

112TH CONGRESS
1ST SESSION

H. R. 2264

To reduce the trafficking of drugs and to prevent human smuggling across the Southwest Border by deterring the construction and use of border tunnels.

IN THE HOUSE OF REPRESENTATIVES

JUNE 21, 2011

Mr. REYES introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Homeland Security and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To reduce the trafficking of drugs and to prevent human smuggling across the Southwest Border by deterring the construction and use of border tunnels.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Border Tunnel Preven-
5 tion Act of 2011”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) As the international border between the
2 United States and Mexico becomes more secure,
3 trafficking and smuggling organizations intensify
4 their efforts to enter the United States by increasing
5 the number of tunnels and other subterranean pas-
6 sages between Mexico and the United States.

7 (2) Border tunnels are most often used to
8 transport narcotics from Mexico to the United
9 States, but can also be used to transport people and
10 other contraband.

11 (3) Between May 1990 and May 2011, law en-
12 forcement authorities discovered 137 tunnels, 125 of
13 which have been discovered since September 2001.
14 While law enforcement authorities discovered only 2
15 tunnels in California between 1990 and 2001, there
16 has been a dramatic increase in the number of bor-
17 der tunnels discovered in California since 2001.

18 (4) Section 551 of the Department of Home-
19 land Security Appropriations Act, 2007 (Public Law
20 109–295) added a new section to title 18, United
21 States Code (18 U.S.C. 555), which—

22 (A) criminalizes the construction or financ-
23 ing of an unauthorized tunnel or subterranean
24 passage across an international border into the
25 United States; and

1 (B) prohibits any person from recklessly
2 permitting others to construct or use an unau-
3 thorized tunnel or subterranean passage on the
4 person's land.

5 (5) Any person convicted of using a tunnel or
6 subterranean passage to smuggle aliens, weapons,
7 drugs, terrorists, or illegal goods is subject to an en-
8 hanced sentence for the underlying offense. Addi-
9 tional sentence enhancements would further deter
10 tunnel activities and increase prosecutorial options.

11 **SEC. 3. DEFINITIONS.**

12 In this Act:

13 (1) NATIONAL SECURITY ZONE.—The term
14 “national security zone” means any Southwest Bor-
15 der land designated by the Secretary as being at a
16 high risk for border tunnel activity, as authorized
17 under section 8(b).

18 (2) SECRETARY.—The term “Secretary” means
19 the Secretary of Homeland Security.

20 (3) SOUTHWEST BORDER LAND.—The term
21 “Southwest Border land” means all parcels of real
22 property in the United States that—

23 (A) are located within 1 mile of the inter-
24 national border between the United States and
25 Mexico; and

1 (B) are not owned by a Federal, State,
2 tribal, or local government entity.

3 **SEC. 4. ATTEMPT OR CONSPIRACY TO USE, CONSTRUCT, OR**
4 **FINANCE A BORDER TUNNEL.**

5 Section 555 of title 18, United States Code, is
6 amended by adding at the end the following:

7 “(d) Any person who attempts or conspires to commit
8 any offense under this section shall be subject to the same
9 penalties as those prescribed for the offense, the commis-
10 sion of which was the object of the attempt or con-
11 spiracy.”.

12 **SEC. 5. AUTHORIZATION FOR INTERCEPTION OF WIRE,**
13 **ORAL, OR ELECTRONIC COMMUNICATIONS.**

14 Section 2516(1)(c) of title 18, United States Code,
15 is amended by inserting “, section 555 (relating to con-
16 struction or use of international border tunnels)” before
17 the semicolon at the end.

18 **SEC. 6. FORFEITURE.**

19 (a) **CRIMINAL FORFEITURE.**—Section 982(a)(2)(B)
20 of title 18, United States Code, is amended by inserting
21 “555,” after “545,”.

22 (b) **CIVIL ASSET FORFEITURE.**—Any merchandise
23 introduced into the United States through a tunnel or pas-
24 sage described in section 555(a) of title 18, United States
25 Code, shall be subject to seizure and forfeiture in accord-

1 ance with section 596(c) of the Tariff Act of 1930 (19
2 U.S.C. 1595a(c)).

3 **SEC. 7. MONEY LAUNDERING DESIGNATION.**

4 Section 1956(c)(7)(D) of title 18, United States
5 Code, is amended by inserting “section 555 (relating to
6 border tunnels),” after “section 554 (relating to smug-
7 gling goods from the United States),”.

8 **SEC. 8. NOTIFICATION REQUIREMENTS.**

9 (a) NOTIFICATION TO LAND OWNERS.—The Sec-
10 retary is encouraged to annually provide each known non-
11 governmental owner and tenant of land located in a na-
12 tional security zone with a written notification that de-
13 scribes—

14 (1) Federal laws related to the construction of
15 illegal border tunnels; and

16 (2) the procedures for reporting violations of
17 such laws to U.S. Immigration and Customs En-
18 forcement.

19 (b) DESIGNATION OF BORDER TUNNEL HIGH RISK
20 AREAS.—

21 (1) IN GENERAL.—The Secretary may des-
22 ignate any Southwest Border land that the Sec-
23 retary has a substantial reason to believe is at a
24 high risk for border tunnel activity as a national se-
25 curity zone.

1 (2) PUBLICATION.—The Secretary shall—

2 (A) publish any designations made under
3 paragraph (1) in the Federal Register; and

4 (B) allow appropriate notice and comment
5 in accordance with the chapter 5 of title 5,
6 United States Code (commonly referred to as
7 the “Administrative Procedures Act”).

8 (c) RULEMAKING.—Not later than 18 months after
9 the date of the enactment of this Act, the Secretary shall
10 promulgate regulations to carry out this section.

11 **SEC. 9. REPORT.**

12 (a) IN GENERAL.—The Secretary shall submit an an-
13 nual report to the congressional committees set forth in
14 subsection (b) that includes a description of—

15 (1) the cross border tunnels in Southwest Bor-
16 der land discovered during the reporting period; and

17 (2) the needs of the Department of Homeland
18 Security to effectively prevent, investigate and pros-
19 ecute border tunnel construction on Southwest Bor-
20 der land.

21 (b) CONGRESSIONAL COMMITTEES.—The congres-
22 sional committees set forth in this subsection are—

23 (1) the Committee on Homeland Security and
24 Governmental Affairs of the Senate;

1 (2) the Committee on the Judiciary of the Sen-
2 ate;

3 (3) the Committee on Homeland Security of the
4 House of Representatives; and

5 (4) the Committee on the Judiciary of the
6 House of Representatives.

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