

BORDER SECURITY TECHNOLOGY ACCOUNTABILITY ACT
OF 2015

JULY 27, 2015.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. McCAUL, from the Committee on Homeland Security,
submitted the following

R E P O R T

[To accompany H.R. 1634]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 1634) 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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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Border Security Technology Accountability Act of 2015”.

SEC. 2. BORDER SECURITY TECHNOLOGY ACCOUNTABILITY.

(a) IN GENERAL.—Subtitle C of title IV of the Homeland Security Act of 2002 (6 U.S.C. 231 et seq.) is amended by adding at the end the following new section:

“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.”.

(b) CLERICAL AMENDMENT.—The table of contents of the Homeland Security Act of 2002 is amended by inserting after the item relating to section 433 the following new item:

“Sec. 434. Border security technology program management.”.

SEC. 3. PROHIBITION ON ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.

No additional funds are authorized to be appropriated to carry out this Act and the amendments made by this Act. This Act and such amendments shall be carried out using amounts otherwise available for such purposes.

PURPOSE AND SUMMARY

H.R. 1634 requires that each border security technology program with a significant lifecycle cost estimate have an acquisition program baseline and that it be approved by the relevant acquisition decision authority. It also requires the Department of Homeland Security’s Under Secretary for Management to work with the Commissioner of U.S. Customs and Border Protection (CBP) to implement internal control standards and best practices identified by the Comptroller General of the United States. In addition, this legislation requires the Under Secretary for Management and the Commissioner of CBP to work together to develop and submit to Congress a plan for testing and evaluation of border security technologies, as well as the use of independent verification and validation resources.

BACKGROUND AND NEED FOR LEGISLATION

Since 2005, the GAO has identified DHS's acquisition management as an activity on their "High Risk List," which identifies programs highly susceptible to fraud, waste, abuse, and mismanagement or most in need of broad reform. The Department of Homeland Security's (DHS) Secure Border Initiative (*SBI_{net}*) is a prime example of such mismanagement. Initial plans developed in 2005 and 2006 called for *SBI_{net}* to extend across the entire U.S.-Mexico border. Major technical issues, delays, cost overruns and management problems cost taxpayers nearly \$1 billion for minimal results. In January 2011, DHS cancelled *SBI_{net}*, and is currently focusing on smaller successor programs to help better secure the border.

The Border Security Technology Accountability Act of 2015 requires that DHS border security technology programs 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 as well as use independent verification and validation resources.

HEARINGS

No hearings were held on H.R. 1634.

COMMITTEE CONSIDERATION

The Committee met on June 23, 2015, to consider H.R. 1634, and ordered the measure to be reported to the House with a favorable recommendation, amended, by voice vote. The Committee took the following actions:

The following amendments were offered:

An Amendment in the Nature of a Substitute offered by Ms. MCSALLY (#1); was AGREED TO, as amended, by voice vote.

An amendment to the Amendment in the Nature of a Substitute offered by MRS. WATSON COLEMAN (#1A) consisting of an amendment by Ms. Jackson Lee; was AGREED TO by voice vote.

Page 1, line 17, strike "and".

Page 2, line 5, strike the period and insert "; and".

Page 2, after line 5, insert the following: "(3) have a plan for meeting program implementation objectives by managing contractor performance."

COMMITTEE VOTES

Clause 3(b) of Rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

No recorded votes were requested during consideration of H.R. 1634.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX
EXPENDITURES

In compliance with clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1634, the Border Security Technology Accountability Act of 2015, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 24, 2015.

Hon. MICHAEL MCCAUL,
Chairman, Committee on Homeland Security, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1634, 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,

ROBERT A. SUNSHINE
(For Keith Hall, Director).

Enclosure.

H.R. 1634—Border Security Technology Accountability Act of 2015

H.R. 1634 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 H.R. 1634 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 border security technology programs. Because enacting the legislation would not affect direct spending or revenues, pay-as-you-go procedures do not apply.

H.R. 1634 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.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, H.R. 1634 contains the following general per-

formance goals and objectives, including outcome related goals and objectives authorized.

The general performance goal of this bill is to ensure the DHS Under Secretary for Management works with the Commissioner of U.S. Customs and Border Protection to implement internal control standards and best practices identified by the Comptroller General of the United States to improve the management of CBP's border security technology programs.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of Rule XIII, the Committee finds that H.R. 1634 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with Rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the Rule XXI.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or Tribal law, the Committee finds that H.R. 1634 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 1634 would require no directed rule makings.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short Title.

This section provides that bill may be cited as the “Border Security Technology Accountability Act of 2015”.

*Section 2 Border Security Technology Accountability.**Subsection (a) Planning Documentation.*

This subsection requires that each border security technology program with a significant lifecycle cost estimate have an acquisition program baseline and that it be approved by the relevant acquisition decision authority. Significant lifecycle cost estimate is certainly anything defined as a level 2 program under DHS Management Directive 102, but perhaps programs as small as \$100 million dollars in total lifecycle cost.

Subsection (b) Adherence to Standards.

This subsection requires the DHS Under Secretary for Management to work with the Commissioner of CBP to implement internal control standards and best practices identified by the Comptroller General of the United States. The Committee is concerned that CBP’s Arizona Border Surveillance Technology Plan does not have an integrated master schedule across the various programs as the GAO recommended in order to understand the interdependencies and sequencing of the deployed capabilities. CBP disagreed with this GAO recommendation.

The Committee expects that all aspects of this bill will be implemented consistent with OMB’s IT-management initiatives such as PortfolioStat, TechStat, and Federal Information Technology Acquisition Reform Act (FITARA) requirements [P.L. 113-291, Title VIII, Subtitle D, section 831].

Subsection (c) Plan.

This subsection states that the DHS Under Secretary for Management and the Commissioner of CBP shall work together to develop and submit to Congress a plan for testing and evaluation of border security technologies as well as the use of independent verification and validation (IV&V) resources. In GAO Report GAO-15-171SP, auditors noted that DHS leadership would be better informed to make deployment decisions if it consistently received documentation clearly stating whether systems have met all of their key performance parameters (KPPs).

Contracted IV&V agents are able to independently test, verify, and evaluate solutions to ensure that all technology products and services meet federal government standards and are performing to their defined capabilities. IV&V requirements ensure that new, expensive, and cutting-edge technologies are evaluated through a series of assessments, processes, and procedure audits. IV&V also incorporates project and performance management, as well as systems analysis and design, in order to deliver maximum effectiveness of technology products. The Committee believes that taxpayer money should only be used for border security technology and infrastructure that performs as promised.

Subsection (d) Definition.

This subsection defines the term “major acquisition program” as a Department acquisition program that is estimated by the Secretary to require at least \$300,000,000 (in FY15 dollars) over its entire life cycle.

Section 3. Prohibition on Additional Authorization of Appropriations.

This section established that no additional funding will be authorized to carry out the requirements of this bill.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics 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) **SHORT TITLE.**—This Act may be cited as the “Homeland Security Act of 2002”.

(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						
*	*	*	*	*	*	*
<i>Sec. 434. Border security technology program management.</i>						
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TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

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Subtitle C—Miscellaneous Provisions

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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.

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