

S 2976

DHS Accountability Act of 2016

Congress: 114 (2015–2017, Ended)

Chamber: Senate

Policy Area: Emergency Management

Introduced: May 23, 2016

Current Status: Placed on Senate Legislative Calendar under General Orders. Calendar No. 532.

Latest Action: Placed on Senate Legislative Calendar under General Orders. Calendar No. 532. (Jun 28, 2016)

Official Text: <https://www.congress.gov/bill/114th-congress/senate-bill/2976>

Sponsor

Name: Sen. Johnson, Ron [R-WI]

Party: Republican • **State:** WI • **Chamber:** Senate

Cosponsors (1 total)

Cosponsor	Party / State	Role	Date Joined
Sen. Carper, Thomas R. [D-DE]	D · DE		May 23, 2016

Committee Activity

Committee	Chamber	Activity	Date
Homeland Security and Governmental Affairs Committee	Senate	Reported By	Jun 28, 2016

Subjects & Policy Tags

Policy Area:

Emergency Management

Related Bills

Bill	Relationship	Last Action
114 S 1808	Related bill	Dec 14, 2016: Became Public Law No: 114-267.
114 S 2522	Related bill	Jul 11, 2016: Placed on Senate Legislative Calendar under General Orders. Calendar No. 552.
114 S 2450	Related bill	Jul 6, 2016: Placed on Senate Legislative Calendar under General Orders. Calendar No. 545.
114 HR 4402	Related bill	Feb 24, 2016: Received in the Senate and Read twice and referred to the Committee on Homeland Security and Governmental Affairs.
114 HR 4408	Related bill	Feb 24, 2016: Received in the Senate and Read twice and referred to the Committee on Homeland Security and Governmental Affairs.
114 HR 455	Related bill	Oct 29, 2015: Received in the Senate and Read twice and referred to the Committee on Homeland Security and Governmental Affairs.
114 S 1864	Related bill	Oct 8, 2015: Placed on Senate Legislative Calendar under General Orders. Calendar No. 255.

DHS Accountability Act of 2016

TITLE I--DEPARTMENT MANAGEMENT AND COORDINATION

(Sec. 101) This bill amends the Homeland Security Act of 2002 to make the Department of Homeland Security's (DHS's) Under Secretary for Management: (1) the first assistant to the Deputy Secretary of Homeland Security, thereby requiring the Under Secretary to perform as the acting Deputy Secretary if the Deputy Secretary dies, resigns, or is unable to perform; and (2) the acting DHS Secretary if by reason of absence, disability, or vacancy in office, neither the DHS Secretary nor Deputy Secretary is available to exercise the Secretary's duties.

The President, with the Senate's advice and consent, must appoint a DHS Under Secretary for Strategy, Policy, and Plans to head an office that coordinates DHS-wide strategic planning, leadership councils, and international engagement.

DHS may designate other officers in further order of succession to serve as acting Secretary and must notify Congress of any vacancies in senior positions.

The Under Secretary for Management's responsibilities for management integration and transformation (consistent and consolidated functions for information technology, financial management, acquisition management, logistics and material resource management, asset security, and human capital management) are expanded to include each DHS functional management discipline within the development of: (1) centralized data sources and connectivity of information systems, (2) standardized and automated management information, and (3) program management and regular oversight mechanisms.

The DHS transition and succession plan for new presidential administrations must be made available to Congress.

DHS must report to the Government Accountability Office (GAO) every six months on progress in implementing corrective action plans to address the designation of DHS management functions on the GAO's biannual high-risk list, until the GAO notifies Congress of the removal of the high-risk designation.

DHS must notify Congress and the DHS inspector general if DHS waives the prohibition against engaging in business with a contractor or other recipient of funds that is listed as suspended or debarred from receiving federal assistance in the System for Award Management maintained by the General Services Administration (GSA).

(Sec. 102) DHS may: (1) establish leadership councils to ensure coordination among DHS leadership, and (2) direct development of joint operational plans.

A Joint Requirements Council of senior officials is established to: (1) identify and validate joint requirements and capabilities that multiple DHS components or task forces must possess in their systems or services to satisfy contractual or other formally imposed requirements; (2) ensure efficiencies among life-cycle schedules, performance objectives, and procurement quantities; and (3) make prioritized capability recommendations for such joint requirements. DHS must ensure that the Future Years Homeland Security Program is consistent with the council's recommendations.

DHS may establish joint task forces to coordinate with foreign governments and other federal, state, or local agencies to maintain situational awareness of: (1) unlawful cross-border trafficking and crossings, and (2) operational capabilities for continuous and integrated surveillance of U.S. borders. Joint task forces may also be established for: (1) coordination of U.S. land and maritime borders; (2) cybersecurity; and (3) prevention, preparation, and response to other homeland

security matters.

For each joint task force, the director and deputy director must be from different DHS offices or components. DHS must report annually on each task force's: (1) total funding, personnel, and resources allocated from each DHS component; and (2) effectiveness using outcome-based performance metrics.

DHS must establish a joint duty training program to coordinate workforce professional development and improve task force joint operations. The program must address national security strategy, strategic and contingency planning, command and control of operations under joint command, international engagement, all the governmental and nongovernmental entities involved in the homeland security enterprise, interagency collaboration, and leadership.

DHS must notify Congress of the formation of joint task forces, but DHS may waive the notice requirement in an emergency that imminently threatens the protection of human life or property. The DHS inspector general must report to Congress with an evaluation of joint task forces.

DHS may not establish a joint task force to coordinate operations for a major disaster or emergency declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act or an incident for which the Federal Emergency Management Agency (FEMA) has primary responsibility.

(Sec. 103) The National Operations Center's current role in providing situational awareness to federal, state, and local governments about events of terrorism and other natural or man-made disasters is expanded to include threats and incidents of such events. The center must also: (1) provide information to the private sector and international partners, and (2) enter information sharing agreements with other federal operations centers and homeland security partners.

Each federal agency must provide the center with timely information about: (1) events, threats, and incidents; and (2) the status and potential vulnerability of U.S. critical infrastructure and key resources.

DHS must replace the center's fire service representative with a representative of state and local emergency responders.

(Sec. 104) DHS must establish a Homeland Security Advisory Council.

(Sec. 105) An Office of Strategy, Policy, and Plans (OSPP) is established to: (1) coordinate DHS strategic plans and long-term goals, (2) conduct DHS's quadrennial homeland security review, (3) manage and provide analytics to DHS leadership councils, and (4) establish standards for DHS statistical data. The bill transfers from the Under Secretary for Management to the OSPP the responsibility to maintain immigration statistical information of the U.S. Customs and Border Protection (CBP) and the U.S. Citizenship and Immigration Services.

(Sec. 106) An Office for Partnerships Against Violent Extremism is established to lead DHS efforts to counter violent extremism by:

- partnering with communities to address vulnerabilities that can be exploited by violent extremists;
- working with civil society groups to counter propaganda or recruitment;
- developing a digital engagement strategy that utilizes Internet and social media platforms;
- entering cooperative agreements state, local, tribal, and federal agencies and disseminating information to nongovernmental partners;
- coordinating with the Department of State on international violent extremism; and
- coordinating with FEMA on guidance for the use of terrorism protection grants to state, local, and tribal governments to counter violent extremism.

DHS must submit a comprehensive DHS strategy to counter violent extremism in the United States. In developing the strategy, DHS must consider efforts to: (1) increase support for programs and initiatives of other governmental, nongovernmental, and foreign partners; and (2) disseminate resources and training guidance to local law enforcement agencies and the general public.

The Assistant Secretary must submit annual reports on DHS programs and policies to counter violent extremism, including its assistance to other agencies and an accounting of its awarded grants, cooperative agreements, and training. The Office for Civil Rights and Civil Liberties shall conduct annual reviews to ensure that these activities respect the privacy, civil rights, and civil liberties of all persons.

FEMA's grants that assist high-risk urban areas and state, local, and tribal governments in protecting against terrorism may not be used to support any organization or group that: (1) has knowingly or recklessly funded domestic or international terrorism, or (2) is known to engage in or recruit for such activities.

This section shall be repealed seven years after enactment of this bill.

TITLE II--DEPARTMENT ACCOUNTABILITY, EFFICIENCY, AND WORKFORCE REFORMS

(Sec. 201) DHS must submit to Congress: (1) a review of its international affairs offices and functions to eliminate unnecessary duplication; and (2) an action plan to address duplication, fragmentation, overlap, and opportunities for cost savings and revenue enhancement identified by the GAO.

(Sec. 202) DHS must submit an information technology strategic plan to: (1) align budget priorities; (2) estimate dates for the elimination of unnecessarily duplicative, legacy, or outdated technology; (3) list projects and completion dates; (4) identify high risk projects and cybersecurity risks; and (5) maximize the use and purchase of commercial off-the-shelf products.

(Sec. 203) DHS must conduct an inventory of its software licenses to bring the number of licenses into balance with DHS's needs.

(Sec. 204) The DHS Chief Human Capital Officer must report to the Under Secretary for Management and develop strategic workforce planning policies, performance measures, compensation flexibilities for employee recruitment and retention, training opportunities, career path frameworks, and methods to eliminate duplicative or unnecessary human capital policies.

Each DHS component must develop a five-year workforce strategy for DHS to determine its proper balance of federal employees and private labor resources.

(Sec. 205) If the DHS Secretary, an administrative law judge, the Merit Systems Protections Board, the Office of Special Counsel, an adjudicating body under a union contract, a federal judge, or the DHS inspector general determines that a DHS supervisor committed certain prohibited personnel actions against a DHS employee whistleblower, DHS shall propose a minimum 12-day suspension for a first violation or removal for a second violation. DHS must carry out the suspension or removal if, after providing the supervisor an opportunity to answer and furnish evidence, DHS determines that such evidence is insufficient to reverse the proposed suspension or removal.

DHS must provide: (1) training to DHS supervisors regarding how to respond to complaints alleging a violation of whistleblower protections, and (2) inform DHS employees of their whistleblower rights and the procedures for lawful disclosures.

(Sec. 206) The Under Secretary for Management must submit to Congress a report that: (1) recommends adjustments in DHS management and administration that would reduce deficiencies, reduce costs, and enhance efficiencies; and (2) examines whether unnecessary duplication, overlap, or fragmentation exists among DHS components, the Office of Personnel Management (OPM), and the GSA.

(Sec. 207) The bill abolishes the position of Director of Shared Services and the Office of Counternarcotics Enforcement.

TITLE III--DEPARTMENT TRANSPARENCY AND ASSESSMENTS

(Sec. 301) DHS's immigration functions report must address: (1) the number of persons known to have overstayed the terms of their visa, by visa type; (2) the estimated percentage of persons believed to have overstayed their visa, by visa type; and (3) immigration enforcement actions.

DHS must develop and annually implement metrics to measure the effectiveness of: (1) security between ports of entry; (2) security at ports of entry; (3) security in the maritime environment; and (4) aviation assets and operations of the CBP's Office of Air and Marine, including in detecting and apprehending subjects and in seizing illicit drugs. Such metrics shall be informed by situational awareness, which is defined as knowledge and unified understanding of current unlawful cross-border activity.

DHS shall: (1) make data related to apprehensions, inadmissible aliens, drug seizures, and other enforcement actions available to the public, academic research, and law enforcement communities in accordance with applicable privacy laws; (2) provide DHS's Office of Immigration Statistics with unfettered access to the data; (3) submit an annual report containing such metrics and the data and methodology used to develop such metrics to Congress and the GAO; and (4) after submitting its final report, evaluate and update such metrics to ensure that they meet DHS's performance management needs and are suitable to measure the effectiveness of border security. The GAO shall submit biennial reports analyzing and making recommendations regarding the suitability and statistical validity of the data and methodology contained in such DHS reports.

DHS must submit annually through FY2025 a State of the Border report that includes: (1) metric trends for the last 10 years, and (2) analysis of illegal flow rates.

(Sec. 302) DHS must submit annual mitigation plans in response to reports by the Under Secretary for Intelligence and Analysis, and recommendations of the DHS inspector general, regarding current threats to homeland security and DHS's capability to address those threats.

(Sec. 303) FEMA must report on the feasibility of gathering data and providing information to Congress on the use of federal grant awards, for expenditures of more than \$5,000, by state, local, and tribal governments and high-risk urban areas that receive federal grants to protect against terrorism under the Urban Area Security Initiative and the State Homeland Security Grant Program.

(Sec. 304) DHS must post on its public website a list of each: (1) research and development (R&D) project that is not classified, and (2) task order for a Federally Funded Research and Development Center or a university-based center of excellence not associated with an R&D project. DHS may exclude from such list, but must provide to Congress, any controlled unclassified information regarding projects or task orders that would jeopardize operational security. For each R&D project that has transitioned to practice, the Under Secretary of Science and Technology must develop and track indicators to demonstrate the uptake of the technology among customers or end-users.

(Sec. 305) DHS and the Department of Agriculture (USDA) must report on the status of construction of the National Bio and Agro-Defense Facility to be the successor to the Plum Island Animal Disease Center. The GAO must report on the project's schedule estimates and budgeting.

(Sec. 307) The DHS inspector general must: (1) audit DHS's award of grants and procurement contracts, and (2) review DHS's suspension and debarment program.

(Sec. 307) DHS's Future Years Homeland Security Program submitted after the President's annual budget submission must project: (1) acquisition estimates for the fiscal year for which the budget is submitted and the four succeeding fiscal years for all major DHS acquisitions; and (2) estimated annual deployment schedules for all physical asset major acquisitions over that five-fiscal-year period and the full operating capability for all information technology major acquisitions.

(Sec. 308) In each quadrennial homeland security review, DHS must identify redundant, wasteful, or unnecessary capabilities and capacities from which resources can be redirected. The report regarding the review must: (1) describe efforts to build capacity of states, local governments, Indian tribes, territories, private entities, individuals, and communities; and (2) propose changes to DHS's authorities, organization, governance structure, or business processes to better fulfill its responsibilities.

(Sec. 309) The bill repeals reporting requirements of:

- USDA and the Department of the Interior on illegal drug cultivation on federal lands;
- DHS and the Department of Defense (DOD) on drug seizures and the number of air and maritime patrol hours dedicated to drug supply reduction; and
- the Department of Justice (DOJ) on drug violation arrests, prosecutions, and seizures.

The bill changes from annual to biennial the requirement for: (1) the Domestic Nuclear Detection Office to report on U.S. nuclear forensic and attribution capabilities, the National Technical Nuclear Forensics Center, and the National Nuclear Forensics Expertise Development Program; (2) DHS, DOJ, the State Department, DOD, the Department of Energy, and the Director of National Intelligence to ensure that agencies review their global nuclear detection architecture.

TITLE IV--MISCELLANEOUS

Administrative Leave Act of 2016

(Sec. 401) This title expresses the sense of Congress that federal agency use of administrative leave for personnel purposes has exceeded reasonable amounts.

The title: (1) prohibits an agency from placing an employee in administrative leave for more than five consecutive days; (2) requires agencies to record administrative leave separately from other types of leave; (3) requires the OPM to prescribe regulations with respect to acceptable agency uses of, and proper recording of, administrative leave and other leave authorized by law; (4) directs agencies to revise and implement their internal policies to meet the requirements of this title; and (5) requires the OPM to report on agency use of administrative leave.

In lieu of administrative leave, agencies may place an employee in investigative or notice leave if the employee is under investigation or the target of an adverse action, but only if the continued presence of the employee in the workplace may pose a threat or cause loss of, or damage to, government property. Before placing an employee on investigative or notice leave, an agency must consider other options, including reassigning the employee, allowing the employee to take

available leave, allowing the employee to telework, or treating the employee as absent without leave.

Agencies may grant leave to employees who cannot report to work due to an act of God, a terrorist attack, or another condition that prevents such employees from safely traveling to or performing work at an approved location.

The OPM must report to Congress within three years after enactment of this bill on whether agency policies comply with the requirements of this section.

(Sec. 402) The President must initiate a review of known instances since 2011 in which a person has traveled or attempted to travel to a conflict zone in Iraq or Syria from the United States to join or provide material support or resources to a terrorist organization. Such review shall: (1) ascertain factors that may have undermined efforts to prevent such travel, including issues related to the timely identification of suspects, information sharing, intervention, and interdiction; and (2) identify lessons learned and areas that can be improved to prevent additional travel by such persons to a conflict zone in Iraq or Syria, or other terrorist safe havens abroad. The President's report on such review must include information on travel routes of greatest concern.

(Sec. 403) The President must submit to Congress a national strategy to combat terrorist travel that addresses efforts to intercept terrorists and foreign fighters and constrain their domestic and international travel. The strategy must be updated after a new President is inaugurated.

The strategy must:

- include an accounting and description of all federal government programs, projects, and activities designed to constrain travel by terrorists and foreign fighters;
- identify specific security vulnerabilities within and outside the United States that may be exploited by such persons;
- delineate goals for closing those vulnerabilities and enhancing the federal government's ability to constrain such travel; and
- describe actions and the means needed to achieve such goals.

The President must submit annual updated plans for agencies to implement the strategy.

The requirement to submit: (1) updated national strategies shall terminate 7 years after enactment of this bill, and (2) implementation plans shall terminate 10 years after such enactment.

(Sec. 404) DHS must submit a northern border threat analysis of:

- terrorism and criminal threats posed by individuals and organized groups seeking to enter the United States through the northern border or to exploit vulnerabilities on such border;
- improvements needed at and between ports of entry along such border to prevent terrorists and instruments of terrorism from entering the United States and to reduce criminal activity, as measured by the total flow of illegal goods, illicit drugs, and smuggled and trafficked persons moved across such border;
- gaps in law, policy, cooperation between state, local, and tribal law enforcement, international agreements, or tribal agreements that hinder effective and efficient border security, counterterrorism, anti-human smuggling and trafficking efforts, and the flow of legitimate trade along the northern border; and
- whether additional preclearance and pre-inspection operations by the CBP at ports of entry along such border could help prevent terrorists and instruments of terror from entering the United States.

For such analysis, DHS must consider and examine:

technology needs and challenges;

- personnel needs and challenges;
- the role of state, local, and tribal law enforcement in general border security activities;
- the need for cooperation among federal, state, local, tribal, and Canadian law enforcement entities relating to border security;
- the terrain, population density, and climate along the northern border; and
- the needs and challenges of DHS facilities.

Actions Timeline

- **Jun 28, 2016:** Committee on Homeland Security and Governmental Affairs. Reported by Senator Johnson with amendments. With written report No. 114-287.
- **Jun 28, 2016:** Placed on Senate Legislative Calendar under General Orders. Calendar No. 532.
- **May 25, 2016:** Committee on Homeland Security and Governmental Affairs. Ordered to be reported with amendments favorably.
- **May 23, 2016:** Introduced in Senate
- **May 23, 2016:** Read twice and referred to the Committee on Homeland Security and Governmental Affairs.