

Bill Comparison—H.R. 1417 and S.744
September 25, 2013

H.R.1417 THE BORDER SECURITY RESULTS ACT	S.744 THE BORDER SECURITY, ECONOMIC OPPORTUNITY AND IMMIGRATION MODERNIZATION ACT
<p>Within 90 days of enactment Requires DHS to submit a report to Congress and the GAO on the current state of:</p> <ul style="list-style-type: none"> • “Operational control” and • “Situational awareness” (p.3, see definitions below) 	<p>Within 90 days of enactment N/A</p>
<p>Within 180 days of enactment Requires DHS to submit a strategy for gaining and maintaining:</p> <ul style="list-style-type: none"> • Operational control and situational awareness of “high traffic areas” within 2 years, and • Operational control of the U.S.-Mexico border within 5 years (p.4) 	<p>Within 180 days of enactment Requires DHS to submit a strategy for “achieving and maintaining”:</p> <ul style="list-style-type: none"> • “effective control” of the U.S.-Mexico border (p.24-25)
<p><i>Defines “operational control” as:</i></p> <ul style="list-style-type: none"> • A “90 percent illegal border crossing effectiveness rate” (p.23) 	<p><i>Defines “effective control” as the “ability to achieve and maintain”</i></p> <ul style="list-style-type: none"> • An effectiveness rate of 90 percent or higher (p.12); and • Persistent surveillance (undefined)
<p><i>Defines “illegal border crossing effectiveness rate” as:</i></p> <ul style="list-style-type: none"> • The number of apprehensions and turn backs divided by the number of apprehensions, turn backs, and got aways (p.22) • Note that “got aways” means illegal aliens DHS knows crossed into the U.S. but did not (for whatever reason) apprehend. It does not include the number of illegal aliens who crossed into the U.S. unbeknownst to DHS. Thus, the definition is inherently an underestimate of the number of illegal aliens coming into the U.S. 	<p><i>Defines “effectiveness rate” as:</i></p> <ul style="list-style-type: none"> • The number of apprehensions and turn backs divided by the total number of illegal entries (p.12) • Note that—like the House definition—“got aways” means illegal aliens DHS knows crossed into the U.S. but did not apprehend. It does not include the number of illegal aliens who crossed into the U.S. unbeknownst to DHS. Thus, the definition is inherently an underestimate of the number of illegal aliens coming into the U.S.
<p><i>Defines “situational awareness” as:</i></p> <ul style="list-style-type: none"> • Knowledge and understanding of current “illicit cross-border activity” (p.23) • The phrase “illicit cross-border activity” is vague. It does not refer to people; it grants the DHS secretary to interpret it as the movement of contraband, not illegal aliens. • Also note that cross-border activity does not specify which direction the activity is moving. For 	<p>Does not define “persistent surveillance”</p>

<p><i>example, it is broad enough to allow the DHS secretary to define situational awareness as the knowledge of gun trafficking from the U.S. into Mexico instead of the movement of illegal aliens from Mexico into the U.S.</i></p>	
<p><i>Defines “high traffic areas” as:</i></p> <ul style="list-style-type: none"> • <i>Border Patrol sectors that have “the most illicit cross-border activity” (p.22)</i> • <i>This definition is vague. What does “the most” mean? What does “activity” mean?</i> • <i>As with the definition of “situational awareness, note that the phrase “illicit cross-border activity” does not refer to people; the vagueness allows DHS to interpret it as the movement of contraband, such as drugs or guns</i> • <i>As with the definition of “situational awareness,” note that “illegal cross-border activity” does not specify which direction the cross-border activity is taking place, giving the Homeland Security Secretary the discretion to define it as the movement of guns from the U.S. into Mexico, instead of the movement of illegal aliens from Mexico into the U.S.</i> 	<p><i>The term “high traffic area,” with respect to achieving effective control, was removed from S.744 during mark-up in the Senate Judiciary Committee.</i></p>
<p>Requires DHS to submit: An “implementation plan” of the border strategy to Congress and the GAO within 90 days of submission (p.8). DHS must update the implementation plan every four years (p.10)</p>	<p>Requires DHS to submit: An implementation report of the border strategy every 180 days after submission (p.41-42)</p>
<p>Requires GAO to: Review the implementation plan within 90 days of receipt and to submit a report to Congress on it (p.9-10)</p>	<p>Requires GAO to: Conduct annual reviews of DHS’s implementation reports and submit a report to Congress on it (p.44)</p>
<p>H.R. 1417 does <u>NOT</u> require DHS to achieve:</p> <ul style="list-style-type: none"> • Operational control (90 percent effectiveness rate), or • Situational awareness 	<p>S.744 does <u>NOT</u> require DHS to achieve:</p> <ul style="list-style-type: none"> • Effective control, defined as 90 percent effectiveness rate and persistent surveillance
<p>Border Security Certification:</p> <ul style="list-style-type: none"> • IF DHS determines—in its sole discretion -- that it has achieved situational awareness and operational control of high traffic areas within 2 years, DHS shall certify such to Congress (p.17). Requires GAO to review the certification (p.18) • IF DHS determines—in its sole discretion—that it has achieved operational control of the U.S.-Mexico border within 5 years, DHS shall certify such to Congress (p.17-18). GAO to review the certification (p.18) 	<p>Border Security Certification</p> <ul style="list-style-type: none"> • Does not affirmatively require that DHS certify it has achieved effective control of the border. • However, S.744 provides that if DHS “cannot certify” that it has achieved effective control in all border sectors for at least one year within 5 years of enactment, the “Southern Border Security Commission” shall issue a report with nonbinding recommendations (p.19, 22)

<ul style="list-style-type: none"> • IF DHS determines that it has not met the deadlines (one or both), DHS shall submit “a report” to Congress that describes why and includes “recommendations” for achieving the goal (p.19) • H.R. 1417 does not provide any consequences if DHS does not achieve operational control (90 percent effectiveness rate) or situational awareness. It does not even require DHS to implement its own recommendations that it submits to Congress if it does not meet the goals. 	
<p>Requires DHS to: Implement specific metrics—including an “inadmissible border crossing rate”—to measure the “effectiveness of security” between ports of entry, at ports of entry and in “the maritime environment.” (p.10-16). Requires the GAO to review, but does not give DHS a deadline for submitting information to the GAO (p.16)</p>	<p>Requires DHS to: Report, through updates of the implementation plan, on the effectiveness rate, recidivist apprehensions, and additional measures of the state of security along the U.S.-Mexico border (p.43). Requires the GAO to review (p.44)</p>
<p>Regarding biometric entry-exit:</p> <ul style="list-style-type: none"> • Within 180 days of enactment, requires DHS to submit “a plan” to implement “a biometric exit capability” at ports of entry in accordance with Public Law 107-173 (1992) (p.24) • If DHS determines that development of a biometric exit system is not feasible, DHS must within 180 days submit to Congress “a plan to implement” “an alternative program to provide the same level of security” within 2 years (p.24) • Note that this provision gives the DHS secretary discretion to ignore 17 years of laws that require the federal government to implement a biometric entry-exit system. 	<p>Regarding biometric entry-exit:</p> <ul style="list-style-type: none"> • Within 2 years of enactment, requires DHS to establish a “mandatory biometric exit data system” at the 10 airports with the highest volume of international travelers (p.671-672) • Within 6 years of enactment, requires DHS to establish a biometric exit system at the 30 busiest international airports (p.672-673) • Within 6 years of enactment, requires DHS to submit a plan to Congress “for the expansion of the biometric exit system to “major” sea and land entry and exit points within the U.S. (p.673) • Note that together these measures are a fraction of what current law requires. (8 U.S.C. 1365b)