

UNIFYING DHS INTELLIGENCE
ENTERPRISE ACT

—
R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

H.R. 2589

TO AMEND THE HOMELAND SECURITY ACT OF 2002 TO
ESTABLISH A HOMELAND INTELLIGENCE DOCTRINE FOR THE
DEPARTMENT OF HOMELAND SECURITY, AND FOR OTHER
PURPOSES



NOVEMBER 9, 2020.—Ordered to be printed

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U.S. GOVERNMENT PUBLISHING OFFICE

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Calendar No. 578

116TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 116-286

UNIFYING DHS INTELLIGENCE ENTERPRISE ACT

NOVEMBER 9, 2020.—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. 2589]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (H. R. 2589) to amend the Homeland Security Act of 2002 to establish a homeland intelligence doctrine for the Department of Homeland Security, and for other purposes, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

H.R. 2589, the Unifying DHS Intelligence Components Act (as the title was amended to read in Committee), directs the Secretary of the Department of Homeland Security (DHS or the Department) to develop and disseminate a written Department-wide intelligence doctrine for its intelligence components. In addition, the Secretary is required to develop policies, standards, and programs for the intelligence components of the Department for training relating to, among other things, the collection, processing and analysis of intelligence-related information, and coordinate the intelligence and intelligence-related education of personnel for intelligence compo-

nents. The Secretary is also required to develop policies for gathering lessons learned relating to intelligence, intelligence-related information, and terrorism information and use the lessons learned for further development of the intelligence doctrine.

The Department's intelligence doctrine must include defined processes for sharing intelligence information with state, local, tribal and territorial governments (SLTTs), the private sector, and foreign governments in a matter that complies with all privacy, civil rights and civil liberties regulations. Beginning one year following the enactment of this Act, and annually for four years, the Secretary is required to conduct an annual review of the intelligence doctrine, and as necessary revise the doctrine.

The U.S. Government Accountability Office (GAO) is required to conduct a review, within one year of the enactment, of the Department's implementation of the Act and submit the results of this review to Congress. GAO's review is to include, among other things, details on the extent of intelligence doctrine adoption across the Department and evaluate if the newly implemented standards protect civil rights, civil liberties and privacy requirements. In addition, GAO is required to report on the variation between the standards prior to the enactment of the Act, and the standards in effect following the issuance of intelligence doctrine.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Following the aftermath of the September 11, 2001, terrorist attacks, Congress established DHS as a means of unifying the nation's homeland security efforts.¹ The creation of DHS from 22 distinct Executive Branch agencies was the most significant reorganization of the Federal Government since the Cold War.² By consolidating these agencies into a single department, Congress and the administration intended to break down existing stovepipes and barriers to information sharing, thereby enhancing the nation's ability to mitigate, prepare for, and respond to potential terrorist threats.³

Protecting the homeland against threats of terrorism requires a coordinated and robust homeland intelligence enterprise. Since the Department's inception, DHS has made a number of changes in an effort to do so, including establishing the Office of Intelligence and Analysis (I&A) and designating the role of Assistant Secretary (now the Under Secretary) for Information Analysis to serve as the Chief Intelligence Officer.⁴ With the passage of the 9/11 Commission Act of 2007, I&A was given the responsibility of handling intelligence-related matters, to include evaluating information-sharing practices within the Department.⁵

In 2016, the majority staff for the House Committee on Homeland Security issued a report titled "Reviewing the Department of

¹Homeland Security Act of 2002, Pub. L. No. 107-296, 107th Cong. (2002); The President of the United States, *The Department of Homeland Security* (June 2002), available at <https://www.dhs.gov/xlibrary/assets/book.pdf>.

²*Id.*

³The President of the United States, *The Department of Homeland Security* (June 2002), available at <https://www.dhs.gov/xlibrary/assets/book.pdf>; *Mission*, Department of Homeland Security (Jul. 3, 2019), <https://www.dhs.gov/mission>.

⁴*Id.*; 6 U.S.C. § 121(b).

⁵Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53, 110th Cong. (2007), codified at 6 U.S.C. § 121.

Homeland Security’s Intelligence Enterprise,” that evaluated the current status of DHS intelligence programs and provided recommendations for DHS to streamline their intelligence operations and unify efforts to facilitate the Department’s mission.⁶ Many of the recommendations form the basis for this legislation, specifically with regard to those calling for better coordination among components and the establishment of clear standards for handling intelligence information.⁷

Currently, I&A and the U.S. Coast Guard are the only members of the intelligence community within the Department.⁸ Other components of the Department lack the same standards for the handling of intelligence.⁹ Due to the lack of standardization among the intelligence components of the Department, the report recommended that the DHS Chief Intelligence Officer “standardize raw intelligence reporting formats throughout the Department and create a system of record for dissemination, discoverable by all personnel with a need-to-know, even for products contain information that threes not meet the standard for national intelligence reporting.”¹⁰ Standardizing methods to share intelligence and intelligence-related information among relevant components helps prevent stove piping of intelligence information, a problem identified by the 9/11 Commission.¹¹

Another recommendation outlined in the report called for the Chief Intelligence Officer to “standardize all DHS [intelligence enterprise] analytical product formats where practicable.”¹² Specifically, the report found that there were 56 various finished intelligence product formats due to the lack of standardized protocols across the Department.¹³ In April 2016, the Chief Intelligence Officer established a centralized repository for finished intelligence products.¹⁴ However, due to inconsistencies in the product format requirements, analysts tasked with formatting the intelligence products said the act of putting the products together drained resources and confused users based on the differing formats and scopes.¹⁵ H.R. 2589 would establish required guidance on processing, analysis, production and dissemination, thereby helping to streamline the product processes, improve resource allocation, and reduce confusion.

A former Chief Intelligence Officer identified confusion within the Department “as to who has the responsibility and/or ability to compel information sharing, owing to the lack of a Departmental

⁶House Committee on Homeland Security, Majority Staff Report, Reviewing the Department of Homeland Security’s Intelligence Enterprise, 105th Cong. (2016), available at <https://www.hsdl.org/?view&did=797351> [hereinafter, “House Committee on Homeland Security Majority Staff Report”].

⁷*Id.*

⁸*Members of the IC*, Office of the Director of National Intelligence, <https://www.dni.gov/index.php/what-we-do/members-of-the-ic>.

⁹House Committee on Homeland Security Majority Staff Report, *supra* note 6; see also Congressional Research Service, The Department of Homeland Security Intelligence Enterprise: Operational Overview and Oversight Challenges for Congress (2010), available at <https://fas.org/sgp/crs/homesec/R40602.pdf>.

¹⁰House Committee on Homeland Security Majority Staff Report, *supra* note 6.

¹¹National Commission on Terrorist Attacks Upon the United States, The 9/11 Commission Report—Final Report of the National Commission on Terrorist Attacks Upon the United States—Executive Summary (2004), available at https://govinfo.library.unt.edu/911/report/911Report_Exec.pdf.

¹²House Committee on Homeland Security Majority Staff Report, *supra* note 6.

¹³*Id.*

¹⁴*Id.* at 32.

¹⁵*Id.*

intelligence doctrine,”¹⁶ which further enforces the need for establishing the Homeland Intelligence Doctrine as called for in this Act. The report specifically cites an instance in which an intelligence component of the Department created a definition of “intelligence,” different from what is established in DHS policy.¹⁷ Without set standards and interpretations of definitions, intelligence components of the Department lack unity and accountability when handling intelligence.

The report includes several additional recommendations that call for the standardization of guidance on intelligence analysis, production and sharing.¹⁸ The report highlights the need for “[normalized]” intelligence-sharing and coordination procedures as it relates to Federal, SLTT, foreign and private sector partners.¹⁹ This Act would require DHS to develop guidance on intelligence dissemination to its aforementioned non-DHS partners.

To address these problems, H.R. 2589 establishes a Homeland Intelligence Doctrine within the DHS to standardize the development, dissemination, and analysis of intelligence-related information across the intelligence components of the Department. Implementation of the Homeland Intelligence Doctrine will be reviewed by GAO. This report will provide Congress and DHS with information on whether the establishment of the Homeland Intelligence Doctrine has had the desired outcome of improving the Department’s ability to unify its intelligence-related activities amongst its intelligence components.

III. LEGISLATIVE HISTORY

Representative Mark Green (R–TN–7) introduced H.R. 2589, the Unifying DHS Intelligence Enterprise Act of 2019, in the House of Representatives on May 8, 2019. The House of Representatives passed the Act, as amended, under suspension of the rules by voice vote on September 26, 2019. The Act was referred to the Senate Committee on Homeland Security and Governmental Affairs.

The Committee considered H.R. 2589 at a business meeting on March 11, 2020. Chairman Ron Johnson and Ranking Member Gary Peters offered a substitute amendment, which incorporated minor technical edits and changed the short title from “Unifying DHS Intelligence Enterprise Act” to “Unifying DHS Intelligence Components Act.” Both the amendment and legislation as modified were passed by voice vote *en bloc* with Senators Johnson, Portman, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Harris, Sinema and Rosen present. Consistent with Committee rules, the Committee reports the bill with a technical amendment by mutual agreement of the Chairman and Ranking Member.

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

Section 1. Short title

This section establishes the Short Title of the Act as the “Unifying DHS Intelligence Components Act.”

¹⁶*Id.* at 35.

¹⁷*Id.*

¹⁸House Committee on Homeland Security Majority Staff Report, *supra* note 6.

¹⁹*Id.*

Section 2. Homeland Intelligence Doctrine

Subsection (a) amends Subtitle A of title II of the Homeland Security Act of 2002 (6 U.S.C. 121 et seq.) to add a new section 210H, Homeland Intelligence Doctrine.

New subsection (a) defines the terms “intelligence,” “intelligence information” and “terrorism information.”

New subsection (b) requires that within 180 days of enactment, the Secretary of Homeland Security establish and distribute a written intelligence doctrine for the intelligence components of the Department. The Secretary is also required to develop policies, standards and programs for training, coordination and developing lessons learned related to intelligence, intelligence-related information, and terrorism information. The lessons learned are to be distributed to the Department’s intelligence components, and used to inform further development of the intelligence doctrine.

New subsection (c) establishes the contents of the intelligence doctrine, which should include a description of the fundamental principles guiding the collection, processing, analysis, and dissemination of intelligence information by, and oversight activities for, the intelligence components of the Department. This subsection also requires the intelligence doctrine to include information on how it can be used to develop Department-wide training and education, including best practices. The intelligence doctrine must also include guidance on the dissemination and sharing of intelligence and intelligence-related information between Federal, SLTT, and foreign government partners, as well as with the private sector. In addition, the intelligence doctrine’s policies, standards and programs must include the protection of privacy, civil rights, and civil liberties and must also include any mission statements, strategic or planning documents and all other related documents relevant to the guidance.

New subsection (d) requires the intelligence doctrine, policies, standards and programs to be disseminated in an unclassified form, with a classified annex if necessary.

New subsection (e) requires the Secretary of Homeland Security, one year of enactment of this Act and annually for four years thereafter, to review the intelligence doctrine, policies, standards, and programs and make any necessary revisions. After the required review period, the Secretary of Homeland Security is required to conduct reviews of the intelligence doctrine on an *ad hoc* basis and make any necessary revisions. Subsection (e) also contains a clerical amendment, amending section 1(b) of the Homeland Security Act of 2002 (Public Law 107–296) to include this act in the table of contents.

Section 3. Comptroller General assessment

Subsection (a) requires the Comptroller General of the United States to, within one year of enactment of this Act, provide a report to the Committee on Homeland Security and Governmental Affairs and the Select Committee on Intelligence of the Senate, and the Committee on Homeland Security and the Permanent Select Committee on Intelligence of the House of Representatives. The report must include an assessment of the implementation of the intelligence doctrine, policies, standards and programs and evaluate the extent privacy, civil rights and civil liberties protections are in-

cluded in the doctrine. The report must also assess the effectiveness of intelligence and intelligence-related training programs provided to the intelligence components of the Department, including training programs that involve international and private sector intelligence and intelligence-related information.

Subsection (b) requires the Comptroller General to assess changes in standards before and after the enactment of this Act.

Subsection (c) requires the Secretary of Homeland Security to provide the Comptroller General access to all data relevant to the Comptroller General's responsibilities related to this report.

Section 4. Analysts for the Chief Intelligence Officer

This section requires the Secretary of Homeland Security to provide the Chief Intelligence Officer staff with appropriate knowledge to assist the Chief Intelligence Officer.

Section 5. Savings clause

Subsection (a) provides that the definition of the term "intelligence community," has the same meaning provided in section 3(4) of the National Security Act of 1947 (50 U.S.C. 30003(4)).

Subsection (b) establishes that this Act will have no effect on the authorities and responsibilities of the Coast Guard.

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, October 26, 2020.

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. 2589, the Unifying DHS Intelligence Components Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Madeleine Fox.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 2589, Unifying DHS Intelligence Components Act			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on March 11, 2020			
By Fiscal Year, Millions of Dollars	2021	2021-2025	2021-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

H.R. 2589 would direct the Department of Homeland Security (DHS) to manage and provide guidance for the use of intelligence throughout the department. DHS is currently carrying out activities similar to those required by the act. Any new activities required under the legislation would not require substantial action by the department. The act also would require the Government Accountability Office to report on how the intelligence policies and standards are implemented throughout the department. In total, CBO estimates that over the 2021–2025 period implementing H.R. 2589 would cost less than \$500,000; any spending would be subject to the availability of appropriated funds.

On May 22, 2019, CBO transmitted a cost estimate for H.R. 2589, the Unifying DHS Intelligence Enterprise Act, as ordered reported by the House Committee on Homeland Security on May 15, 2019. The two versions of the legislation are similar, and CBO's estimates of their budgetary effects are the same.

The CBO staff contact for this estimate is Madeleine Fox. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of 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 the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in *italics*, and existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002

* * * * *

TITLE II—INFORMATION ANALYSIS

* * * * *

Subtitle A—Information and analysis; Access to
information

* * * * *

SEC. 201. INFORMATION AND ANALYSIS.

(a) * * *

* * * * *

(e) The Secretary shall also provide the Chief Intelligence Officer with a staff having appropriate expertise and experience to assist the Chief Intelligence Officer.

* * * * *

SEC. 210H. HOMELAND INTELLIGENCE DOCTRINE.

(a) *DEFINITIONS.—In this section—*

(1) the term “intelligence” has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003);

(2) the term “intelligence information” includes—

(A) information within the scope of the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485);

(B) national intelligence, as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 3003); and

(C) any other intelligence collected, gathered, processed, analyzed, produced, or disseminated by an intelligence component of the Department necessary to execute the mission and discharge the lawful preventive, protective, enforcement, or other responsibilities of the Secretary; and

(3) 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).

(b) *DEVELOPING INTELLIGENCE DOCTRINE.—Not later than 180 days after the date of the enactment of this section, the Secretary shall—*

(1) develop and disseminate written Department-wide intelligence doctrine for the intelligence components of the Department;

(2) develop Department-wide policies, standards, and programs for—

(A) training relating to the collection, processing, analysis, and dissemination of intelligence information, intelligence-related information, and terrorism information by personnel within the intelligence components of the Department; and

(B) coordinating the intelligence and intelligence-related education of personnel within the intelligence components of the Department; and

(3) develop Department-wide policies for gathering and developing lessons learned relating to intelligence information, intelligence-related information, and terrorism information, disseminating the lessons learned to personnel within the intelligence components of the Department, and using the lessons learned to inform the further development of the intelligence doctrine.

(c) *CONTENTS.*—The intelligence doctrine, policies, standards, and programs required under subsection (b) shall, at a minimum, include the following:

(1) A description of the fundamental principles guiding the collection, processing, analysis, and dissemination of intelligence information by, and oversight of the intelligence activities of, the intelligence components of the Department.

(2) A standardized terminology and summary describing roles, relationships, responsibilities, and processes relating to the collection, processing, analysis, production, and dissemination of intelligence information by, and oversight of the intelligence activities of, the intelligence components of the Department.

(3) The use of the intelligence doctrine as a foundation for and to inform the development of the Department-wide training and education referred to in subsection (b)(2), and the incorporation, as appropriate, of intelligence and intelligence-related exercises, best practices, and lessons learned.

(4) Guidance for the dissemination of intelligence information, including within the Department, among and between Federal departments and agencies, among and between members of the intelligence community, among and between State, local, Tribal, and Territorial governments (including law enforcement agencies), with foreign partners, and with the private sector.

(5) The protection of privacy, civil rights, and civil liberties in the conduct of intelligence and intelligence-related activities by the intelligence components of the Department.

(6) Any mission statements, strategic and planning documents, and other pertinent documents relevant to the organizational structure and guidance provided to the intelligence components of the Department.

(d) *FORM.*—The intelligence doctrine, policies, standards, and programs required under subsection (b) shall be disseminated in unclassified form, but may include a classified annex.

(e) *REVIEW AND REVISION.*—

(1) *REQUIRED REVIEWS.*—Not later than 1 year after the date of enactment of this section, and every year thereafter for 4 years, the Secretary shall conduct a review of and, as appropriate, revise the intelligence doctrine, policies, standards, and programs required under subsection (b).

(2) *SUBSEQUENT REVIEWS.*—After the end of the period described in paragraph (1), the Secretary shall conduct a review of and, as appropriate, revise the intelligence doctrine, policies, standards, and programs required under subsection (b) on an as needed basis.

* * * * *