except as provided in subsection  
2 (a), members of the Panel may not be current appointees  
3 of the President’s Administration or Members of Con-  
4 gress, in order to ensure objectivity of the Panel’s assess-  
5 ments.

6 (c) DEADLINE FOR APPOINTMENTS.—All appoint-  
7 ments to the Panel shall be made not later than 90 days  
8 after the date of the enactment of this Act.

9 (d) CO-CHAIRMEN.—The Panel shall have two co-  
10 chairmen, as follows:

11 (1) A co-chairman who shall be a member of  
12 the Panel designated by the Speaker of the House  
13 of Representatives.

14 (2) A co-chairman who shall be a member of  
15 the Panel designated by the majority leader of the  
16 Senate.

17 (e) VACANCY.—In the event of a vacancy on the  
18 Panel, the individual appointed to fill the vacant seat shall  
19 be—

20 (1) subject to paragraph (2), appointed by the  
21 same officer (or the officer’s successor) who made  
22 the appointment to the seat when the Panel was  
23 first established; or

24 (2) if the officer’s successor is of a party other  
25 than the party of the officer who made the initial

1 appointment when the Panel was first established,  
2 chosen in consultation with the senior officers of the  
3 House of Representatives and the Senate of the  
4 party which is the party of the officer who made  
5 such initial appointment.

6 (f) GOVERNMENT EMPLOYEES.—Members of the  
7 Panel who are officers or employees of the Federal Gov-  
8 ernment shall serve without additional pay (or benefits in  
9 the nature of compensation) for service as a member of  
10 the Panel.

11 (g) INITIAL MEETING.—The Panel shall meet and  
12 begin the operations of the Panel not later than 60 days  
13 after the appointment of all Panel members under sub-  
14 section (a).

15 **SEC. 5. DUTIES.**

16 (a) IN GENERAL.—The Panel shall assess the current  
17 management structure and capabilities of the Department  
18 of Homeland Security, including examining the following:

19 (1) The efficiency and effectiveness of the man-  
20 agement structure and capabilities, including the  
21 policies, practices, and procedures, of the Depart-  
22 ment of Homeland Security and its component agen-  
23 cies in carrying out the management functions, such  
24 as program acquisition, financial management, infor-  
25 mation technology, human capital issues, perform-

1       ance measurement, and risk management efforts, re-  
2       lated to homeland security.

3           (2) The extent to which unnecessary duplication  
4       exists in such management structure and capabili-  
5       ties, and how, if at all, such duplication negatively  
6       affects the mission of protecting the United States.

7           (3) The extent to which management of key  
8       homeland security missions is centralized under the  
9       Department.

10          (4) Options, as appropriate, to reduce or elimi-  
11       nate harmful waste and duplication of effort in the  
12       Department.

13          (5) Measures to evaluate the Department's  
14       progress in reducing and eliminating waste and du-  
15       plication from its management structure and capa-  
16       bilities.

17       (b) **ADDITIONAL CONSIDERATIONS.**—In carrying out  
18       its duties, the Panel should consult and leverage the work  
19       performed and recommendations made by the Government  
20       Accountability Office on the management structure and  
21       capabilities of the Department of Homeland Security, in  
22       particular with respect to the issues identified under sub-  
23       section (a).

24       **SEC. 6. POWERS AND AUTHORITIES.**

25       (a) **HEARINGS AND EVIDENCE.**—

1           (1) IN GENERAL.—The Panel or, on the author-  
2           ity of the Panel, any portion thereof, may, for the  
3           purpose of carrying out this section—

4                   (A) hold such hearings and sit and act at  
5                   such times and places, take such testimony, re-  
6                   ceive such evidence, administer such oaths (pro-  
7                   vided that the quorum for a hearing shall be  
8                   two members of the Panel); and

9                   (B) subject to subsection (b), require by  
10                  subpoena or otherwise provide for the attend-  
11                  ance and testimony of such witnesses and the  
12                  production of such books, records, correspond-  
13                  ence, memoranda, papers, and documents, as  
14                  the Panel, or such portion thereof, may deter-  
15                  mine advisable.

16           (2) OPEN TO THE PUBLIC.—Hearings and  
17           other activities conducted under paragraph (1) shall  
18           be open to the public unless the Panel, or, on the  
19           authority of the Panel, any portion thereof, deter-  
20           mines that such is not appropriate, including for  
21           reasons relating to the disclosure of information or  
22           material regarding the national security interests of  
23           the United States or the disclosure of sensitive law  
24           enforcement data.

25           (b) SUBPOENAS.—

## 1 (1) ISSUANCE.—

2 (A) IN GENERAL.—A subpoena may be  
3 issued under this subsection only—

4 (i) by the two co-chairmen; or

5 (ii) by the affirmative recorded vote of  
6 six members of the Panel.

7 (B) SIGNATURE.—Subpoenas issued under  
8 this subsection may be—

9 (i) issued under the signature of the  
10 two co-chairmen or any member designated  
11 by a majority of the Panel; and

12 (ii) served by any person designated  
13 by the two co-chairmen or by any member  
14 designated by a majority of the Panel.

## 15 (2) ENFORCEMENT.—

16 (A) IN GENERAL.—In the case of contu-  
17 macy or failure to obey a subpoena issued  
18 under this subsection, the United States district  
19 court for the judicial district in which the sub-  
20 poenaed person resides, is served, or may be  
21 found, or where the subpoena is returnable,  
22 may issue an order requiring such person to  
23 produce documentary or other evidence. Any  
24 failure to obey the order of the court may be

1           punished by the court as contempt of that  
2           court.

3           (B) ADDITIONAL ENFORCEMENT.—In the  
4           case of any failure of any witness to comply  
5           with any subpoena, the Panel may, by majority  
6           vote, certify a statement of fact constituting  
7           such failure to the appropriate United States  
8           attorney, who may bring the matter before a  
9           grand jury for its action, under the same statu-  
10          tory authority and procedures as if the United  
11          States attorney had received a certification  
12          under sections 102 through 104 of the Revised  
13          Statutes of the United States (2 U.S.C. 192  
14          through 194).

15          (c) PERSONNEL.—

16           (1) IN GENERAL.—The Panel shall have the au-  
17           thorities provided in section 3161 of title 5, United  
18           States Code, and shall be subject to the conditions  
19           specified in such section, except to the extent that  
20           such conditions would be inconsistent with the re-  
21           quirements of this section.

22           (2) COMPENSATION.—The co-chairmen, in ac-  
23           cordance with rules agreed upon by the Panel, may  
24           appoint and fix the compensation of a staff director  
25           and such other personnel as may be necessary to en-

1       able the Panel to carry out its functions, without re-  
2       gard to the provisions of title 5, United States Code,  
3       governing appointments in the competitive service,  
4       and without regard to the provisions of chapter 51  
5       and subchapter III of chapter 53 of such title relat-  
6       ing to classification and General Schedule pay rates,  
7       except that no rate of pay fixed under this para-  
8       graph may exceed the equivalent of that payable for  
9       a position at level V of the Executive Schedule under  
10      section 5316 of title 5, United States Code.

11           (3) **DETAILEES.**—Any employee of the Federal  
12      Government may be detailed to the Panel without  
13      reimbursement from the Panel, and such detailee  
14      shall retain the rights, status, and privileges of the  
15      employee’s regular employment without interruption.

16           (4) **EXPERT AND CONSULTANT SERVICES.**—The  
17      Panel is authorized to procure the services of experts  
18      and consultants in accordance with section 3109 of  
19      title 5, United States Code, but at rates not to ex-  
20      ceed the daily rate paid a person occupying a posi-  
21      tion at level IV of the Executive Schedule under sec-  
22      tion 5315 of title 5, United States Code.

23           (5) **VOLUNTEER SERVICES.**—Notwithstanding  
24      section 1342 of title 31, United States Code, the

1 Panel may accept and use voluntary and uncompen-  
2 sated services as the Panel determines necessary.

3 (d) SECURITY CLEARANCES.—The appropriate de-  
4 partments or agencies of the Federal Government shall co-  
5 operate with the Panel in expeditiously providing to the  
6 Panel members and staff appropriate security clearances  
7 to the extent possible pursuant to existing procedures and  
8 requirements, except that no person shall be provided with  
9 access to classified information under this section without  
10 the appropriate security clearances.

11 (e) CONTRACTING.—The Panel may, to such extent  
12 and in such amounts as are provided in appropriation  
13 Acts, enter into contracts to enable the Panel to carry out  
14 its duties under this Act.

15 (f) POSTAL SERVICES.—The Panel may use the  
16 United States mails in the same manner and under the  
17 same conditions as departments and agencies of the  
18 United States.

19 (g) SUPPORT SERVICES.—Upon request of the Panel,  
20 the Administrator of General Services shall provide the  
21 Panel, on a reimbursable basis, with the administrative  
22 support services necessary for the Panel to carry out its  
23 duties under this Act. Such administrative services may  
24 include human resource management, budget, leasing, ac-  
25 counting, and payroll services.

1 (h) RULES OF PROCEDURE.—The Panel may estab-  
2 lish rules for the conduct of the Panel’s business, if such  
3 rules are not inconsistent with this Act or other applicable  
4 law.

5 (i) NONAPPLICABILITY OF THE FEDERAL ADVISORY  
6 COMMITTEE ACT.—The Federal Advisory Committee Act  
7 (5 U.S.C. App.) shall not apply to the Panel.

8 (j) TERMINATION.—The Panel shall terminate on the  
9 date that is 60 days after the date of the submission of  
10 its final report.

11 **SEC. 7. REPORTS TO CONGRESS.**

12 (a) INTERIM REPORT.—Not later than one year after  
13 the date of the appointment of all the members of the  
14 Panel, the Panel shall submit to the Committee on Home-  
15 land Security of the House of Representatives and the  
16 Committee on Homeland Security and Governmental Af-  
17 fairs of the Senate an interim report, including the results  
18 and findings of the assessment and examination carried  
19 out in accordance with section 5.

20 (b) OTHER REPORTS AND BRIEFINGS.—The Panel  
21 may from time to time submit to the committees specified  
22 in subsection (a) such other reports and briefings relating  
23 to the assessment and examination carried out in accord-  
24 ance with section 5 as the Panel considers appropriate.

1 Such committees may request information on the Panel's  
2 progress as it conducts its work.

3 (c) FINAL REPORT.—Not later than two years after  
4 the date of the appointment of all the members of the  
5 Panel, the Panel shall submit to the committees specified  
6 in subsection (a) a final report on the assessment and ex-  
7 amination carried out in accordance with section 5. Such  
8 final report shall—

9 (1) include the findings of the Panel;

10 (2) identify lessons learned related to homeland  
11 security management issues; and

12 (3) include specific recommendations related  
13 to—

14 (A) improving the efficiency and effective-  
15 ness of the management structure and capabili-  
16 ties, including the policies, practices, and proce-  
17 dures, of the Department of Homeland Security  
18 and its component agencies in carrying out the  
19 Department's management functions and mis-  
20 sion to protect the United States;

21 (B) reducing or eliminating unnecessary  
22 duplication in the management structure and  
23 capabilities of the Department and its compo-  
24 nent agencies;

1           (C) options, as appropriate, to reduce or  
2           eliminate harmful waste and duplication of ef-  
3           fort in the Department; and

4           (D) developing measures to evaluate the  
5           Department's progress in reducing and elimi-  
6           nating waste and duplication from its manage-  
7           ment structure and capabilities.

Passed the House of Representatives November 27,  
2012.

Attest:

KAREN L. HAAS,  
*Clerk.*