110TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
110–763

HOMELAND SECURITY OPEN SOURCE INFORMATION ENHANCEMENT ACT OF 2008

JULY 21, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. THOMPSON of Mississippi, from the Committee on Homeland Security, submitted the following

R E P O R T

[To accompany H.R. 3815]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 3815) to amend the Homeland Security Act of 2002 to require the Secretary of Homeland Security to make full and efficient use of open source information to develop and disseminate open source homeland security information products, 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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69–006

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 "Homeland Security Open Source Information Enhancement Act of 2008".

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Internet has profoundly expanded the amount, significance, and accessibility of all types of information, but the Department of Homeland Security has not sufficiently expanded its use of such information to produce analytical products.

(2) Open source products can be shared with Federal, State, local, and tribal law enforcement, the American public, the private sector, and foreign allies because of their unclassified nature.

(3) The Department of Homeland Security is responsible for providing open source products to consumers consistent with existing Federal open source information guidelines.

SEC. 3. FULL AND EFFICIENT USE OF OPEN SOURCE INFORMATION.

(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. 210F. FULL AND EFFICIENT USE OF OPEN SOURCE INFORMATION.

"(a) RESPONSIBILITIES OF SECRETARY.—The Secretary shall establish an open source collection, analysis, and dissemination program within the Department. This program shall make full and efficient use of open source information to develop and disseminate open source intelligence products.

"(b) OPEN SOURCE PRODUCTS.—The Secretary shall ensure that among the open source products that the Department generates, there shall be a specific focus on open source products that—

"(1) analyze news and developments related to foreign terrorist organizations including how the threat of such organizations is relevant to homeland security;

"(2) analyze the risks and vulnerabilities to the nation's critical infrastructure;

"(3) analyze terrorist tactics and techniques to include recommendations on how to identify patterns of terrorist activity and behavior allowing State, local and tribal first responders to allocate resources appropriately; and

"(4) utilize, as appropriate, computer-based electronic visualization and animation tools that combine imagery, sound, and written material into unclassified open source intelligence products.

"(c) SHARING RESULTS OF ANALYSIS.—The Secretary shall share the unclassified results of such analysis with appropriate Federal, State, local, tribal, and private-sector officials.

"(d) PROTECTION OF PRIVACY.—The Secretary shall ensure that the manner in which open source information is gathered and disseminated by the Department complies with the Constitution, section 552a of title 5, United States Code (popularly known as the Privacy Act of 1974), provisions of law enacted by the E–Government Act of 2002 (Public Law 107–347), and all other relevant Federal laws.

"(e) INSPECTOR GENERAL REPORT.—The Inspector General of the Department shall audit the use and dissemination of open source information by the Department to evaluate the effectiveness of the Department's activities and to ensure that it is consistent with the procedures established by the Secretary or a designee of the Secretary for the operation of the Department's open source program and with Federal open source information and intelligence guidelines promulgated by the Director of National Intelligence.

"(f) OPEN SOURCE INFORMATION DEFINED.—In this section the term 'open source information' means information that is publicly available and that can be used and disseminated in a timely manner to an appropriate audience for the purpose of addressing a specific homeland requirement.

"(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for each of fiscal years 2009 through 2013 such sums as may be necessary to carry out this section.".

(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. 210F. Full and efficient use of open source information.".

SEC. 4. PRIVACY AND CIVIL LIBERTIES IMPACT ASSESSMENT.

Not later than 90 days after the date of the enactment of this Act, the Privacy Officer and the Officer for Civil Rights and Civil Liberties of the Department of Homeland Security, in consultation with the Chief Privacy Officer and Civil Liberties Protection Officer of the Office of the Director of National Intelligence, shall submit to the Secretary of Homeland Security, the Director of National Intelligence, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Homeland Security of the House of Representatives, and the Privacy and Civil Liberties Oversight Board, a privacy and civil liberties impact assessment of the Department of Homeland Security's open source program, including information on the collection, analysis, and dissemination of any information on United States persons.

SEC. 5. OPEN SOURCE INFORMATION DEFINED.

In this Act the term "open source information" has the meaning that term has in section 203 of Homeland Security Act of 2002, as amended by this Act.

PURPOSE AND SUMMARY

The purpose of H.R. 3815 is to amend the Homeland Security Act of 2002 to require the Secretary of Homeland Security to make full and efficient use of open source information to develop and disseminate open source homeland security information products, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

In the 21st Century, detailed data about almost anything or anyone is accessible on the Internet. Although much of this information is for social or commercial use, some of it may be helpful to terrorists as they plot attacks against the homeland. Put simply, there is a world of publicly available information online that terrorists might exploit to cause death and extreme damage to the Nation's critical infrastructure. Open source information is a valuable source of data about terrorists themselves that must be fully integrated into the intelligence cycle to ensure that policymakers are fully and completely informed about threats. It therefore should be viewed not only as a supplement to classified data but also as a potential source of valuable intelligence that can make the Nation safer. Open source has the added benefit of being open, unclassified information that can be shared rapidly with State, local, and tribal law enforcement and other first preventers without the need for security clearances.

Unfortunately, the Department of Homeland Security has not sufficiently exploited this type of information as part of its effort to provide its meaningful products to its customers. The Department must dedicate the time and resources to analyzing open source information and creating unclassified intelligence products based on it that help police, sheriffs, and other first responders—and the public—take appropriate preventative and preparedness action.

H.R. 3815 accordingly directs the Department to establish a program specializing in this work with a particular emphasis on building privacy and civil liberties safeguards into its processes. The unclassified intelligence products that it will generate will enhance the Nation's counter-terrorism and infrastructure protection efforts.

HEARINGS

No hearings were held on H.R. 3815, however the Committee held oversight hearings on the use of open source information.

In the 109th Congress, on June 21, 2005, the Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment held a hearing entitled "Using Open-Source Information Effectively." The Subcommittee received testimony from Dr. John C. Gannon, Vice President for Global Analysis, BAE Systems, Information Technology; Mr. Eliot Jardines, President, Open Source Publishing, Inc.; and Mr. Joe Onek, Senior Policy Analyst, Open Society Institute.

On April 24, 2008, the Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment held a hearing entitled "Moving Beyond the First Five Years: Evolving the Office of Intelligence and Analysis to Better Serve State, Local, and Tribal Needs." The Subcommittee received testimony from Mr. Matthew Bettenhausen, Executive Director, California Office of Homeland Security, State of California; Ms. Juliette Kayyem, Under Secretary for Homeland Security, Executive Office of Public Safety and Security, Commonwealth of Massachusetts; and Mr. Frank J. Cilluffo, Director and Associate Vice President, Homeland Security Policy Institute, The George Washington University.

COMMITTEE CONSIDERATION

H.R. 3815 was introduced in the House on October 10, 2007, by Mr. Perlmutter and seven original co-sponsors, and referred solely to the Committee on Homeland Security. Within the Committee, H.R. 3815 was referred the Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment.

On June 11, 2008, the Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment considered H.R. 3815 and ordered the measure favorably forwarded to the Full Committee for consideration, amended, by the unanimous consent.

The following amendment was offered:

> An Amendment in the Nature of a Substitute offered by Ms. Harman (#1), was AGREED TO by unanimous consent.

On June 26, 2008, the Committee on Homeland Security considered H.R. 3815 and ordered the measure to be reported to the House favorably, as amended, by voice vote.

The following amendment was offered:

> An Amendment in the Nature of a Substitute offered by Mr. Perlmutter (#1); was AGREED TO by unanimous consent pursuant.

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 occurred during Committee consideration.

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. 3815, the Homeland Security Open Source Information Enhancement Act of 2008, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 10, 2008.

Hon. BENNIE G. THOMPSON,
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. 3815, the Homeland Security Open Source Information Enhancement Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

ROBERT A. SUNSHINE
(For Peter R. Orszag, Director).

Enclosure.

H.R. 3815—Homeland Security Open Source Information Enhancement Act of 2008

H.R. 3815 would authorize the appropriation of whatever sums are necessary for each of fiscal years 2009 through 2013 for the Department of Homeland Security (DHS) to establish a program to collect and analyze open source (publicly available) information and disseminate reports and other products based on that analysis. The bill would direct the department to focus those efforts on foreign terrorist organizations and vulnerabilities of the nation's infrastructure. Based on information from DHS, CBO expects that the department would hire about 10 people to carry out the activities required by the bill. We estimate that the additional staff would cost about $1 million annually over the 2009–2013 period, assuming the availability of appropriated funds.

Enacting the bill would not affect direct spending or revenues. H.R. 3815 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Mark Grabowicz. This estimate was approved by Theresa Gullo, 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. 3815 contains the following general performance goals, and objectives, including outcome related goals and objectives authorized.

The primary goal of H.R. 3815 is to establish an open source program within the Department of Homeland Security to provide accurate, actionable, and timely unclassified intelligence products to its State, local, tribal, and private sector partners—and the public—in order to strengthen the Nation's prevention and preparedness posture. At the same time, the Department should become a key provider of homeland security relevant open source intelligence products to the rest of the Federal Intelligence Community in order to maximize situational awareness of threats. In that way, the Department's open source program could have a powerful impact in informing the Nation's overall homeland and national security efforts. To ensure the quality of its products, the Department will be expected to make the information needs of its customers the starting point of its open source work.

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(d), 9(e), or 9(f) 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.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 1, which grants Congress the power to provide for the common Defense of the United States.

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 states that this measure may be cited as the "Homeland Security Open Source Information Act of 2007".

Section 2. Findings

This section outlines a series of Congressional findings, including that: (1) the Department of Homeland Security has not sufficiently expanded its use of open source information to produce open source analytical products; (2) open source products can be easily shared with the Department's State, local, and tribal partners, the private sector and the public because of its unclassified nature; (3) more than three years ago, the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction identified both the increasing importance of exploiting open source information and the Federal Government's failure to do so; (4) the Department has been specifically tasked with creating open source products under existing Federal open source guidelines.

Section 3. Full and efficient use of open source information

This section modifies Title II of the Homeland Security Act of 2002 (P.L. 107-296) by requiring the Secretary of Homeland Security to establish an open source program at the Department of Homeland Security that produces open source intelligence products that: (1) analyze news reports and developments related to foreign terrorist organizations including how the threat is relevant to homeland security; (2) analyze the risks and vulnerabilities to the Nation's critical infrastructure; (3) analyze terrorist tactics and techniques to include recommendations on how to identify patterns of terrorist activity and behavior allowing State, local and tribal first responders to allocate resources appropriately; and (4) utilize, as appropriate, computer-based electronic visualization and animation tools that combine imagery, sound, and written material into unclassified open source intelligence products. This section likewise requires the Secretary to share these and other open source products with Federal, State, local, tribal, and private sector customers and to ensure that the manner in which open source material is gathered and disseminated complies with the Constitution, the Privacy Act, the E-Government Act and all other relevant laws.

This section further modifies Title II of the Homeland Security Act of 2002 by requiring the Inspector General of the Department to produce a report ensuring compliance with the National Open Source Enterprise coordinated by the Director of National Intelligence. It likewise defines "open source information" and authorizes appropriations for the Department's open source program.

The Committee believes that progress and efficacy of the Department of Homeland Security's open source program should be assessed on: (1) its inclusion of customer input into the open source intelligence production process; (2) the degree to which it is creating products that are easily accessible through appropriate dissemination channels and recognizable as open source; (3) the extent to which its products receive positive feedback from the Department's customers at all levels of government and in the private sector; (4) the actual role the products are having in prevention

and preparedness efforts, including any role in preventing or responding to a terrorist attack or other disaster; and (5) the extent to which privacy and civil liberties safeguards are incorporated into the production process.

Section 4. Privacy and civil liberties impact assessment

This section modifies Title II of the Homeland Security Act of 2002 (P.L. 107–296) by requiring the Privacy Officer and the Officer for Civil Rights and Civil Liberties of the Department of Homeland Security to conduct a privacy and civil liberties impact assessment of the Department's open source program within 90 days of enactment.

Section 5. Definitions

This section defines terms used in this measure.

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 (new matter is printed in italic and 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:

* * * * * * *

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

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

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Sec. 210F. Full and efficient use of open source information.

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TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

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

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SEC. 210F. FULL AND EFFICIENT USE OF OPEN SOURCE INFORMATION.

(a) RESPONSIBILITIES OF SECRETARY.—The Secretary shall establish an open source collection, analysis, and dissemination program within the Department. This program shall make full and efficient use of open source information to develop and disseminate open source intelligence products.

(b) OPEN SOURCE PRODUCTS.—The Secretary shall ensure that among the open source products that the Department generates, there shall be a specific focus on open source products that—

(1) analyze news and developments related to foreign terrorist organizations including how the threat of such organizations is relevant to homeland security;

(2) analyze the risks and vulnerabilities to the nation's critical infrastructure;

(3) analyze terrorist tactics and techniques to include recommendations on how to identify patterns of terrorist activity and behavior allowing State, local and tribal first responders to allocate resources appropriately; and

(4) utilize, as appropriate, computer-based electronic visualization and animation tools that combine imagery, sound, and written material into unclassified open source intelligence products.

(c) SHARING RESULTS OF ANALYSIS.—The Secretary shall share the unclassified results of such analysis with appropriate Federal, State, local, tribal, and private-sector officials.

(d) PROTECTION OF PRIVACY.—The Secretary shall ensure that the manner in which open source information is gathered and disseminated by the Department complies with the Constitution, section 552a of title 5, United States Code (popularly known as the Privacy Act of 1974), provisions of law enacted by the E-Government Act of 2002 (Public Law 107–347), and all other relevant Federal laws.

(e) INSPECTOR GENERAL REPORT.—The Inspector General of the Department shall audit the use and dissemination of open source information by the Department to evaluate the effectiveness of the Department's activities and to ensure that it is consistent with the procedures established by the Secretary or a designee of the Secretary for the operation of the Department's open source program and with Federal open source information and intelligence guidelines promulgated by the Director of National Intelligence.

(f) OPEN SOURCE INFORMATION DEFINED.—In this section the term "open source information" means information that is publicly available and that can be used and disseminated in a timely manner to an appropriate audience for the purpose of addressing a specific homeland requirement.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for each of fiscal years 2009 through 2013 such sums as may be necessary to carry out this section.

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COMMITTEE CORRESPONDENCE

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