

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5913
OFFERED BY MR. MCCAUL OF TEXAS**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “DHS Accountability
3 Act of 2012”.

4 SEC. 2. FINDINGS.

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

11 (1) The Department of Homeland Security has
12 not prioritized the missions outlined in its key stra-
13 tegic planning documents. This lack of prioritization
14 may hinder the Department’s efforts to effectively
15 manage risks to the United States. Since 2003, the
16 Government Accountability Office designated the
17 transformation of the Department as high risk be-
18 cause the Department had to transform 22 agen-

1 cies—several with major management challenges—
2 into one department, and failure to effectively ad-
3 dress the Department’s management and mission
4 risks could have serious consequences to United
5 States national and economic security. The Govern-
6 ment Accountability Office continues to designate
7 the transformation of the Department as high risk.

8 (2) The Department has considerable work
9 ahead to achieve actions and outcomes critical to ad-
10 dressing persistent management challenges. For ex-
11 ample, a significant number of acquisition programs
12 proceeded without component or departmental ap-
13 proval of essential planning documents. These re-
14 views are important to ensure the success of an ac-
15 quisition program. The Department also continues
16 to face challenges implementing key human capital
17 initiatives. Integrating financial data essential to ef-
18 fectively managing the Department also remains a
19 challenge.

20 (3) Areas of duplicative effort have also been
21 identified within the Department. For example, some
22 Federal Government agencies are paying fees to the
23 Department’s Federal Protective Service for facility
24 risk assessments that are not being performed, while
25 at the same time performing their own risk assess-

1 ments. The Department also lacks robust acquisition
2 practices in place to position programs for success.
3 Federal Government auditors questioned U.S. Cus-
4 toms and Border Protection’s plan to secure the Ari-
5 zona border because the agency could not justify the
6 specific types, quantities, cost, and deployment loca-
7 tions of its surveillance technologies.

8 (4) Investigators continue to identify cases of
9 employee corruption within the Department. Inves-
10 tigations by the Department’s Inspector General led
11 to over 400 arrests of employees in 2011. Examples
12 include Border Patrol agents accepting bribes, thefts
13 by airport screeners, and immigration officers
14 complicit in fraud. In addition, overall employee mo-
15 rale in the Department remains one of the lowest in
16 the Federal Government.

17 **SEC. 3. ESTABLISHMENT.**

18 There is established in the legislative branch an inde-
19 pendent advisory panel to—

20 (1) comprehensively assess the management
21 structure and capabilities related to the Department
22 of Homeland Security; and

23 (2) make recommendations to improve the effi-
24 ciency and effectiveness of the management of the
25 Department.

1 **SEC. 4. MEMBERSHIP.**

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

5 (1) Two members shall be appointed by the
6 Speaker of the House of Representatives, in coordi-
7 nation with the Chairman of the Committee on
8 Homeland Security of the House of Representatives.
9 Only one of such members may be from the same
10 political party as the Speaker of the House of Rep-
11 resentatives.

12 (2) Two members shall be appointed by the ma-
13 jority leader of the Senate, in coordination with the
14 Chairman of the Committee on Homeland Security
15 and Governmental Affairs of the Senate. Only one of
16 such members may be from the same political party
17 as the majority leader of the Senate.

18 (3) One member shall be appointed by the mi-
19 nority leader of the House of Representatives, in co-
20 ordination with the Ranking Minority Member of the
21 Committee on Homeland Security of the House of
22 Representatives.

23 (4) One member shall be appointed by the mi-
24 nority leader of the Senate, in coordination with the
25 Ranking Minority Member of the Committee on

1 Homeland Security and Governmental Affairs of the
2 Senate.

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

7 (b) PROHIBITION.—Except as provided in subsection
8 (a), members of the Panel may not be current appointees
9 of the President's Administration or Members of Con-
10 gress, in order to ensure objectivity of the Panel's assess-
11 ments.

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

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

17 (1) A co-chairman who shall be a member of
18 the Panel designated by the Speaker of the House
19 of Representatives.

20 (2) A co-chairman who shall be a member of
21 the Panel designated by the majority leader of the
22 Senate.

23 (e) VACANCY.—In the event of a vacancy on the
24 Panel, the individual appointed to fill the vacant seat shall
25 be—

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

5 (2) if the officer's successor is of a party other
6 than the party of the officer who made the initial
7 appointment when the Panel was first established,
8 chosen in consultation with the senior officers of the
9 House of Representatives and the Senate of the
10 party which is the party of the officer who made
11 such initial appointment.

12 (f) **GOVERNMENT EMPLOYEES.**—Members of the
13 Panel who are officers or employees of the Federal Gov-
14 ernment shall serve without additional pay (or benefits in
15 the nature of compensation) for service as a member of
16 the Panel.

17 (g) **INITIAL MEETING.**—The Panel shall meet and
18 begin the operations of the Panel not later than 60 days
19 after the appointment of all Panel members under sub-
20 section (a).

21 **SEC. 5. DUTIES.**

22 (a) **IN GENERAL.**—The Panel shall assess the current
23 management structure and capabilities of the Department
24 of Homeland Security, including examining the following:

1 (1) The efficiency and effectiveness of the man-
2 agement structure and capabilities, including the
3 policies, practices, and procedures, of the Depart-
4 ment of Homeland Security and its component agen-
5 cies in carrying out the management functions, such
6 as program acquisition, financial management, infor-
7 mation technology, human capital issues, perform-
8 ance measurement, and risk management efforts, re-
9 lated to homeland security.

10 (2) The extent to which unnecessary duplication
11 exists in such management structure and capabili-
12 ties, and how, if at all, such duplication negatively
13 affects the mission of protecting the United States.

14 (3) The extent to which management of key
15 homeland security missions is centralized under the
16 Department.

17 (4) Options, as appropriate, to reduce or elimi-
18 nate harmful waste and duplication of effort in the
19 Department.

20 (5) Measures to evaluate the Department's
21 progress in reducing and eliminating waste and du-
22 plication from its management structure and capa-
23 bilities.

24 (b) ADDITIONAL CONSIDERATIONS.—In carrying out
25 its duties, the Panel should consult and leverage the work

1 performed and recommendations made by the Government
2 Accountability Office on the management structure and
3 capabilities of the Department of Homeland Security, in
4 particular with respect to the issues identified under sub-
5 section (a).

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

7 (a) HEARINGS AND EVIDENCE.—

8 (1) IN GENERAL.—The Panel or, on the author-
9 ity of the Panel, any portion thereof, may, for the
10 purpose of carrying out this section—

11 (A) hold such hearings and sit and act at
12 such times and places, take such testimony, re-
13 ceive such evidence, administer such oaths (pro-
14 vided that the quorum for a hearing shall be
15 two members of the Panel); and

16 (B) subject to subsection (b), require by
17 subpoena or otherwise provide for the attend-
18 ance and testimony of such witnesses and the
19 production of such books, records, correspond-
20 ence, memoranda, papers, and documents, as
21 the Panel, or such portion thereof, may deter-
22 mine advisable.

23 (2) OPEN TO THE PUBLIC.—Hearings and
24 other activities conducted under paragraph (1) shall
25 be open to the public unless the Panel, or, on the

1 authority of the Panel, any portion thereof, deter-
2 mines that such is not appropriate, including for
3 reasons relating to the disclosure of information or
4 material regarding the national security interests of
5 the United States or the disclosure of sensitive law
6 enforcement data.

7 (b) SUBPOENAS.—

8 (1) ISSUANCE.—

9 (A) IN GENERAL.—A subpoena may be
10 issued under this subsection only—

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

12 (ii) by the affirmative recorded vote of
13 six members of the Panel.

14 (B) SIGNATURE.—Subpoenas issued under
15 this subsection may be—

16 (i) issued under the signature of the
17 two co-chairmen or any member designated
18 by a majority of the Panel; and

19 (ii) served by any person designated
20 by the two co-chairmen or by any member
21 designated by a majority of the Panel.

22 (2) ENFORCEMENT.—

23 (A) IN GENERAL.—In the case of contu-
24 macy or failure to obey a subpoena issued
25 under this subsection, the United States district

1 court for the judicial district in which the sub-
2 poenaed person resides, is served, or may be
3 found, or where the subpoena is returnable,
4 may issue an order requiring such person to
5 produce documentary or other evidence. Any
6 failure to obey the order of the court may be
7 punished by the court as contempt of that
8 court.

9 (B) ADDITIONAL ENFORCEMENT.—In the
10 case of any failure of any witness to comply
11 with any subpoena, the Panel may, by majority
12 vote, certify a statement of fact constituting
13 such failure to the appropriate United States
14 attorney, who may bring the matter before a
15 grand jury for its action, under the same statu-
16 tory authority and procedures as if the United
17 States attorney had received a certification
18 under sections 102 through 104 of the Revised
19 Statutes of the United States (2 U.S.C. 192
20 through 194).

21 (c) PERSONNEL.—

22 (1) IN GENERAL.—The Panel shall have the au-
23 thorities provided in section 3161 of title 5, United
24 States Code, and shall be subject to the conditions
25 specified in such section, except to the extent that

1 such conditions would be inconsistent with the re-
2 quirements of this section.

3 (2) COMPENSATION.—The co-chairmen, in ac-
4 cordance with rules agreed upon by the Panel, may
5 appoint and fix the compensation of a staff director
6 and such other personnel as may be necessary to en-
7 able the Panel to carry out its functions, without re-
8 gard to the provisions of title 5, United States Code,
9 governing appointments in the competitive service,
10 and without regard to the provisions of chapter 51
11 and subchapter III of chapter 53 of such title relat-
12 ing to classification and General Schedule pay rates,
13 except that no rate of pay fixed under this para-
14 graph may exceed the equivalent of that payable for
15 a position at level V of the Executive Schedule under
16 section 5316 of title 5, United States Code.

17 (3) DETAILEES.—Any employee of the Federal
18 Government may be detailed to the Panel without
19 reimbursement from the Panel, and such detailee
20 shall retain the rights, status, and privileges of the
21 employee's regular employment without interruption.

22 (4) EXPERT AND CONSULTANT SERVICES.—The
23 Panel is authorized to procure the services of experts
24 and consultants in accordance with section 3109 of
25 title 5, United States Code, but at rates not to ex-

1 ceed the daily rate paid a person occupying a posi-
2 tion at level IV of the Executive Schedule under sec-
3 tion 5315 of title 5, United States Code.

4 (5) VOLUNTEER SERVICES.—Notwithstanding
5 section 1342 of title 31, United States Code, the
6 Panel may accept and use voluntary and uncompen-
7 sated services as the Panel determines necessary.

8 (d) SECURITY CLEARANCES.—The appropriate de-
9 partments or agencies of the Federal Government shall co-
10 operate with the Panel in expeditiously providing to the
11 Panel members and staff appropriate security clearances
12 to the extent possible pursuant to existing procedures and
13 requirements, except that no person shall be provided with
14 access to classified information under this section without
15 the appropriate security clearances.

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

20 (f) POSTAL SERVICES.—The Panel may use the
21 United States mails in the same manner and under the
22 same conditions as departments and agencies of the
23 United States.

24 (g) SUPPORT SERVICES.—Upon request of the Panel,
25 the Administrator of General Services shall provide the

1 Panel, on a reimbursable basis, with the administrative
2 support services necessary for the Panel to carry out its
3 duties under this Act. Such administrative services may
4 include human resource management, budget, leasing, ac-
5 counting, and payroll services.

6 (h) RULES OF PROCEDURE.—The Panel may estab-
7 lish rules for the conduct of the Panel’s business, if such
8 rules are not inconsistent with this Act or other applicable
9 law.

10 (i) NONAPPLICABILITY OF THE FEDERAL ADVISORY
11 COMMITTEE ACT.—The Federal Advisory Committee Act
12 (5 U.S.C. App.) shall not apply to the Panel.

13 (j) TERMINATION.—The Panel shall terminate on the
14 date that is 60 days after the date of the submission of
15 its final report.

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

17 (a) INTERIM REPORT.—Not later than one year after
18 the date of the appointment of all the members of the
19 Panel, the Panel shall submit to the Committee on Home-
20 land Security of the House of Representatives and the
21 Committee on Homeland Security and Governmental Af-
22 fairs of the Senate an interim report, including the results
23 and findings of the assessment and examination carried
24 out in accordance with section 5.

1 (b) OTHER REPORTS AND BRIEFINGS.—The Panel
2 may from time to time submit to the committees specified
3 in subsection (a) such other reports and briefings relating
4 to the assessment and examination carried out in accord-
5 ance with section 5 as the Panel considers appropriate.
6 Such committees may request information on the Panel’s
7 progress as it conducts its work.

8 (c) FINAL REPORT.—Not later than two years after
9 the date of the appointment of all the members of the
10 Panel, the Panel shall submit to the committees specified
11 in subsection (a) a final report on the assessment and ex-
12 amination carried out in accordance with section 5. Such
13 final report shall—

14 (1) include the findings of the Panel;

15 (2) identify lessons learned related to homeland
16 security management issues; and

17 (3) include specific recommendations related
18 to—

19 (A) improving the efficiency and effective-
20 ness of the management structure and capabili-
21 ties, including the policies, practices, and proce-
22 dures, of the Department of Homeland Security
23 and its component agencies in carrying out the
24 Department’s management functions and mis-
25 sion to protect the United States;

1 (B) reducing or eliminating unnecessary
2 duplication in the management structure and
3 capabilities of the Department and its compo-
4 nent agencies;

5 (C) options, as appropriate, to reduce or
6 eliminate harmful waste and duplication of ef-
7 fort in the Department; and

8 (D) developing measures to evaluate the
9 Department's progress in reducing and elimi-
10 nating waste and duplication from its manage-
11 ment structure and capabilities.

