AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

I

114TH CONGRESS
1ST SESSION

H. R. 300

To provide for operational control of the international border of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 13, 2015

Mr. POE of Texas (for himself, Mr. SMITH of Texas, and Mrs. BLACK) introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committees on Armed Services, Rules, Energy and Commerce, and Agriculture, 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 provide for operational control of the international border of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Support More Assets, Resources, and Technology on the Border Act of 2015'' or the ''SMART Border Act of 2015''.

SEC. 2. OPERATIONAL CONTROL.

(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall take all actions the Secretary determines necessary and appropriate to achieve and maintain operational control of the international border between the United States and Mexico, and shall submit to the Comptroller General of the United States a report on such actions, achievement, and maintenance.

(b) GAO CONSULTATION AND REPORT.—Not later than 90 days after the submission of the report by the Secretary of Homeland Security under subsection (a), the Comptroller General of the United States shall—

(1) consult with State and local officials along the international border between the United States and Mexico, including border sheriffs, mayors of border towns and cities, chambers of commerce in border areas, farmers and ranchers and associated farming and ranching organizations in border areas, community organizations in border areas, State law enforcement agencies, and border State governors regarding the state of operational control of such border; and

(2) submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Af-

fairs of the Senate a report on such state of operational control.

(c) JOINT RESOLUTION OF DISAPPROVAL ON OPERATIONAL CONTROL.—Not later than 90 days after receiving the report of the Comptroller General under subsection (b)(2) regarding the state of operational control, both the House of Representatives and the Senate shall vote on a joint resolution on the question as to whether such report should be disapproved. Such joint resolution shall be deemed to pass only if—

(1) a majority of each House approves such joint resolution; or

(2) such joint resolution is not voted on by each House by such date.

(d) ANNUAL REPORTS.—The Comptroller General of the United States 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 an annual report on the state of operational control of the international border between the United States and Mexico. The first of such annual reports shall be submitted not later than one year after the report required under subsection (b)(2) is submitted.

SEC. 3. USE OF NATIONAL GUARD TO SUPPORT DEPARTMENT OF HOMELAND SECURITY BORDER CONTROL ACTIVITIES.

(a) EXPANDED DEPLOYMENT OF NATIONAL GUARD; DURATION.—

(1) DEPLOYMENT REQUIREMENT.—At the request of a Governor of a State that shares a portion of the international border between the United States and Mexico the Secretary of Defense shall provide for the deployment of additional members of the National Guard along such border in excess of the number of members of the National Guard so deployed along such border as of the date of the enactment of this Act.

(2) NUMBER OF ADDITIONAL GUARDSMEN DEPLOYED.—The total number of additional members of the National Guard deployed under paragraph (1) along the international border between the United States and Mexico may not exceed 10,000, except that the Secretary of Defense may exceed such number at the request of a Governor of a State that shares a portion of such border if, despite the deployment of the additional 10,000 members of the National Guard, operational control of such border has not been achieved.

(3) DURATION.—The deployment of additional members of the National Guard under paragraph (1) in a State that shares a portion of the international border between the United States and Mexico shall continue until the earlier of the following:

(A) The date on which the Governor of the State revokes the request made under paragraph (1).

(B) The date on which a vote on the joint resolution of disapproval on operational control described in section 2(c) occurs if such joint resolution does not pass.

(4) DEPLOYMENT AUTHORITIES.—Members of the National Guard deployed under paragraph (1) may be deployed under section 502(f) of title 32, United States Code, pursuant to a State border control activities plan approved under section 112a of such title, as added by subsection (b) of this section, or pursuant to the order of the Secretary of Defense under any other provision of law.

(5) EXEMPTION FROM END STRENGTHS AND OTHER LIMITATIONS.—Members of the National Guard deployed under paragraph (1) shall not be included in the calculation to determine compliance with—

(A) limits on end strength; or

(B) limits on the number of National Guard personnel that may be placed on active duty for operational support.

(b) FEDERAL ASSISTANCE FOR STATE BORDER CONTROL ACTIVITIES PLANS.—Chapter 1 of title 32, United States Code, is amended by inserting after section 112 the following:

"SEC. 112a. BORDER CONTROL ACTIVITIES.

"(a) FUNDING ASSISTANCE.—The Secretary of Defense shall provide funds to the Governor of a State who submits to the Secretary a State border control activities plan satisfying the requirements of subsection (c). Such funds shall be used for the following:

"(1) The pay, allowances, clothing, subsistence, gratuities, travel, and related expenses, as authorized by State law, of personnel of the National Guard of that State used, while not in Federal service, for the purpose of border control activities.

"(2) The operation and maintenance of the equipment and facilities of the National Guard of that State used for the purpose of border control activities.

"(3) The procurement of services and equipment, and the leasing of equipment, for the National

Guard of that State used for the purpose of border control activities. However, the use of such funds for the procurement of equipment may not exceed $5,000 per item, unless approval for procurement of equipment in excess of that amount is granted in advance by the Secretary of Defense.

"(b) USE OF PERSONNEL PERFORMING FULL-TIME NATIONAL GUARD DUTY.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary of Defense, personnel of the National Guard of a State may, in accordance with the State border control activities plan referred to in subsection (c), be ordered to perform full-time National Guard duty under section 502(f) of this title for the purpose of carrying out border control activities.

"(2) REQUIREMENTS.—

"(A) TRAINING.—A member of the National Guard serving on full-time National Guard duty under orders authorized under paragraph (1) shall participate in the training required under section 502(a) of this title in addition to the duty performed for the purpose authorized under that paragraph. The pay, allowances, and other benefits of the member

while participating in the training shall be the same as those to which the member is entitled while performing duty for the purpose of carrying out border control activities. The member is not entitled to additional pay, allowances, or other benefits for participation in training required under section 502(a)(1) of this title.

"(B) FUNDING.—Appropriations available for the Department of Defense for homeland defense may be used for paying costs associated with a member's participation in training described in subparagraph (A). The appropriation shall be reimbursed in full, out of appropriations available for paying those costs, for the amounts paid. Appropriations available for paying those costs shall be available for making the reimbursements.

"(C) RESTRICTIONS.—To ensure that the use of units and personnel of the National Guard of a State pursuant to a State border control activities plan does not degrade the training and readiness of such units and personnel, the following requirements shall apply in determining the border control activities that

units and personnel of the National Guard of a State may perform:

"(i) The performance of the activities may not adversely affect the quality of that training or otherwise interfere with the ability of a member or unit of the National Guard to perform the military functions of the member or unit.

"(ii) National Guard personnel will not degrade their military skills as a result of performing the activities.

"(iii) The performance of the activities will not result in a significant increase in the cost of training.

"(iv) In the case of border control activities performed by a unit organized to serve as a unit, the activities will support valid unit training requirements.

"(c) PLAN REQUIREMENTS.—A State border control activities plan shall—

"(1) specify how personnel of the National Guard of that State are to be used in border control activities in support of the mission of United States Customs and Border Protection of the Department of Homeland Security;

"(2) certify that those operations are to be conducted at a time when the personnel involved are not in Federal service;

"(3) certify that participation by National Guard personnel in those operations is service in addition to training required under section 502 of this title;

"(4) certify that any engineer-type activities (as defined by the Secretary of Defense) under the plan will be performed only by units and members of the National Guard;

"(5) include a certification by the Attorney General of the State (or, in the case of a State with no position of Attorney General, a civilian official of the State equivalent to a State attorney general) that the use of the National Guard of the State for the activities proposed under the plan is authorized by, and is consistent with, State law; and

"(6) certify that the Governor of the State or a civilian law enforcement official of the State designated by the Governor has determined that any activities included in the plan that are carried out in conjunction with Federal law enforcement agencies serve a State law enforcement purpose.

"(d) EXAMINATION OF PLAN.—Before funds are provided to the Governor of a State under this section and before members of the National Guard of that State are ordered to full-time National Guard duty as authorized in subsection (b), the Secretary of Defense shall, in consultation with the Secretary of Homeland Security, examine the adequacy of the plan submitted by the Governor under subsection (c). The plan as approved by the Secretary of Defense may provide for the use of personnel and equipment of the National Guard of that State to assist United States Customs and Border Protection in the transportation of aliens who have violated a Federal immigration law.

"(e) END STRENGTH LIMITATION.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), at the end of a fiscal year there may not be more than 10,000 members of the National Guard—

"(A) on full-time National Guard duty under section 502(f) of this title to perform border control activities pursuant to an order to duty; or

"(B) on duty under State authority to perform border control activities pursuant to an order to duty with State pay and allowances

being reimbursed with funds provided under subsection (a)(1).

"(2) EXCEPTION.—The Secretary of Defense may increase the end strength authorized under paragraph (1) if the Secretary determines that such an increase is necessary in the national security interests of the United States.

"(3) CERTAIN EXCLUSION.—National Guard personnel deployed pursuant to paragraph (1) shall not be included in the calculation to determine compliance with—

"(A) limits on end strength; or

"(B) limits on the number of National Guard personnel that may be placed on active duty for operational support.

"(f) ANNUAL REPORT.—The Secretary of Defense shall submit to Congress an annual report regarding assistance provided and activities carried out under this section during the preceding fiscal year. The report shall include the following:

"(1) The number of members of the National Guard excluded under subsection (e)(3) from the computation of end strengths.

"(2) A description of the border control activities conducted under State border control activities

plans referred to in subsection (c) with funds provided under this section.

"(3) An accounting of the amount of funds provided to each State.

"(4) A description of the effect on military training and readiness of using units and personnel of the National Guard to perform activities under the State border control activities plans.

"(g) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as a limitation on the authority of any unit of the National Guard of a State, when such unit is not in Federal service, to perform law enforcement functions authorized to be performed by the National Guard by the laws of the State concerned.

"(h) DEFINITIONS.—In this section:

"(1) BORDER CONTROL ACTIVITIES.—The term 'border control activities', with respect to the National Guard of a State, means the use of National Guard personnel in border control activities authorized by the law of the State and requested by the Governor of the State in support of the mission of United States Customs and Border Protection of the Department of Homeland Security, including activities as follows:

"(A) Armed vehicle and foot patrols along the international border between the United States and Mexico.

"(B) Interdiction of a vehicle, vessel, aircraft or other similar activity.

"(C) Search, seizure, and detention of suspects.

"(D) Construction of roads, fences, and vehicle barriers.

"(E) Search and rescue operations.

"(F) Intelligence gathering, surveillance, and reconnaissance.

"(G) Aviation support.

"(2) GOVERNOR OF A STATE.—The term 'Governor of a State' means, in the case of the District of Columbia, the Commanding General of the National Guard of the District of Columbia.

"(3) STATE.—The term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.".

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 1 of such title is amended by inserting after the item relating to section 112 the following new item:

"112a. Border control activities.".

SEC. 4. SMART BORDER TECHNOLOGY.

If the Secretary of Homeland Security determines that there are areas along the international border between the United States and Mexico with respect to which operational control has not been achieved and maintained, the Secretary is authorized to deploy smart border technologies, such as seismic detectors and unmanned aerial vehicles to such areas to achieve and maintain operational control over such areas.

SEC. 5. TRANSFER OF USED MILITARY EQUIPMENT TO FEDERAL, STATE, AND LOCAL AGENCIES.

(a) IN GENERAL.—Not later than one year after eligible equipment returns to the United States, and in accordance with subsections (b) and (c) of section 2576a of title 10, United States Code, the Secretary of Defense may transfer such eligible equipment to Federal, State, and local agencies.

(b) PREFERENCE.—

(1) TRANSFERS UNDER THIS SECTION.—In considering applications for the transfer of eligible equipment under subsection (a), the Secretary of Defense may give preference to Federal, State, and local agencies that will use such eligible equipment primarily for the purpose of strengthening border security along the international border between the United States and Mexico.

(2) TRANSFERS GENERALLY.—Section 2576a(d) of title 10, United States Code, is amended—

(A) by striking ''In considering'' and inserting ''(1) In considering''; and

(B) by adding at the end the following new paragraph:

''(2)(A) In considering applications for the transfer of equipment described in subparagraph (B) under this section, the Secretary may give a preference to those applications indicating that the transferred property will be used primarily for the purpose of strengthening border security along the international border between the United States and Mexico.

''(B) Equipment described in this subparagraph is equipment of the Department of Defense that—

''(i) was used in Operation Enduring Freedom, Operation Iraqi Freedom, or Operation New Dawn; and—

''(ii) the Secretary determines would be suitable for use by Federal and State agencies in law enforcement activities, including—

''(I) surveillance unmanned aerial vehicles, including the MQ–9 Reaper (also known as the 'Predator B');

"(II) night-vision goggles; and

"(III) high mobility multi-purpose wheel vehicles (commonly known as 'humvees').".

(c) ELIGIBLE EQUIPMENT DEFINED.—In this section, the term "eligible equipment" means equipment of the Department of Defense that—

(1) was used in Operation Enduring Freedom, Operation Iraqi Freedom, or Operation New Dawn; and

(2) the Secretary of Defense determines would be suitable for use by Federal and State agencies in law enforcement activities, including—

(A) surveillance unmanned aerial vehicles, including the MQ–9 Reaper (also known as the "Predator B");

(B) night-vision goggles; and

(C) high mobility multi-purpose wheel vehicles (commonly known as "humvees").

SEC. 6. CBP VETERAN HIRING.

(a) ADDITIONAL HIRES.—Not later than the date of a vote on the joint resolution of disapproval on operational control described in section 2(c) if such joint resolution passes (or the date by which such vote is required to have occurred pursuant to such section), the Secretary of Homeland Security shall appoint 1,500 Border Patrol

agents over the number of such agents who were employed by the Department of Homeland Security as of the date of the enactment of this Act.

(b) PREFERENCE.—In carrying out the additional appointments required under subsection (a), the Secretary of Homeland Security shall give preference to veterans returning from overseas deployments. To the maximum extent practicable and subject to otherwise applicable provisions of law, the Secretary—

(1) shall implement policies and procedures that will allow veterans so appointed to start employment within 90 days after the date on which they make application for appointment; and

(2) shall streamline the background-check and security-clearance procedures that apply to veterans so appointed.

SEC. 7. SOUTHERN BORDERLANDS PUBLIC SAFETY COMMUNICATIONS GRANT PROGRAM.

(a) IN GENERAL.—The Secretary of Homeland Security may make competitive grants for public-private partnerships that finance equipment and infrastructure to improve the public safety of persons who are residents of rural areas of the United States near the international border with Mexico, by enhancing access to mobile com-

1 munications for such persons who do not currently have
2 access to reliable mobile communications networks.

3 (b) FOCUS AREAS.—In making grants under this sec-
4 tion, the Secretary of Homeland Security shall focus on
5 projects that improve mobile communications in areas im-
6 pacted by the illegal smuggling and trafficking of people
7 and drugs from Mexico into the United States.

8 (c) ELIGIBLE APPLICANTS.—Persons eligible for
9 grants under this section include States, counties, munici-
10 palities, organizations representing agricultural producers
11 and other rural Americans, and telecommunications pro-
12 viders.

13 (d) AUTHORIZATION OF APPROPRIATIONS.—For
14 grants under this section there is authorized to be appro-
15 priated to the Secretary $10,000,000 for the three-fiscal-
16 year period following the date of the enactment of this
17 Act.

18 (e) FUNDING OFFSET.—To offset amounts appro-
19 priated pursuant to the authorization of appropriations in
20 subsection (d), the International Forestry Cooperation Act
21 of 1990 (16 U.S.C. 4501 et seq.) is repealed.

22 **SEC. 8. COMMUNITY IMPACT AID GRANTS.**

23 (a) IN GENERAL.—The Secretary of Homeland Secu-
24 rity shall make grants to sheriffs' departments along
25 international border between the United States and Mex-

ico for the purpose of hiring additional deputies, including for salaries, benefits, training, uniforms, patrol vehicles, and arms.

(b) GRANT CALCULATION FORMULA.—Except as provided in subsection (c), a grant made pursuant to subsection (a) shall be in an amount equal to 30 percent of an eligible sheriff's department's fiscal year 2010 budget for patrol deputies.

(c) MINIMUM BENEFIT.—Notwithstanding the calculation provided for in subsection (b), a grant made pursuant to subsection (a) to an eligible sheriff's department shall be in an amount that allows for the hiring of at least one additional deputy.

(d) AVAILABILITY.—Grants made pursuant to subsection (a) are authorized to remain available until expended.

(e) ELIGIBILITY AND FUNDING.—To be eligible to receive a grant under this section, a sheriff's department shall submit to the Secretary of Homeland Security an application at such time, in such manner, and containing such information as the Secretary may require.

(f) ELIGIBLE SHERIFFS' DEPARTMENTS.—Sheriffs' departments in the following counties are eligible to receive grants under this section:

(1) In Texas, the following counties: El Paso, Hudspeth, Culberson, Jeff Davis, Presidio, Brewster, Terrell, Val Verde, Kinney, Maverick, Dimmit, Webb, Zapata, Starr, Hidalgo, Cameron, Willacy, Jim Hogg, Zavala, and Pecos Counties.

(2) In Arizona, the following counties: Yuma, Pima, Santa Cruz, and Cochise Counties.

(3) In New Mexico, the following counties: Dona Ana, Luna, Grant, Otero, and Hidalgo Counties.

(4) In California, the following counties: San Diego and Imperial Counties.

(g) FUNDING OFFSET.—To carry out this section, the Secretary of Homeland Security shall reprogram funds that would otherwise be obligated and expended under the account heading ''Departmental Management and Operations''.

SEC. 9. U.S. CUSTOMS AND BORDER PROTECTION REPORTING ON BORDER APPREHENSIONS.

(a) IN GENERAL.—The Commissioner of U.S. Customs and Border Protection shall ensure that an individual who is apprehended unlawfully crossing or attempting to unlawfully cross the border into the United States is counted only once for purposes of counting border apprehensions.

(b) PROHIBITION ON DUPLICATE COUNTING.—Any subsequent transfer or booking of an individual described in subsection (a) may not be counted again for purposes of counting border apprehensions.

SEC. 10. BIOMETRIC ENTRY AND EXIT DATA SYSTEM.

(a) IN GENERAL.—Not later than two years after the date of enactment of this Act, the Secretary of Homeland Security shall establish the biometric entry and exit data system required by section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (8 U.S.C. 1365b).

(b) REQUIREMENTS.—In addition to the features required by such section 7208, the Secretary shall ensure that the biometric entry and exit data system is established and in operation at each port of entry to the United States.

SEC. 11. DEFINITION.

In this Act, the term ''operational control'' means a condition in which all illegal border crossers are apprehended and narcotics and other contraband are seized.

○