

DEPARTMENT OF HOMELAND SECURITY SUPPORT TO
FUSION CENTERS ACT OF 2015

NOVEMBER 2, 2015.—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. 3503]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 3503) to require an assessment of fusion center personnel needs, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary	3
Background and Need for Legislation	3
Hearings	4
Committee Consideration	4
Committee Votes	5
Committee Oversight Findings	5
New Budget Authority, Entitlement Authority, and Tax Expenditures	5
Congressional Budget Office Estimate	5
Statement of General Performance Goals and Objectives	6
Duplicative Federal Programs	6
Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits ...	6
Federal Mandates Statement	6
Preemption Clarification	7
Disclosure of Directed Rule Makings	7
Advisory Committee Statement	7
Applicability to Legislative Branch	7
Section-by-Section Analysis of the Legislation	7
Changes in Existing Law Made by the Bill, as Reported	9
Committee Correspondence	10

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 “Department of Homeland Security Support to Fusion Centers Act of 2015”.

SEC. 2. FUSION CENTER PERSONNEL NEEDS ASSESSMENT.

(a) **IN GENERAL.**—Not later than 120 days after the date of the enactment of this Act, the Under Secretary of Intelligence and Analysis of the Department of Homeland Security, in coordination with the appropriate components and offices of the Department and the Homeland Security Advisors of the States, shall, in consultation with the principal officials of the fusion centers in the National Network of Fusion Centers, conduct a needs assessment of Department personnel assigned to fusion centers pursuant to subsection (c) of section 210A of the Homeland Security Act of 2002 (6 U.S.C. 124h), including an assessment of whether deploying additional Department personnel to such fusion centers would enhance the Department’s mission under section 101(b) of such Act and the National Network of Fusion Centers. The assessment required under this subsection shall include the following:

(1) Information on the current deployment of the Department’s personnel to each fusion center.

(2) Information on the roles and responsibilities of the Office of Intelligence and Analysis’ intelligence officers, intelligence analysts, senior reports officers, reports officers, and regional directors deployed to fusion centers.

(3) Information on Federal resources, in addition to personnel, provided to each fusion center.

(4) An assessment of whether deploying additional personnel, as described in paragraph (2), would enhance intelligence and information sharing between the Department and Federal, State, local, tribal, and territorial partners.

(5) An assessment of fusion centers located in jurisdictions along land and maritime borders of the United States, and the degree to which deploying personnel, as appropriate, from the U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and the Coast Guard to such fusion centers would enhance the integrity and security at such borders by helping Federal, State, local, and tribal law enforcement authorities to identify, investigate, and interdict persons, weapons, and related contraband that pose a threat to homeland security.

(6) An assessment of fusion centers located in jurisdictions with large and medium hub airports, and the degree to which deploying, as appropriate, personnel from the Transportation Security Administration to such fusion centers would enhance the integrity and security of aviation security.

(b) **REPORT.**—Not later than 60 days after the completion of the assessment required under subsection (a), the Under Secretary of Intelligence and Analysis of the Department of Homeland Security, in coordination with the appropriate components and offices of the Department of Homeland Security shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate such assessment, together with a report on the following:

(1) The number of personnel assigned to fusion centers from the Office of Intelligence and Analysis of the Department of Homeland Security, including a breakdown of the types of positions assigned and the methodology for determining the fusion centers to which such personnel are assigned.

(2) The number of personnel assigned to the National Network of Fusion Centers from components and offices of the Department of Homeland Security and the methodology for determining the fusion centers to which such personnel are assigned.

(3) An implementation plan for determining how the Department’s personnel resources will be allocated to fusion centers in the future.

SEC. 3. PROGRAM FOR STATE AND LOCAL ANALYST CLEARANCES.

(a) **IN GENERAL.**—The Under Secretary of Intelligence and Analysis of the Department of Homeland Security, in collaboration with the Chief Security Officer of the Department, shall establish a program to provide eligibility for access to information classified as Top Secret pursuant to Executive Order 13526 (50 U.S.C. 3161 note) for State and local analysts located in fusion centers.

(b) **REPORT.**—Not later than two years after the establishment of the program required under subsection (a), the Under Secretary of Intelligence and Analysis of the Department of Homeland Security shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the following:

(1) The effects of such program on the Department’s ability to sponsor such Top Secret clearances for State and local analysts located in designated fusion centers.

(2) The effects of such program on enhancing information sharing with State, local, tribal, and territorial partners.

(3) The cost for providing additional training and providing such Top Secret clearances for State and local analysts.

(4) The effect of such program on increasing the situational awareness of key stakeholders of the fusion centers, including Federal, State, local, tribal, and territorial law enforcement and emergency response providers.

SEC. 4. INFORMATION TECHNOLOGY ASSESSMENT.

The Under Secretary of Intelligence and Analysis of the Department of Homeland Security, in collaboration with the Chief Information Officer of the Department and representatives from the National Network of Fusion Centers, shall conduct an assessment of information systems (as such term is defined in section 3502 of title 44, United States Code) used to share homeland security information between the Department and fusion centers in the National Network of Fusion Centers and make upgrades to such systems, as appropriate. Such assessment shall include the following:

(1) An evaluation of the accessibility and ease of use of such systems by fusion centers in the National Network of Fusion Centers.

(2) A review to determine how to establish improved interoperability of departmental information systems with existing information systems used by fusion centers in the National Network of Fusion Centers.

(3) An evaluation of participation levels of departmental components and offices of information systems used to share homeland security information with fusion centers in the National Network of Fusion Centers.

SEC. 5. MEMORANDUM OF UNDERSTANDING.

Not later than one year after the date of the enactment of this Act, the Under Secretary of Intelligence and Analysis of the Department of Homeland Security shall enter into a memorandum of understanding with each fusion center in the National Network of Fusion Centers regarding the type of information fusion centers will provide to the Department and whether such information may be subject to public disclosure.

SEC. 6. DEFINITIONS.

In this Act:

(1) **FUSION CENTER.**—The term “fusion center” has the meaning given such term in subsection (j) of section 210A of the Homeland Security Act of 2002 (6 U.S.C. 124h).

(2) **NATIONAL NETWORK OF FUSION CENTERS.**—The term “National Network of Fusion Centers” means a decentralized arrangement of fusion centers intended to enhance individual State and urban area fusion centers’ ability to leverage the capabilities and expertise of all such fusion centers for the purpose of enhancing analysis and homeland security information sharing nationally.

PURPOSE AND SUMMARY

The purpose of H.R. 3503 is to require an assessment of Department of Homeland Security (DHS) employees, including those from the components, and to assess whether additional personnel should be detailed to fusion centers. Additionally, the bill requires the Office of Intelligence and Analysis (I&A) to establish a program to sponsor Top Secret/Sensitive Compartmentalized Information (TS/SCI) clearances for appropriate State and local analysts at fusion centers and report on whether a higher clearance level improves threat awareness and information sharing

BACKGROUND AND NEED FOR LEGISLATION

After the September 11, 2001 terrorist attacks, State and local governments established fusion centers as a way to improve coordination, disseminate Federal intelligence and homeland security information to State and local law enforcement officials, and fuse State and locally collected information with Federal Government intelligence information. There are 78 centers across the country and they have established the National Network of Fusion Centers

to enhance information sharing and coordination between the individual centers.¹ In testimony before the Committee, as well as through numerous briefings and site visits, fusion center personnel have noted that increasing access to information and expertise from other parts of the Department, such as Customs and Border Protection, Immigration and Customs Enforcement, and the Transportation Security Administration would improve the National Network's ability to detect and prevent potential terrorist attacks and other emergencies.

During a Subcommittee on Counterterrorism and Intelligence hearing on February 26, 2015, Members heard from witnesses about the need for some State and local analysts and officials to have higher security clearance levels, particularly TS//SCI clearances. The witnesses noted that in order to continue breaking down stovepipes and increasing information sharing between Federal, State, and local law enforcement officials, State and local analysts should have Top Secret clearances in order to understand the entire threat picture and communicate with Federal personnel about the threat and terrorism investigations.

This legislation addresses these concerns. Additionally, the legislation enhances the partnership between the Department of Homeland Security and the National Network of Fusion Centers by requiring the Under Secretary of Intelligence and Analysis to assess the Department's information systems used to share information with fusion centers and sign a memorandum of understanding with each fusion center on what information will be collected and whether such information may be subject to public disclosure.

HEARINGS

The Committee did not hold any hearing specifically on H.R. 3503; however, the Committee did hold the following oversight hearing in the 114th Congress:

On February 26, 2015, the Subcommittee on Counterterrorism and Intelligence held a hearing entitled "Addressing Remaining Gap in Federal, State, and Local Information Sharing." The Subcommittee received testimony from Mr. Mike Sena, President, National Fusion Center Association; Chief Richard Beary, President, International Association of Chiefs of Police; and Dr. Cedric Alexander, National President, National Organization of Black Law Enforcement Executives.

COMMITTEE CONSIDERATION

The Committee met on September 30, 2015, to consider H.R. 3503, and ordered the measure to be reported to the House with a favorable recommendation, as amended, by voice vote. The Committee took the following actions:

The following amendments were offered:

An en bloc amendment offered by MR. LOUDERMILK (#1); was **AGREED TO** by voice vote.

Consisting of the following amendments:

Page 6, beginning line 3, insert a new section entitled "Sec. 4. Information Technology Assessment."

¹ Committee on Homeland Security Majority Staff Report, "The National Network of Fusion Centers," July 2013. (Accessed at: <http://homeland.house.gov/sites/homeland.house.gov/files/documents/CHS%20SLFC%20Report%202013%20FINAL.pdf>)

Page 6, beginning line 3, insert a new section entitled “Sec. 4. Memorandum of Understanding.”

The Subcommittee on Counterterrorism and Intelligence met on September 17, 2015, to consider H.R. 3503 and reported the measure to the Full Committee 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. 3503.

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. 3503, the Department of Homeland Security Support to Fusion Centers Act of 2015, 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, October 19, 2015.

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. 3503, the Department of Homeland Security Support to Fusion Centers Act of 2015.

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. 3503—Department of Homeland Security Support to Fusion Centers Act of 2015

H.R. 3503 would direct the Department of Homeland Security (DHS) to evaluate the effectiveness of information systems and the deployment of department personnel at fusion centers, which are supported by DHS and facilitate information sharing among fed-

eral, state, and local authorities. The bill also would require the department to establish a program to provide access to certain classified information for state and local personnel at fusion centers. Based on information from DHS, CBO estimates that implementing H.R. 3503 would cost about \$1 million in fiscal year 2016, assuming appropriation of the necessary amounts.

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. 3503 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2026.

H.R. 3503 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

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. 3503 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

The goal of H.R. 3503 is to assess the Department of Homeland Security's personnel detailed to fusion centers, establish a program to provide Top Secret clearances to State and local analysts at fusion centers, as appropriate, assess current information systems being used to share information with fusion centers, and have the Department sign a memorandum of understanding with each fusion center on what fusion center information should be provided to the Department.

Additionally, the Under Secretary of Intelligence and Analysis at the Department shall submit a report to Congress on whether increasing personnel detailed to fusion centers, upgrading information systems, and providing higher clearances will enhance threat and intelligence information sharing.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 3503 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. 3503 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 3503 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 the bill may be cited as the “Department of Homeland Security Support to Fusion Centers Act of 2015”.

Sec. 2. Fusion Center personnel needs assessment

This section requires the Under Secretary of I&A to conduct an assessment of Departmental personnel detailed to fusion centers across the nation and whether deploying additional Departmental personnel will enhance homeland security information sharing between Federal, State, and local departments and agencies. The assessment will look particularly at personnel from the Office of Intelligence and Analysis, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, U.S. Coast Guard, and the Transportation Security Administration.

Additionally, this section requires the Under Secretary to submit a report to Congress on the current number of Departmental personnel detailed to fusion centers and an implementation plan on how personnel will be allocated to fusion centers in the future.

The Committee has consistently heard from fusion center stakeholders, as well as other State and local personnel, about the importance of increasing Departmental presence at fusion centers, both in terms of personnel and access to information. While I&A is the primary agency interfacing with fusion centers, other DHS agencies have information and responsibilities that could be beneficial to State and local agencies.

This section is consistent with existing requirements in the Homeland Security Act, particularly Section 210A (c), which requires I&A to assign personnel to fusion centers, including from component agencies.

Sec. 3. Program for State and local analyst clearances

This section requires the Under Secretary of I&A, in collaboration with the Chief Security Officer, to establish a program to provide Top Secret clearances to State and local analysts in fusion centers as appropriate. This section requires the Under Secretary to submit a report to Congress, two years after the establishment of the program, on (1) the effectiveness of granting higher clearance levels to State and local officials to improve information sharing and situational awareness and (2) the costs for issuing and administering clearances, and the associated training programs.

During a Counterterrorism and Intelligence Subcommittee hearing on February 26, 2015, witnesses stressed that providing appropriate State and local analysts and officials within fusion centers with TS//SCI clearances would significantly improve homeland security information sharing and operational decision-making by State and local authorities.

The authorization of the clearance program in the underlying bill supports on-going efforts at the Department. On June 25, 2015, Under Secretary of I&A Frances X. Taylor notified fusion centers that I&A would sponsor appropriate State, local, tribal, and territorial partners (SLTTP) for TS//SCI clearances “on a case by case basis when the individual to whom the clearance will be granted has demonstrated active and continuing participation in . . . a DHS sponsored board, committee, working group, task force, operations center or other entity where the integration of SLTTP personnel is essential or the individual has a particular expertise or role where there is a demonstrated and foreseeable need for access to Top Secret information.”²

The Committee expects that fusion centers will continue to focus their reports and briefings on reaching the largest number of State, local and private sector stakeholders. It is important that the information being developed and written in fusion centers provide the critical information that local first responders require at the For Official Use Only (FOUO) level whenever possible. This will ensure a wide distribution of important information without compromising classified information.

Sec. 4. Information technology assessment

This section requires the Under Secretary of I&A, in collaboration with the Chief Information Officer and representatives from the National Network of Fusion Centers, to conduct an assessment of information systems used to share homeland security information between the Department and fusion centers. The assessment shall include an evaluation of the accessibility and ease of use, a review of how departmental information systems connect with existing systems in the fusion centers, and an evaluation of participation levels of departmental components and offices using information systems to share information with fusion centers.

²Email from Francis X. Taylor to the Fusion Center Directors and others entitled, “Update from Under Secretary Taylor, Security Clearance Nominations,” sent on June 25, 2015 and forwarded to Committee staff on August 28, 2015 from the Office of Congressional Affairs.

The primary system currently being used for this process is the Homeland Security Information Network or HSIN. A significant amount of progress has been made to develop and improve this tool, which is used to share sensitive but unclassified information. However, the Committee is concerned that the system is not as user friendly as it needs to be, that there is a lack of connectivity between HSIN and other information systems used by State and local entities, and that there is a lack of participation by DHS component agencies.

Sec. 5. Memorandum of Understanding

This section requires the Under Secretary of I&A, not later than one year after the date of enactment of this Act, to enter into a memorandum of understanding with each fusion center in the National Network of Fusion Centers regarding the type of information fusion centers will provide to the Department and if such information may be subject to public disclosure.

The Committee is concerned about an ongoing challenge between DHS and the fusion centers regarding public disclosure of certain information provided by fusion centers. Annually, fusion centers provide the Department with important data regarding each center's progress, threat focus areas, and remaining vulnerabilities. When requesting this information, the Department, through I&A, assured fusion centers that the data would not be publicly disclosed. However, there are concerns that this assurance was incorrect and DHS will have to publicly release the information.

Transparency is an essential element of our government. The problem in this case is that the Department unintentionally misled State and local governments and fusion centers resulting in a serious breach of trust. This issue has the potential to bleed into other areas and create a negative atmosphere for sharing information.

We are facing an unprecedented threat picture in the Homeland related to foreign fighters and homegrown radicals inspired by ISIS. We cannot allow miscommunication and uncertainty between DHS and fusion centers to hamper information sharing.

The purpose of this section is to ensure that both DHS and the fusion centers are aware of what information could be disclosed. This will ensure that both sides are informed and can take appropriate steps, consistent with the Freedom of Information Act, to exempt certain information if deemed necessary.

Sec. 6. Definitions

This section includes definitions for "fusion centers" and the "National Network of Fusion Centers."

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

As reported, H.R. 3503 makes no changes to existing law.

COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
PERMANENT SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC, October 28, 2015.

Hon. MICHAEL MCCAUL,
Chairman, House Committee on Homeland Security,
Washington, DC.

DEAR CHAIRMAN MCCAUL: On September 30, 2015, your committee ordered H.R. 3503, the “Department of Homeland Security Support to Fusion Centers Act of 2015,” reported. Additionally, on that same day, your committee ordered H.R. 3598, the “Fusion Center Enhancement Act of 2015,” reported.

As you know, both H.R. 3503 and H.R. 3598 contain provisions within the jurisdiction of the Permanent Select Committee on Intelligence. On the basis of your consultations with the Committee and in order to expedite the House’s consideration of both bills, the Permanent Select Committee on Intelligence will not assert a jurisdictional claim over either bill by seeking a sequential referral. This courtesy is, however, conditioned on our mutual understanding and agreement that it will in no way diminish or alter the jurisdiction of the Permanent Select Committee with respect to the appointment of conferees or to any future jurisdictional claim over the subject matters contained in the bills or any similar legislation.

I would appreciate your response to this letter confirming this understanding and would request that you include a copy of this letter and your response in the committee reports for both bills and in the Congressional Record during their floor consideration. Thank you in advance for your cooperation.

Sincerely,

DEVIN NUNES,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
Washington, DC, October 29, 2015.

Hon. DEVIN NUNES,
Chairman, Permanent Select Committee on Intelligence,
Washington, DC.

DEAR CHAIRMAN NUNES: Thank you for your letter regarding H.R. 3503, the “Department of Homeland Security Support to Fusion Centers Act of 2015,” and H.R. 3598, the “Fusion Center Enhancement Act of 2015.”

I appreciate your support in bringing both of these measures before the House of Representatives, and accordingly, understand that the Permanent Select Committee on Intelligence will not seek a sequential referral on either bill. I acknowledge that by foregoing a sequential referral on these two pieces of legislation, your Committee is not diminishing or altering its jurisdiction with respect to any future jurisdictional claim over the subject matters contained in these bills or any similar legislation. Additionally, should a conference on either bill be necessary, I would support your request to have the Permanent Select Committee represented on the conference committee.

I will include copies of this exchange in the reports for H.R. 3503 and H.R. 3598 and in the Congressional Record during consideration of these bills on the House floor. I thank you for your cooperation in this matter.

Sincerely,

MICHAEL T. McCAUL,
Chairman,
Committee on Homeland Security.

○