

DHS ACQUISITION DOCUMENTATION INTEGRITY ACT OF 2016

FEBRUARY 23, 2016.—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. 4398]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 4398) to amend the Homeland Security Act of 2002 to provide for requirements relating to documentation for major acquisition programs, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of H.R. 4398 is to amend the Homeland Security Act of 2002 to provide for requirements relating to documentation for major acquisition programs, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

Management challenges have plagued the Department of Homeland Security (DHS) since its inception. For example, every two years, the Government Accountability Office (GAO) identifies areas in the federal government that are “high risk” due to their vulnerabilities to fraud, waste, abuse, and mismanagement. For years, GAO has identified DHS’s management functions, which includes acquisition responsibilities, as high risk. In GAO’s 2015 high risk update, it was noted that challenges remained and progress was needed “to mitigate the risks that management weaknesses posed to mission accomplishment.”

Most of DHS’s major acquisition programs continue to cost more than expected, take longer to deploy than planned, or deliver less capability than promised. In recent years, DHS has issued a Departmental acquisition policy that reflects important commercial best practices. However, DHS has not held component heads and other senior DHS leaders to account for fully implementing that policy.

This bill is based on text included in bipartisan legislation, the DHS Headquarters Reform and Improvement Act (H.R. 3572), introduced by Mr. McCaul and Mr. Thompson that passed the House in October 2015. The DHS Acquisition Documentation Integrity Act of 2016 (H.R. 4398) requires the DHS Secretary, acting through the Under Secretary for Management, to require relevant components to maintain specific types of acquisition documentation. This bill codifies a narrow set of authorities for the DHS Secretary to waive those requirements in limited circumstances, which is similar to an approach that exists within the Department of Defense (10 U.S.C. 2432(b)).

HEARINGS

The Committee did not hold any hearings on H.R. 4398, however the Committee held the following oversight hearing:

On April 22, 2015, the Subcommittee on Oversight and Management Efficiency held a hearing entitled “Acquisition Oversight: How Effectively Is DHS Safeguarding Taxpayer Dollars?” The Subcommittee received testimony from Ms. Michele Mackin, Director, Acquisition and Sourcing Management, U.S. Government Accountability Office; Hon. Chip Fulghum, Acting Deputy Undersecretary for Management and Chief Financial Officer, U.S. Department of Homeland Security; and Dr. Cedric Sims, Partner, Evermay Consulting Group.

COMMITTEE CONSIDERATION

The Committee met on February 2, 2016, to consider H.R. 4398, and ordered the measure to be reported to the House with a favorable recommendation, without amendment, by voice vote.

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. 4398.

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. 4398, the DHS Acquisition Documentation Integrity Act of 2016, 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, February 17, 2016.

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. 4398, the DHS Acquisition Documentation Integrity Act of 2016.

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.

H.R. 4398—DHS Acquisition Documentation Integrity Act of 2016

H.R. 4398 would direct the Department of Homeland Security (DHS) to prepare cost estimates and schedules for its major acquisition programs and to maintain complete and accurate documentation of such projects. The bill's requirements are largely consistent with existing DHS procurement policies. Therefore, CBO estimates that implementing H.R. 4398 would cost less than \$500,000 annually; such spending would be subject to the availability of appropriated funds.

Because enacting the legislation would not affect direct spending or revenues, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 4398 would not increase net direct spending or

on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 4398 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on 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. 4398 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

This bill requires relevant components to maintain specific types of acquisition documentation that is complete, accurate, timely, and valid. The heads of DHS components shall submit required information as part of an annual comprehensive report on the status of the Department's acquisitions.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 4398 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. 4398 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 4398 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 this bill may be cited as the “DHS Acquisition Documentation Integrity Act of 2016”.

Section 2. Department of Homeland Security Acquisition Documentation

SUBSECTION (a)—IN GENERAL.

This subsection inserts a new section in the Homeland Security Act of 2002, entitled “Sec. 708. Acquisition Documentation” containing the following:

Subsection (a)—In general

This subsection compels the Secretary of Homeland Security, acting through the Under Secretary for Management, to require relevant components to maintain specific types of acquisition documentation that is complete, accurate, timely, and valid. Specifically, component heads must maintain documentation that, at a minimum, includes: (1) information regarding operational requirements; (2) a complete life-cycle cost estimate; (3) a verification of the life-cycle cost estimate against independent cost estimates; (4) a cost-benefit analysis; and (5) a schedule. The component heads are also required to submit certain documentation to the DHS Secretary for inclusion in an annual comprehensive report on the status of the Department’s acquisitions.

Subsection (b)—Waiver

This subsection codifies a narrow set of authorities for the DHS Secretary to waive the documentation requirement under subsection (a)(3), a similar approach to the acquisition-management and reporting activities in the Department of Defense. Specifically, the Secretary may waive documentation requirements if a program has not: (1) entered full-rate production; (2) established a reasonable cost estimate; or (3) had a fully defined system configuration. Additionally, the requirement may be waived if the program is not a “capital asset,” as defined by the Office of Management and Budget.

Subsection (c)—Congressional oversight

This subsection requires the DHS Secretary to submit to the House and Senate homeland security committees, as part of the annual budget process, information on the circumstances surrounding any waivers issued under subsection (b) in the prior fiscal year.

The Secretary must include information on: (1) the grounds for issuing a waiver for a program; (2) the projected cost of such program; (3) the proportion of the total annual acquisition budget attributed to such program; and (4) information on the significance of such program to support the Department's mission.

Subsection (d)—Major acquisition program defined

This subsection defines “major acquisition program” as an acquisition program that is estimated to require at least \$300 million over its life cycle.

SUBSECTION (b)—CLERICAL AMENDMENT.

This subsection makes clerical corrections to the Homeland Security Act of 2002 by inserting the section header in the table of contents at the appropriate place.

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 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) **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 VII—MANAGEMENT						
*	*	*	*	*	*	*
<i>Sec. 708. Acquisition documentation.</i>						
*	*	*	*	*	*	*

TITLE VII—MANAGEMENT

*	*	*	*	*	*	*
SEC. 708. ACQUISITION DOCUMENTATION.						

(a) *IN GENERAL.*—For each major acquisition program, the Secretary, acting through the Under Secretary for Management, shall require the head of a relevant component or office to—

(1) *maintain acquisition documentation that is complete, accurate, timely, and valid and that includes, at a minimum—*

(A) *operational requirements that are validated consistent with Departmental policy and changes to those requirements, as appropriate;*

(B) *a complete lifecycle cost estimate with supporting documentation;*

(C) verification of the lifecycle cost estimate against independent cost estimates, and reconciliation of any differences;

(D) a cost-benefit analysis with supporting documentation; and

(E) a schedule, including, as appropriate, an integrated master schedule;

(2) prepare cost estimates and schedules for major acquisition programs, as required under subparagraphs (B) and (E), in a manner consistent with best practices as identified by the Comptroller General of the United States; and

(3) submit certain acquisition documentation to the Secretary to produce an annual comprehensive report on the status of departmental acquisitions for submission to Congress.

(b) **WAIVER.**—On a case-by-case basis, the Secretary may waive the requirement under paragraph (3) of subsection (a) for a fiscal year if either—

(1) the program has not—

(A) entered the full rate production phase in the acquisition lifecycle;

(B) had a reasonable cost estimate established; and

(C) had a system configuration defined fully; or

(2) the program does not meet the definition of capital asset, as such term is defined by the Director of the Office of Management and Budget.

(c) **CONGRESSIONAL OVERSIGHT.**—At the same time the President's budget is submitted for a fiscal year under section 1105(a) of title 31, United States Code, the Secretary shall make information available, as applicable, to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate information on the requirement under subsection (a) in the prior fiscal year that includes the following specific information regarding each program for which the Secretary has issued a waiver under subsection (b):

(1) The grounds for granting a waiver for that program.

(2) The projected cost of that program.

(3) The proportion of a component's or office's annual acquisition budget attributed to that program, as available.

(4) Information on the significance of the program with respect to the component's operations and execution of its mission.

(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 2016 constant dollars) over its lifecycle cost.

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