

Suspend the Rules and Pass the Bill, H.R. 5913, With an Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

112TH CONGRESS
2^D SESSION

H. R. 5913

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.

IN THE HOUSE OF REPRESENTATIVES

JUNE 7, 2012

Mr. McCAUL (for himself, Mr. KEATING, and Mr. LONG) introduced the following bill; which was referred to the Committee on Homeland Security

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “DHS Accountability
5 Act of 2012”.

1 **SEC. 2. FINDINGS.**

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

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

23 (2) The Department has considerable work
24 ahead to achieve actions and outcomes critical to ad-
25 dressing persistent management challenges. For ex-
26 ample, a significant number of acquisition programs

1 proceeded without component or departmental ap-
2 proval of essential planning documents. These re-
3 views are important to ensure the success of an ac-
4 quisition program. The Department also continues
5 to face challenges implementing key human capital
6 initiatives. Integrating financial data essential to ef-
7 fectively managing the Department also remains a
8 challenge.

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

22 (4) Investigators continue to identify cases of
23 employee corruption within the Department. Inves-
24 tigations by the Department's Inspector General led
25 to over 400 arrests of employees in 2011. Examples

1 include Border Patrol agents accepting bribes, thefts
2 by airport screeners, and immigration officers
3 complicit in fraud. In addition, overall employee mo-
4 rale in the Department remains one of the lowest in
5 the Federal Government.

6 **SEC. 3. ESTABLISHMENT.**

7 There is established in the legislative branch an inde-
8 pendent advisory panel to—

9 (1) comprehensively assess the management
10 structure and capabilities related to the Department
11 of Homeland Security; and

12 (2) make recommendations to improve the effi-
13 ciency and effectiveness of the management of the
14 Department.

15 **SEC. 4. MEMBERSHIP.**

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

19 (1) Two members shall be appointed by the
20 Speaker of the House of Representatives, in coordi-
21 nation with the Chairman of the Committee on
22 Homeland Security of the House of Representatives.
23 Only one of such members may be from the same
24 political party as the Speaker of the House of Rep-
25 resentatives.

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

7 (3) One member shall be appointed by the mi-
8 nority leader of the House of Representatives, in co-
9 ordination with the Ranking Minority Member of the
10 Committee on Homeland Security of the House of
11 Representatives.

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

17 (5) Two members shall be appointed by the
18 President, in consultation with the Secretary of
19 Homeland Security. Only one of such members may
20 be from the same political party as the President.

21 (b) PROHIBITION.—Except as provided in subsection
22 (a), members of the Panel may not be current appointees
23 of the President's Administration or Members of Con-
24 gress, in order to ensure objectivity of the Panel's assess-
25 ments.

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

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

6 (1) A co-chairman who shall be a member of
7 the Panel designated by the Speaker of the House
8 of Representatives.

9 (2) A co-chairman who shall be a member of
10 the Panel designated by the majority leader of the
11 Senate.

12 (e) VACANCY.—In the event of a vacancy on the
13 Panel, the individual appointed to fill the vacant seat shall
14 be—

15 (1) subject to paragraph (2), appointed by the
16 same officer (or the officer's successor) who made
17 the appointment to the seat when the Panel was
18 first established; or

19 (2) if the officer's successor is of a party other
20 than the party of the officer who made the initial
21 appointment when the Panel was first established,
22 chosen in consultation with the senior officers of the
23 House of Representatives and the Senate of the
24 party which is the party of the officer who made
25 such initial appointment.

1 (f) GOVERNMENT EMPLOYEES.—Members of the
2 Panel who are officers or employees of the Federal Gov-
3 ernment shall serve without additional pay (or benefits in
4 the nature of compensation) for service as a member of
5 the Panel.

6 (g) INITIAL MEETING.—The Panel shall meet and
7 begin the operations of the Panel not later than 60 days
8 after the appointment of all Panel members under sub-
9 section (a).

10 **SEC. 5. DUTIES.**

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

14 (1) The efficiency and effectiveness of the man-
15 agement structure and capabilities, including the
16 policies, practices, and procedures, of the Depart-
17 ment of Homeland Security and its component agen-
18 cies in carrying out the management functions, such
19 as program acquisition, financial management, infor-
20 mation technology, human capital issues, perform-
21 ance measurement, and risk management efforts, re-
22 lated to homeland security.

23 (2) The extent to which unnecessary duplication
24 exists in such management structure and capabili-

1 ties, and how, if at all, such duplication negatively
2 affects the mission of protecting the United States.

3 (3) The extent to which management of key
4 homeland security missions is centralized under the
5 Department.

6 (4) Options, as appropriate, to reduce or elimi-
7 nate harmful waste and duplication of effort in the
8 Department.

9 (5) Measures to evaluate the Department's
10 progress in reducing and eliminating waste and du-
11 plication from its management structure and capa-
12 bilities.

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

20 **SEC. 6. POWERS AND AUTHORITIES.**

21 (a) **HEARINGS AND EVIDENCE.**—

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

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

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

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

22 (b) SUBPOENAS.—

23 (1) ISSUANCE.—

24 (A) IN GENERAL.—A subpoena may be
25 issued under this subsection only—

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

2 (ii) by the affirmative recorded vote of
3 six members of the Panel.

4 (B) SIGNATURE.—Subpoenas issued under
5 this subsection may be—

6 (i) issued under the signature of the
7 two co-chairmen or any member designated
8 by a majority of the Panel; and

9 (ii) served by any person designated
10 by the two co-chairmen or by any member
11 designated by a majority of the Panel.

12 (2) ENFORCEMENT.—

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

24 (B) ADDITIONAL ENFORCEMENT.—In the
25 case of any failure of any witness to comply

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

11 (c) PERSONNEL.—

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

18 (2) COMPENSATION.—The co-chairmen, in ac-
19 cordance with rules agreed upon by the Panel, may
20 appoint and fix the compensation of a staff director
21 and such other personnel as may be necessary to en-
22 able the Panel to carry out its functions, without re-
23 gard to the provisions of title 5, United States Code,
24 governing appointments in the competitive service,
25 and without regard to the provisions of chapter 51

1 and subchapter III of chapter 53 of such title relat-
2 ing to classification and General Schedule pay rates,
3 except that no rate of pay fixed under this para-
4 graph may exceed the equivalent of that payable for
5 a position at level V of the Executive Schedule under
6 section 5316 of title 5, United States Code.

7 (3) **DETAILEES.**—Any employee of the Federal
8 Government may be detailed to the Panel without
9 reimbursement from the Panel, and such detailee
10 shall retain the rights, status, and privileges of the
11 employee's regular employment without interruption.

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

19 (5) **VOLUNTEER SERVICES.**—Notwithstanding
20 section 1342 of title 31, United States Code, the
21 Panel may accept and use voluntary and uncompen-
22 sated services as the Panel determines necessary.

23 (d) **SECURITY CLEARANCES.**—The appropriate de-
24 partments or agencies of the Federal Government shall co-
25 operate with the Panel in expeditiously providing to the

1 Panel members and staff appropriate security clearances
2 to the extent possible pursuant to existing procedures and
3 requirements, except that no person shall be provided with
4 access to classified information under this section without
5 the appropriate security clearances.

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

10 (f) POSTAL SERVICES.—The Panel may use the
11 United States mails in the same manner and under the
12 same conditions as departments and agencies of the
13 United States.

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

21 (h) RULES OF PROCEDURE.—The Panel may estab-
22 lish rules for the conduct of the Panel's business, if such
23 rules are not inconsistent with this Act or other applicable
24 law.

1 (i) NONAPPLICABILITY OF THE FEDERAL ADVISORY
2 COMMITTEE ACT.—The Federal Advisory Committee Act
3 (5 U.S.C. App.) shall not apply to the Panel.

4 (j) TERMINATION.—The Panel shall terminate on the
5 date that is 60 days after the date of the submission of
6 its final report.

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

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

16 (b) OTHER REPORTS AND BRIEFINGS.—The Panel
17 may from time to time submit to the committees specified
18 in subsection (a) such other reports and briefings relating
19 to the assessment and examination carried out in accord-
20 ance with section 5 as the Panel considers appropriate.
21 Such committees may request information on the Panel's
22 progress as it conducts its work.

23 (c) FINAL REPORT.—Not later than two years after
24 the date of the appointment of all the members of the
25 Panel, the Panel shall submit to the committees specified

1 in subsection (a) a final report on the assessment and ex-
2 amination carried out in accordance with section 5. Such
3 final report shall—

4 (1) include the findings of the Panel;

5 (2) identify lessons learned related to homeland
6 security management issues; and

7 (3) include specific recommendations related
8 to—

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

16 (B) reducing or eliminating unnecessary
17 duplication in the management structure and
18 capabilities of the Department and its compo-
19 nent agencies;

20 (C) options, as appropriate, to reduce or
21 eliminate harmful waste and duplication of ef-
22 fort in the Department; and

23 (D) developing measures to evaluate the
24 Department's progress in reducing and elimi-

- 1 nating waste and duplication from its manage-
- 2 ment structure and capabilities.