

112TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session 112-466

WMD INTELLIGENCE AND INFORMATION SHARING ACT
OF 2012

MAY 8, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. KING of New York, from the Committee on Homeland Security,
submitted the following

R E P O R T

[To accompany H.R. 2764]

The Committee on Homeland Security, to whom was referred the bill (H.R. 2764) to amend the Homeland Security Act of 2002 to establish weapons of mass destruction intelligence and information sharing functions of the Office of Intelligence and Analysis of the Department of Homeland Security and to require dissemination of information analyzed by the Department to entities with responsibilities relating to homeland security, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend 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 “WMD Intelligence and Information Sharing Act of 2012”.

SEC. 2. WEAPONS OF MASS DESTRUCTION INTELLIGENCE AND INFORMATION SHARING.

(a) In GENERAL.—Subtitle A of title II of the Homeland Security Act of 2002 (6 U.S.C. 121 et seq.) is amended by adding at the end the following:

“SEC. 210G. WEAPONS OF MASS DESTRUCTION INTELLIGENCE AND INFORMATION SHARING.

“(a) In GENERAL.—The Office of Intelligence and Analysis of the Department of Homeland Security shall—

“(1) support homeland security-focused intelligence analysis of terrorist actors, their claims, and their plans to conduct attacks involving chemical, biological, radiological, and nuclear materials against the Nation;

“(2) support homeland security-focused intelligence analysis of global biological threats, including global infectious disease, public health, food, agricultural, and veterinary issues, through activities such as engagement of international partners;

“(3) support homeland security-focused risk analysis and risk assessments of the homeland security hazards described in paragraphs (1) and (2) by providing relevant quantitative and nonquantitative threat information;

“(4) leverage existing and emerging homeland security intelligence capabilities and structures to enhance prevention, protection, response, and recovery efforts with respect to a chemical, biological, radiological, or nuclear attack;

“(5) share information and provide tailored analytical support on these threats to State, local, and tribal authorities as well as other national biosecurity and biodefense stakeholders; and

“(6) perform other responsibilities, as assigned by the Secretary.

“(b) COORDINATION.—Where appropriate, the Office of Intelligence and Analysis shall coordinate with other relevant Department components, others in the Intelligence Community, including the National Counter Proliferation Center, and other Federal, State, local, and tribal authorities, including officials from high-threat areas, and enable such entities to provide recommendations on optimal information sharing mechanisms, including expeditious sharing of classified information, and on how they can provide information to the Department.

“(c) REPORT.—

“(1) In GENERAL.—Not later than one year after the date of the enactment of this section and annually thereafter, the Secretary shall report to the appropriate congressional committees on—

“(A) the intelligence and information sharing activities under subsection (a) and of all relevant entities within the Department to counter the threat from weapons of mass destruction; and

“(B) the Department’s activities in accordance with relevant intelligence strategies.

“(2) ASSESSMENT OF IMPLEMENTATION.—The report shall include—

“(A) a description of methods established to assess progress of the Office of Intelligence and Analysis in implementing this section; and

“(B) such assessment.

“(d) DEFINITIONS.—In this section:

“(1) The term ‘appropriate congressional committees’ means the Committee on Homeland Security of the House of Representatives and any committee of the House of Representatives or the Senate having legislative jurisdiction under the rules of the House of Representatives or Senate, respectively, over the matter concerned.

“(2) The term ‘Intelligence Community’ has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

“(3) The term ‘national biosecurity and biodefense stakeholders’ means officials from the Federal, State, local, and tribal authorities and individuals from the private sector who are involved in efforts to prevent, protect against, respond to, and recover from a biological attack or other phenomena that may have serious health consequences for the United States, including wide-scale fatalities or infectious disease outbreaks.”.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act is amended by adding at the end of the items relating to such subtitle the following:

“Sec. 210G. Weapons of mass destruction intelligence and information sharing.”.

SEC. 3. DISSEMINATION OF INFORMATION ANALYZED BY THE DEPARTMENT TO STATE, LOCAL, TRIBAL, AND PRIVATE ENTITIES WITH RESPONSIBILITIES RELATING TO HOMELAND SECURITY.

Section 201(d)(8) of the Homeland Security Act of 2002 (6 U.S.C. 121(d)(8)) is amended by striking “and to agencies of State” and all that follows and inserting “to State, local, tribal, and private entities with such responsibilities, and, as appropriate, to the public, in order to assist in preventing, deterring, or responding to acts of terrorism against the United States.”.

PURPOSE AND SUMMARY

The purpose of H.R. 2764 is to amend the Homeland Security Act of 2002 to establish weapons of mass destruction intelligence and information sharing functions of the Office of Intelligence and Analysis of the Department of Homeland Security and to require dissemination of information analyzed by the Department to entities with responsibilities relating to homeland security, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The Congressionally-mandated Commission on the Prevention of WMD Proliferation and Terrorism found insufficiencies in the Intelligence Community’s ability to meet the needs of the highly technical nature of weapons of mass destruction (WMD) collection and analysis. The bioweapons threat in particular, the Commissioners argued in their report “World at Risk,” must remain among the highest national intelligence priorities. The Department of Homeland Security, as a member of the Intelligence Community, contributes to this goal. H.R. 2764, therefore, codifies and provides Congressional direction toward WMD intelligence activities at the Department of Homeland Security to ensure that vital WMD intelligence analysis and information sharing conducted within the Office of Intelligence and Analysis and elsewhere in the Department are retained, enhanced, coordinated with other agencies, and shared with appropriate stakeholders.

HEARINGS

No hearings were held on H.R. 2764 in the 112th Congress; however, the Committee conducted oversight and related legislative hearings on the issues involved.

On May 3, 2011, the Subcommittee on Counterterrorism and Intelligence held a hearing entitled, “The Threat to the U.S. Homeland Emanating from Pakistan.” The Subcommittee received testimony from Dr. Frederick Kagan, Resident Scholar and Director, American Enterprise Institute Critical Threats Project; Dr. Seth Jones, Senior Political Scientist, The RAND Corporation; Mr. Stephen Tankel, Visiting Fellow, South Asia Program, The Carnegie Endowment for International Peace; and Mr. Shuja Nawaz, Director, South Asia Center, The Atlantic Council.

On June 1, 2011, the Subcommittee on Counterterrorism and Intelligence held a hearing entitled, “The DHS Intelligence Enterprise—Past, Present, and Future.” The Subcommittee received testimony from Hon. Caryn Wagner, Under Secretary for the Office of Intelligence and Analysis, Department of Homeland Security; Rear Admiral Thomas Atkin, Assistant Commandant for Intelligence and Criminal Investigation, U.S. Coast Guard; Mr. Daniel Johnson, Assistant Administrator for Intelligence, U.S. Transportation Secu-

rity Administration; Mr. James Chaparro, Assistant Director for Intelligence, U.S. Immigration and Customs Enforcement; and Ms. Susan Mitchell, Deputy Assistant Commissioner, Office of Intelligence and Operations Coordination, U.S. Customs and Border Protection.

On June 23, 2011, the Subcommittee on Cybersecurity, Infrastructure Protection, and Security Technologies, and the Subcommittee on Emergency Preparedness, Response, and Communications held a joint hearing on legislative recommendations of the WMD Commission entitled, “The WMD Prevention and Preparedness Act of 2011.” The Subcommittees received testimony from Hon. William J. Pascrell, Jr., a Representative in Congress from the 8th District of New Jersey; Senator Jim Talent, Vice Chairman, The Bipartisan WMD Center; Dr. Robert P. Kadlec, Former Special Assistant to the President for Biodefense; and Mr. Richard H. Berdnik, Sheriff, Passaic County, New Jersey. Provisions of H.R. 2764 were included within the proposed WMD Prevention and Preparedness Act of 2011.

On October 5, 2011, the Subcommittee on Counterterrorism and Intelligence held a hearing entitled, “Intelligence Sharing and Terrorist Travel: How DHS Addresses the Mission of Providing Security, Facilitating Commerce and Protecting Privacy for Passengers Engaged in International Travel.” The Subcommittee received testimony from Hon. David Heyman, Assistant Secretary for Policy, Department of Homeland Security; Ms. Mary Ellen Callahan, Chief Privacy Officer, Department of Homeland Security; and Mr. Thomas Bush, Executive Director of Automation and Targeting, Office of Intelligence and Investigative Liaison, Customs and Border Protection, Department of Homeland Security.

COMMITTEE CONSIDERATION

The Subcommittee on Counterterrorism and Intelligence met on November 15, 2011, to consider H.R. 2764, and ordered the measure reported to the Full Committee with a favorable recommendation, without amendment, by voice vote.

The Committee met on March 28, 2012, to consider H.R. 2764, 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 offered by Mr. CLARKE of Michigan (#1); was AGREED TO, by voice vote.

Page 2, strike lines 18 through 20 and insert the following:

“(2) support homeland security-focused intelligence analysis of global biological threats, including infectious disease, public health, food, agricultural, and veterinary issues, through activities such as engagement of international partners.

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. 2764.

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. 2764, the WMD Intelligence and Information Sharing Act of 2011, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the Congressional Record upon its receipt by the Committee.

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. 2764 contains the following general performance goals, and objectives, including outcome related goals and objectives authorized.

H.R. 2764 required the Department to issue a report not less than 2 years after enactment to assess the implementation of this Act.

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

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the Congressional Record upon its receipt by the Committee.

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. 2764 does not preempt any State, local, or Tribal law.

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 Act may be cited as the “WMD Intelligence and Information Sharing Act of 2012”.

Section 2. Weapons of mass destruction intelligence and information sharing

This section amends the Homeland Security Act of 2002 to require the Department of Homeland Security Office of Intelligence and Analysis (I&A) to support homeland-security focused analysis of terrorist actors pertaining to chemical, biological, radiological, and nuclear (CBRN) materials, global biological threats, public health and food, agricultural, and veterinary issues. The Department is required to leverage existing and emerging homeland security capabilities, such as fusion centers, and share information with State, local, and Tribal partners and other stakeholders. Where appropriate, I&A shall coordinate with other relevant Department components, others in the Intelligence Community, and other Federal, State, local, and Tribal authorities, including officials from high-threat areas, and enable such entities to provide recommendations on optimal information sharing mechanisms. The Secretary shall report annually to the appropriate congressional committees on activities to counter the threat from weapons of mass destruction (WMD) conducted by all relevant entities within the Department.

The Committee is aware that I&A is engaged in CBRN intelligence and information sharing activities. This provision ensures that the Department has adequate and enduring expertise in its intelligence division to analyze and disseminate CBRN information, which may be highly technical. The Committee believes that this unit should work to the greatest extent possible with other Department of Homeland Security components (operational and intelligence), headquarters elements, and State, local, and Tribal authorities in order to enhance the Department’s counter-WMD activities. State, local, and Tribal participation, in particular, should include officials from high threat areas. The effective and appropriate sharing of information with state and local partners is paramount and remains a Committee priority. The Committee does not intend for the activities outlined by this section to duplicate those already conducted by the National Counterterrorism Center, the

Federal Bureau of Investigation, or other members of the Intelligence Community. The Committee believes that strict adherence to relevant National intelligence strategies will ensure clarity of mission for each Federal entity engaged in WMD intelligence activities.

Section 3. Dissemination of information analyzed by the Department to State, local, Tribal, and private entities with responsibilities relating to Homeland Security

This section expands the list of entities in section 201(d)(8) of the Homeland Security Act of 2002 which the Department disseminates information to include State, local, Tribal and private sector entities with homeland security responsibilities, and as appropriate, to the public, in order to assist in preventing, deterring, or responding to acts of terrorism against the United States. Specifically, this provision adds Tribal entities and the public to the existing provision, recognizing that they are important stakeholders and partners in preventing, deterring, and responding to acts of terrorism against the United States, including chemical, biological, radiological, and nuclear terrorism.

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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, 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) * * *

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

* * * * *

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

SUBTITLE A—INFORMATION AND ANALYSIS AND INFRASTRUCTURE PROTECTION; ACCESS TO INFORMATION

* * * * *

Sec. 210G. Weapons of mass destruction intelligence and information sharing.

* * * * *

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Subtitle A—Information and Analysis and Infrastructure Protection; Access to Information

SEC. 201. INFORMATION AND ANALYSIS AND INFRASTRUCTURE PROTECTION.

(a) * * *

* * * * *

(d) RESPONSIBILITIES OF SECRETARY RELATING TO INTELLIGENCE AND ANALYSIS AND INFRASTRUCTURE PROTECTION.—The responsibilities of the Secretary relating to intelligence and analysis and infrastructure protection shall be as follows:

(1) * * *

* * * * *

(8) To disseminate, as appropriate, information analyzed by the Department within the Department, to other agencies of the Federal Government with responsibilities relating to homeland security, [and to agencies of State and local governments and private sector entities with such responsibilities in order to assist in the deterrence, prevention, preemption of, or response to, terrorist attacks against the United States.] to *State, local, tribal, and private entities with such responsibilities, and, as appropriate, to the public, in order to assist in preventing, deterring, or responding to acts of terrorism against the United States.*

* * * * *

SEC. 210G. WEAPONS OF MASS DESTRUCTION INTELLIGENCE AND INFORMATION SHARING.

(a) *IN GENERAL.*—The Office of Intelligence and Analysis of the Department of Homeland Security shall—

(1) support homeland security-focused intelligence analysis of terrorist actors, their claims, and their plans to conduct attacks involving chemical, biological, radiological, and nuclear materials against the Nation;

(2) support homeland security-focused intelligence analysis of global biological threats, including global infectious disease, public health, food, agricultural, and veterinary issues, through activities such as engagement of international partners;

(3) support homeland security-focused risk analysis and risk assessments of the homeland security hazards described in paragraphs (1) and (2) by providing relevant quantitative and nonquantitative threat information;

(4) leverage existing and emerging homeland security intelligence capabilities and structures to enhance prevention, protection, response, and recovery efforts with respect to a chemical, biological, radiological, or nuclear attack;

(5) share information and provide tailored analytical support on these threats to State, local, and tribal authorities as well as other national biosecurity and biodefense stakeholders; and
 (6) perform other responsibilities, as assigned by the Secretary.

(b) COORDINATION.—Where appropriate, the Office of Intelligence and Analysis shall coordinate with other relevant Department components, others in the Intelligence Community, including the National Counter Proliferation Center, and other Federal, State, local, and tribal authorities, including officials from high-threat areas, and enable such entities to provide recommendations on optimal information sharing mechanisms, including expeditious sharing of classified information, and on how they can provide information to the Department.

(c) REPORT.—

(1) IN GENERAL.—Not later than one year after the date of the enactment of this section and annually thereafter, the Secretary shall report to the appropriate congressional committees on—

(A) the intelligence and information sharing activities under subsection (a) and of all relevant entities within the Department to counter the threat from weapons of mass destruction; and

(B) the Department's activities in accordance with relevant intelligence strategies.

(2) ASSESSMENT OF IMPLEMENTATION.—The report shall include—

(A) a description of methods established to assess progress of the Office of Intelligence and Analysis in implementing this section; and

(B) such assessment.

(d) DEFINITIONS.—In this section:

(1) The term “appropriate congressional committees” means the Committee on Homeland Security of the House of Representatives and any committee of the House of Representatives or the Senate having legislative jurisdiction under the rules of the House of Representatives or Senate, respectively, over the matter concerned.

(2) The term “Intelligence Community” has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(3) The term “national biosecurity and biodefense stakeholders” means officials from the Federal, State, local, and tribal authorities and individuals from the private sector who are involved in efforts to prevent, protect against, respond to, and recover from a biological attack or other phenomena that may have serious health consequences for the United States, including wide-scale fatalities or infectious disease outbreaks.

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