

SECURE OUR BORDERS FIRST ACT OF 2015

JANUARY 27, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MCCAUL, from the Committee on Homeland Security, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 399]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 399) to require the Secretary of Homeland Security to gain and maintain operational control of the international borders of the United States, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary .....	22
Background and Need for Legislation .....	22
Hearings .....	23
Committee Consideration .....	26
Committee Votes .....	26
Committee Oversight Findings .....	30
New Budget Authority, Entitlement Authority, and Tax Expenditures .....	30
Congressional Budget Office Estimate .....	31
Statement of General Performance Goals and Objectives .....	33
Duplicative Federal Programs .....	33
Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits ...	33
Federal Mandates Statement .....	33
Preemption Clarification .....	33
Disclosure of Directed Rule Makings .....	34
Advisory Committee Statement .....	34
Applicability to Legislative Branch .....	34
Section-by-Section Analysis of the Legislation .....	34

Changes in Existing Law Made by the Bill, as Reported .....	60
Committee Correspondence .....	62
Dissenting Views .....	67

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Secure Our Borders First Act of 2015”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; Table of contents.
Sec. 2. Reports on current border security status.
Sec. 3. Operational control of the border.
Sec. 4. Establishment of Border Security Verification Commission.
Sec. 5. Required consequence.
Sec. 6. Patrol by the Border Patrol of physical land border.
Sec. 7. Tactical flexibility.
Sec. 8. Deployment of certain aviation assets to the southern land border.
Sec. 9. U.S. Customs and Border Protection officer and agent authorization.
Sec. 10. Office of Air and Marine flight hours.
Sec. 11. Air and Marine prioritization.
Sec. 12. Border Patrol flexibility.
Sec. 13. Prohibition on actions that impede border security on certain Federal land.
Sec. 14. Biometric exit data system.
Sec. 15. Northern border threat analysis.
Sec. 16. Operation Stonegarden program.
Sec. 17. Sale or donation of excess personal property for border security activities.
Sec. 18. Reimbursement of States for deployment of National Guard to the southern land border.
Sec. 19. Operation of the Border Patrol.
Sec. 20. Definitions.
Sec. 21. Authorization of appropriations.

**SEC. 2. REPORTS ON CURRENT BORDER SECURITY STATUS.**

(a) **IN GENERAL.**—

(1) **REPORTS.**—The Secretary of Homeland Security shall submit to the appropriate congressional committees, the Border Security Verification Commission (BSVC), and the Government Accountability Office reports that assess and describe the state of situational awareness and operational control along the northern and southern land borders of the United States. Such reports shall include an identification of the high traffic areas and the unlawful border crossing effectiveness rate for each sector along the northern and southern land borders of the United States that are within the responsibility of the Border Patrol.

(2) **DEADLINES.**—The reports required under paragraph (1) shall be submitted as follows:

(A) The first such report shall be submitted by not later than 30 days after the date of the enactment of this Act.

(B) During the two-year period beginning on the date of the submission of such first report, such reports shall be submitted every 180 days.

(C) During the period beginning on the date that is 180 days after the date of the submission of last report under subparagraph (B), such reports shall be submitted every 360 days.

(b) **GAO REPORT.**—Not later than 90 days after receiving the initial report required under subsection (a), the Comptroller General of the United States shall report to the appropriate congressional committees and the BSVC regarding the verification of the data and methodology used to determine high traffic areas and the unlawful border crossing effectiveness rate.

**SEC. 3. OPERATIONAL CONTROL OF THE BORDER.**

(a) **SECURING THE BORDER.**—The Secretary of Homeland Security shall gain and maintain situational awareness, and operational control of high traffic areas, by the date that is not later than two years after the date of the enactment of this Act, and operational control and situational awareness along the southern land border of the United States by the date that is not later than five years after such date of enactment.

(b) **REQUIRED CAPABILITY DEPLOYMENT.**—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security, acting through the appropriate component of the Department of Homeland Security, shall, at a minimum, deploy to each sector or region, as the case may be, of the southern border, in a prioritized, risk-based manner to achieve situational awareness and operational control of the border the following additional capabilities:

(1) **SAN DIEGO SECTOR.**—For the San Diego sector, the following:

(A) Subterranean surveillance and detection technologies.

(B) To increase coastal maritime domain awareness, the following:

(i) Deployable, lighter than air surface surveillance equipment.

- (ii) Unmanned aerial vehicles with maritime surveillance capability.
- (iii) Maritime patrol aircraft.
- (iv) Coastal radar surveillance systems.
- (v) Maritime signals intelligence capabilities.
- (C) Ultralight aircraft detection capabilities.
- (D) Advanced unattended surveillance sensors.
- (E) A rapid reaction capability supported by aviation assets.
- (2) EL CENTRO SECTOR.—For the El Centro sector, the following:
  - (A) Tower-based surveillance technology.
  - (B) Deployable, lighter than air ground surveillance equipment.
  - (C) Man-portable unmanned aerial vehicles.
  - (D) Ultralight aircraft detection capabilities.
  - (E) Advanced unattended surveillance sensors.
  - (F) A rapid reaction capability supported by aviation assets.
- (3) YUMA SECTOR.—For the Yuma sector, the following:
  - (A) Tower-based surveillance technology.
  - (B) Mobile vehicle-mounted and man-portable surveillance systems.
  - (C) Deployable, lighter-than-air ground surveillance equipment.
  - (D) Ultralight aircraft detection capabilities.
  - (E) Advanced unattended surveillance sensors.
  - (F) A rapid reaction capability supported by aviation assets.
- (4) TUCSON SECTOR.—For the Tucson sector, the following:
  - (A) Increased flight hours for aerial detection, interdiction, and monitoring operations capability.
  - (B) Man-portable unmanned aerial vehicles.
  - (C) Tower-based surveillance technology.
  - (D) Ultralight aircraft detection capabilities.
  - (E) Advanced unattended surveillance sensors.
  - (F) Deployable, lighter than air ground surveillance equipment.
  - (G) A rapid reaction capability supported by aviation assets.
- (5) EL PASO SECTOR.—For the El Paso sector, the following:
  - (A) Tower-based surveillance technology.
  - (B) Ultralight aircraft detection capabilities.
  - (C) Advanced unattended surveillance sensors.
  - (D) Mobile vehicle-mounted and man-portable surveillance systems.
  - (E) Deployable, lighter than air ground surveillance equipment.
  - (F) A rapid reaction capability supported by aviation assets.
- (6) BIG BEND SECTOR.—For the Big Bend sector, the following:
  - (A) Tower-based surveillance technology.
  - (B) Deployable, lighter than air ground surveillance equipment.
  - (C) Improved agent communications capabilities.
  - (D) Ultralight aircraft detection capabilities.
  - (E) Advanced unattended surveillance sensors.
  - (F) A rapid reaction capability supported by aviation assets.
- (7) DEL RIO SECTOR.—For the Del Rio sector, the following:
  - (A) Increased monitoring for cross-river dams, culverts, and footpaths.
  - (B) Improved agent communications capabilities.
  - (C) Improved maritime capabilities in the Amistad Recreation Area.
  - (D) Advanced unattended surveillance sensors.
  - (E) A rapid reaction capability supported by aviation assets.
- (8) LAREDO SECTOR.—For the Laredo sector, the following:
  - (A) Maritime detection resources for Falcon Lake region.
  - (B) Increased flight hours for aerial detection, interdiction, and monitoring operations capability.
  - (C) Increased monitoring for cross-river dams, culverts, and footpaths.
  - (D) Ultralight aircraft detection capabilities.
  - (E) Advanced unattended surveillance sensors.
  - (F) A rapid reaction capability supported by aviation assets.
- (9) RIO GRANDE VALLEY SECTOR.—For the Rio Grande Valley sector, the following:
  - (A) Deployable, lighter than air ground surveillance equipment.
  - (B) Increased flight hours for aerial detection, interdiction and monitoring operations capability.
  - (C) Ultralight aircraft detection capabilities.
  - (D) Advanced unattended surveillance sensors.
  - (E) Increased monitoring for cross-river dams, culverts, footpaths.
  - (F) A rapid reaction capability supported by aviation assets.
- (10) EASTERN PACIFIC MARITIME REGION.—For the Eastern Pacific Maritime region, the following:

- (A) Increased cutter and boat hours and operation platforms to conduct interdiction operations.
  - (B) Increased maritime signals intelligence capabilities.
  - (C) To increase maritime domain awareness, the following:
    - (i) Deployable, lighter than air surface surveillance equipment.
    - (ii) Unmanned aerial vehicles with maritime surveillance capability.
    - (iii) Increased maritime aviation patrol hours.
    - (iv) Coastal radar surveillance systems.
  - (D) Increased operational hours for maritime security components dedicated to joint counter-smuggling and interdiction efforts with other Federal agencies, including the Joint Interagency Task Forces, and the United States Coast Guard Deployable Specialized Forces.
- (11) CARIBBEAN AND GULF MARITIME REGION.—For the Caribbean and Gulf Maritime region, the following:
- (A) Increased cutter and boat hours and operation platforms to conduct interdiction operations.
  - (B) Increased maritime signals intelligence capabilities.
  - (C) Increased maritime domain awareness and surveillance capabilities, including the following:
    - (i) Deployable, lighter than air surface surveillance equipment.
    - (ii) Unmanned aerial vehicles with maritime surveillance capability.
    - (iii) Increased maritime aviation patrol hours.
    - (iv) Coastal radar surveillance systems.
  - (D) Increased operational hours for maritime security components dedicated to joint counter-smuggling and interdiction efforts with other Federal agencies, including the Joint Interagency Task Forces, and the United States Coast Guard Deployable Specialized Forces.
- (c) FENCING AND INFRASTRUCTURE.—
- (1) NEW FENCING.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Homeland Security shall construct, at a minimum, each of the following:
- (A) Seven miles of double layer fencing in the Border Patrol's San Diego sector in addition to such fencing in existence as of the date of the enactment of this Act.
  - (B) Twenty-one miles of double layer pedestrian fencing in the Border Patrol's Tucson sector in addition to such fencing in existence as of the date of the enactment of this Act.
  - (C) Ten miles of double layer pedestrian fencing in the Border Patrol's Rio Grande Valley sector in addition to such fencing in existence as of the date of the enactment of this Act.
  - (D) Ten miles of double layer pedestrian fencing in the Border Patrol's Del Rio sector in addition to such fencing in existence as of the date of the enactment of this Act.
- (2) FENCE REPAIR AND REPLACEMENT.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Homeland Security shall replace, at a minimum, each of the following:
- (A) Thirty-one miles of landing mat fencing with bollard style fencing in the Border Patrol's San Diego sector.
  - (B) Five miles of landing mat fencing with bollard style fencing in the Border Patrol's El Centro sector.
  - (C) Three miles of landing mat fencing with bollard style fencing in the Border Patrol's Yuma sector.
  - (D) Twenty-five miles of landing mat fencing with bollard style fencing in the Border Patrol's Tucson sector.
  - (E) Two miles of landing mat fencing with bollard style fencing in the Border Patrol's El Paso sector.
- (3) ROAD CONSTRUCTION.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Homeland Security shall complete, at a minimum, each of the following road construction projects to allow greater access for the Border Patrol:
- (A) Seven miles of road construction in the Border Patrol's San Diego sector.
  - (B) Ten miles of road construction in the Border Patrol's El Centro sector.
  - (C) Sixteen miles of road construction in the Border Patrol's Yuma sector.
  - (D) Fifty-four miles of road construction in the Border Patrol's Tucson sector.
  - (E) One hundred ninety-two miles of road construction in the Border Patrol's Big Bend sector.
  - (F) Two miles of road construction in the Border Patrol's El Paso sector.

- (G) Forty-two miles of road construction in the Border Patrol's Del Rio sector.
- (H) Sixty-five miles of road construction in the Border Patrol's Laredo sector.
- (I) Fifteen miles of road construction in the Border Patrol's Rio Grande Valley sector.
- (4) ROAD MAINTENANCE.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Homeland Security shall complete, at a minimum, each of the following:
- (A) Thirty-seven miles of road maintenance in the Border Patrol's San Diego sector.
- (B) One thousand two hundred miles of road maintenance in the Border Patrol's Del Rio sector.
- (C) Twenty-six miles of road maintenance in the Border Patrol's Laredo sector.
- (D) Ninety-four miles of road maintenance in the Border Patrol's Rio Grande Valley sector.
- (5) NEW VEHICLE FENCE.—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall complete six miles of vehicle fencing in the Border Patrol's Big Bend sector in addition to such fencing in existence as of the date of the enactment of this Act.
- (6) VEHICLE FENCE REPLACEMENT.—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall replace five miles of vehicle fencing with new vehicle fencing in the Border Patrol's Tucson sector in addition to such fencing in existence as of the date of the enactment of this Act.
- (7) BOAT RAMPS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall complete, at a minimum, the construction of each of the following:
- (A) Eight boat ramps in the Border Patrol's Del Rio sector in addition to such ramps in existence as of the date of the enactment of this Act.
- (B) One boat ramp in the Border Patrol's Laredo sector in addition to such ramps in existence as of the date of the enactment of this Act.
- (C) Twenty-one boat ramps in the Border Patrol's Rio Grande Valley sector in addition to such ramps in existence as of the date of the enactment of this Act.
- (8) ACCESS GATES.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall construct 34 access gates in the Border Patrol's Rio Grande Valley sector in addition to such gates in existence as of the date of the enactment of this Act.
- (9) FORWARD OPERATING BASES.—Not later than one year after the date of enactment of this Act, the Secretary of Homeland Security shall complete, at a minimum, construction of each of the following:
- (A) One forward operating base in the Border Patrol's El Paso sector in addition to such bases in existence as of the date of the enactment of this Act.
- (B) Two forward operating bases in the Border Patrol's Tucson sector in addition to such bases in existence as of the date of the enactment of this Act.
- (C) Three forward operating bases in the Border Patrol's Big Bend sector in addition to such bases in existence as of the date of the enactment of this Act.
- (D) Two forward operating bases in the Border Patrol's Del Rio sector in addition to such bases in existence as of the date of the enactment of this Act.
- (E) Two forward operating bases in the Border Patrol's Laredo sector in addition to such bases in existence as of the date of the enactment of this Act.
- (F) Two forward operating bases in the Border Patrol's Rio Grande Valley sector in addition to such bases in existence as of the date of the enactment of this Act.
- (10) ROADS.—The roads referred to in paragraphs (3) and (4) shall include border roads, patrol roads, access roads, and Federal, State, local, and privately owned roads.
- (11) MINIMUM FORWARD OPERATING BASE REQUIREMENTS.—The forward operating bases referred to in paragraph (9) shall be equipped with each of the following:
- (A) Perimeter security.
- (B) Temporary detention space.

- (C) An interview room.
  - (D) Water.
  - (E) Power.
  - (F) Adequate communications, including wide area network connectivity.
  - (G) Helicopter landing zone.
- (d) CARRIZO CANE ERADICATION.—
- (1) FINDINGS.—Congress makes the following findings:
    - (A) Carrizo cane is a non-native, invasive plant growing along the Rio Grande River in Texas, with heights of up to 27 feet tall.
    - (B) According to U.S. Customs and Border Protection, “the [Carrizo cane] plant causes serious officer safety issues and operational concerns because it hampers enforcement along the [Rio Grande] river. The plant also provides concealment to criminals, drug smugglers, illegal aliens, and potential terrorists who could use it as an advantage to enter the United States illegally. The obvious officer safety hazards created by this situation are of grave concern to the Border Patrol and need to be remedied”.
  - (2) ERADICATION.—The Chief of the Border Patrol shall coordinate with the heads of each relevant Federal and State agency to eradicate, to the greatest extent practicable, the Carrizo cane plant along the Rio Grande River.
- (e) CONSULTATION.—The Secretary of Homeland Security shall consult with the governors of each southern land border State and each southern border maritime State, representatives of the Border Patrol and U.S. Customs and Border Protection, and relevant Federal, State, local, and tribal agencies that have jurisdiction on the southern land border, or in the maritime environment, to develop the operational plan required under subsection (f) and the metrics required under subsections (h), (i), (j), and (k).
- (f) OPERATIONAL PLAN.—
- (1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the appropriate congressional committees, the BSVC, and the Comptroller General of the United States a comprehensive operational plan for each of the components of the Department of Homeland Security responsible for border or maritime security to gain and maintain situational awareness, operational control of high traffic areas, and operational control along the southern land border of the United States by the dates, respectively, referred to in subsection (a).
  - (2) CONTENTS OF PLAN.—The plan required under paragraph (1) shall include the following:
    - (A) An assessment of principal border security threats, including threats relating to the smuggling and trafficking of humans, weapons, and illicit drugs.
    - (B) A description of the required capability deployment under subsection (b).
    - (C) A plan to analyze and disseminate border security and border threat information among the border security components of the Department of Homeland Security, and between the Department and other appropriate Federal departments and agencies with missions associated with the border.
    - (D) A plan to achieve situational awareness using the capabilities deployed under subsection (b).
    - (E) A plan to ensure that any new border security assets will be operationally integrated with assets in use by the Department of Homeland Security as of the date of the enactment of this Act.
    - (F) A plan to eradicate the Carrizo cane plant, as required under subsection (d).
    - (G) Lessons learned from Operation Jumpstart and Operation Phalanx.
    - (H) A description of border security information received from consultation with border community stakeholders, including representatives from agricultural and ranching organizations and business and civic organizations along the northern or southern land borders.
    - (I) A description of the staffing requirements for all border security functions of the border security components of the Department of Homeland Security.
    - (J) A prioritized list of research and development objectives to enhance the security of the international land and maritime borders of the United States.
    - (K) An assessment of the relationship between border security operations and crossing times.
    - (L) Metrics required under subsections (h), (i), (j), and (k).

(M) An integrated master schedule and cost estimate, including lifecycle costs, for the activities contained in such operational plan.

(N) A documented justification and rationale for technology choices.

(O) Deployment locations.

(P) A timetable for procurement and deployment.

(Q) Estimates of operation and maintenance costs.

(R) An identification of any impediments to the deployment of such technologies.

(3) CLASSIFIED ASSESSMENT.—The assessment required to be included in the report under paragraph (2)(A) may be submitted in classified form, if the Secretary of Homeland Security determines that such is appropriate.

(4) IMPLEMENTATION.—

(A) IN GENERAL.—The Secretary of Homeland Security shall commence the implementation of the operational plan under paragraph (1) not later than 30 days after the submission to the appropriate congressional committees of the report by the Comptroller General of the United States under subparagraph (C).

(B) COMPTROLLER GENERAL REVIEW.—Not later than 90 days after receiving the operational plan under paragraph (1), the Comptroller General of the United States shall submit to the appropriate congressional committees and the BSVC a report on the operational plan required under paragraph (1) and such congressional justification.

(g) PERIODIC UPDATES.—Not later than 180 days after the submission of each Quadrennial Homeland Security Review required under section 707 of the Homeland Security Act of 2002 (6 U.S.C. 347) beginning with the first such Review that is due after the operational plan is submitted under subsection (f), the Secretary of Homeland Security shall submit to the appropriate congressional committees, the BSVC, and the Comptroller General of the United States an updated operational plan under paragraph (1) of subsection (f).

(h) METRICS FOR SECURING THE BORDER BETWEEN PORTS OF ENTRY.—

(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act and annually thereafter, the Chief of the Border Patrol shall develop metrics, informed by situational awareness, to measure the effectiveness of security between ports of entry, which shall include, at a minimum, the following:

(A) An unlawful border crossing effectiveness rate, informed by situational awareness.

(B) A probability of detection that measures the estimated total unlawful border crossing attempts not detected by the Border Patrol against the unlawful border crossing effectiveness rate referred to in subparagraph (A).

(C) A weight-to-frequency rate which measures the average weight of marijuana seized per seizure by the Border Patrol in any fiscal year compared to such a weight-to-frequency rate for the immediately preceding five fiscal years.

(D) A situational awareness achievement metric that measures the amount of situational awareness achieved in each Border Patrol sector.

(E) An illicit drugs seizure rate which measures the amount and type of illicit drugs seized by the Border Patrol in any fiscal year compared to an average of the amount and type of illicit drugs seized by the Border Patrol for the immediately preceding five fiscal years.

(F) In consultation with the Office of National Drug Control Policy and the United States Southern Command, a cocaine seizure effectiveness rate measured as a percentage that results from dividing the amount of cocaine seized by the Border Patrol by the total documented cocaine flow rate between ports of entry along the southern land border.

(G) Estimates, using alternative methodologies, including recidivism data, survey data, known-flow data, and technologically measured data, of total attempted unlawful border crossings, the rate of apprehension of attempted unlawful border crossers, and the inflow into the United States of unlawful border crossers who evade apprehension.

(H) Estimates of the impact of the Border Patrol's Consequence Delivery System on the rate of recidivism of unlawful border crossers.

(2) METRICS CONSULTATION.—In developing the metrics required under paragraph (1), the Chief of the Border Patrol shall consult with staff members of the Office of Policy at the Department of Homeland Security and staff members of the Office of the Chief Financial Officer of the Department of Homeland Security. Such staff members may not be political appointees.

(3) METRICS NOT REVIEWABLE.—The metrics required under paragraph (1) may not be reviewed or otherwise amended by the President, any staff employed by the Executive Office of the President, the Secretary of Homeland Se-

curity, the Deputy Secretary of Homeland Security, the Commissioner of U.S. Customs and Border Protection, or the Deputy Commissioner of U.S. Customs and Border Protection before the submission of such metrics to the appropriate congressional committees, the BSVC, and Comptroller General of the United States, as required under subsection (m). The prohibition described in this paragraph does not apply to the Office of National Drug Control Policy.

(i) METRICS FOR SECURING THE BORDER AT PORTS OF ENTRY.—

(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act and annually thereafter, the Assistant Commissioner for the Office of Field Operations in U.S. Customs and Border Protection shall develop metrics, informed by situational awareness, to measure the effectiveness of security at ports of entry, which shall include, at a minimum, the following:

(A) An inadmissible border crossing rate which measures the number of known inadmissible border crossers who are denied entry, excluding those border crossers who voluntarily withdraw their applications for admission, divided by the total estimated number of inadmissible border crossers who attempt entry.

(B) An illicit drugs seizure rate which measures the amount and type of illicit drugs seized by the Office of Field Operations of U.S. Customs and Border Protection in any fiscal year compared to an average of the amount and type of illicit drugs seized by U.S. Customs and Border Protection for the immediately preceding five fiscal years.

(C) In consultation with the Office of National Drug Control Policy and the United States Southern Command, a cocaine seizure effectiveness rate measured as a percentage that results from dividing the amount of cocaine seized by the Office of Field Operations of U.S. Customs and Border Protection by the total documented cocaine flow rate at ports of entry along the southern land border.

(D) Estimates, using alternative methodologies, including survey data and randomized secondary screening data, of total attempted inadmissible border crossers, the rate of apprehension of attempted inadmissible border crossers, and the inflow into the United States of inadmissible border crossers who evade apprehension.

(E) The number of infractions related to personnel and cargo committed by major violators who are apprehended by the Office of Field Operations of U.S. Customs and Border Protection at ports of entry, and the estimated number of such infractions committed by major violators who are not apprehended.

(F) A measurement of how border security operations affect crossing times.

(G) The amount and type of illicit drugs seized by the Office of Field Operations of U.S. Customs and Border Protection at United States seaports during the previous fiscal year.

(H) A cargo scanning rate that measures the number of cargo containers scanned by the Office of Field Operations of U.S. Customs and Border Protection at each United States seaport during the previous fiscal year against the total number of cargo containers entering the United States at each seaport during the previous fiscal year.

(2) METRICS CONSULTATION.—In developing the metrics required under paragraph (1), the Assistant Commissioner for the Office of Field Operations shall consult with staff members of the Office of Policy at the Department of Homeland Security and staff members of the Office of the Chief Financial Officer of the Department of Homeland Security. Such staff members may not be political appointees.

(3) METRICS NOT REVIEWABLE.—The metrics required under paragraph (1) may not be reviewed or otherwise amended by the President, any staff employed by the Executive Office of the President, the Secretary of Homeland Security, the Deputy Secretary of Homeland Security, the Commissioner of U.S. Customs and Border Protection, or the Deputy Commissioner of U.S. Customs and Border Protection before the submission of such metrics to the appropriate congressional committees, the BSVC, and the Comptroller General of the United States, as required under subsection (m). The prohibition described in this paragraph does not apply to the Office of National Drug Control Policy.

(j) METRICS FOR SECURING THE MARITIME BORDER.—

(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act and annually thereafter, the Commandant of the United States Coast Guard and the Assistant Commissioner for the Office of Air and Marine for U.S. Customs and Border Protection shall jointly implement metrics, informed by sit-

national awareness, to measure the effectiveness of security in the maritime environment, which shall include, at a minimum, the following:

(A) An estimate of the total number of undocumented migrants the Department of Homeland Security's maritime security components fail to interdict.

(B) An undocumented migrant interdiction rate which measures the flow of undocumented migrants interdicted against the total estimated number of undocumented migrants the Department of Homeland Security's maritime security components fail to interdict.

(C) An illicit drugs removal rate which measures the amount and type of illicit drugs removed by the Department of Homeland Security's maritime security components inside a transit zone in any fiscal year compared to an average of the amount and type of illicit drugs removed by the Department of Homeland Security's maritime security components inside a transit zone for the immediately preceding five fiscal years.

(D) An illicit drugs removal rate which measures the amount and type of illicit drugs removed by the Department of Homeland Security's maritime security components outside a transit zone in any fiscal year compared to an average of the amount and type of illicit drugs removed by the Department of Homeland Security's maritime security components outside a transit zone for the immediately preceding five fiscal years.

(E) A cocaine removal effectiveness rate inside a transit zone.

(F) A cocaine removal effectiveness rate outside a transit zone.

(G) A response rate which measures the ability of the maritime security components of the Department of Homeland Security to respond to and resolve known maritime threats, both inside and outside a transit zone, by placing assets on-scene, compared to the total number of events with respect to which the Department has known threat information.

(2) METRICS CONSULTATION.—In developing the metrics required under paragraph (1), the Commandant of the Coast Guard and the Assistant Commissioner for Air and Marine shall consult with staff members of the Office of Policy at the Department of Homeland Security and staff members of the Office of the Chief Financial Officer of the Department of Homeland Security. Such staff members may not be political appointees.

(3) METRICS NOT REVIEWABLE.—The metrics required under paragraph (1) may not be reviewed or otherwise amended by the President, any staff employed by the Executive Office of the President, the Secretary of Homeland Security, the Deputy Secretary of Homeland Security, the Commissioner of U.S. Customs and Border Protection, or the Deputy Commissioner of U.S. Customs and Border Protection before the submission of such metrics to the appropriate congressional committees, the BSVC, and the Comptroller General of the United States, as required under subsection (m). The prohibition described in this paragraph does not apply to the Office of National Drug Control Policy.

(k) AIR AND MARINE SECURITY METRICS IN THE LAND DOMAIN.—

(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act and annually thereafter, the Assistant Commissioner for the Office of Air and Marine for U.S. Customs and Border Protection shall implement metrics, informed by situational awareness, to measure the effectiveness of security in the aviation environment, which shall include, at a minimum, the following:

(A) A requirement effectiveness rate which measures U.S. Customs and Border Protection's Office of Air and Marine flight hours requirements against the number of flight hours actually flown by such Office.

(B) A funded flight hours effectiveness rate which measures the number of funded flight hours appropriated to U.S. Customs and Border Protection's Office of Air and Marine against the number of actual flight hours flown by such Office.

(C) A readiness rate which measures the number of aviation missions flown by U.S. Customs and Border Protection's Office of Air and Marine against the number of aviation missions cancelled by such Office due to weather, maintenance, operations, or other causes.

(D) The number of subjects detected by U.S. Customs and Border Protection's Office of Air and Marine through the use of unmanned aerial systems.

(E) The number of apprehensions assisted by U.S. Customs and Border Protection's Office of Air and Marine through the use of unmanned aerial systems.

(F) The number and quantity of illicit drug seizures assisted by U.S. Customs and Border Protection's Office of Air and Marine through the use of unmanned aerial systems.

(G) A detailed description of how, where, and for how long data and images collected through the use of unmanned aerial systems by U.S. Customs and Border Protection is collected and stored.

(2) METRICS CONSULTATION.—In developing the metrics required under paragraph (1), the Assistant Commissioner for Air and Marine shall consult with staff members of the Office of Policy at the Department of Homeland Security and staff members of the Office of the Chief Financial Officer of the Department of Homeland Security. Such staff members may not be political appointees.

(3) METRICS NOT REVIEWABLE.—The metrics required under paragraph (1) may not be reviewed or otherwise amended by the President, any staff employed by the Executive Office of the President, the Secretary of Homeland Security, the Deputy Secretary of Homeland Security, the Commissioner of U.S. Customs and Border Protection, or the Deputy Commissioner of U.S. Customs and Border Protection before the submission to the appropriate congressional committees, the BSVC, and the Comptroller General of the United States, as required under subsection (m). The prohibition described in this paragraph does not apply to the Office of National Drug Control Policy.

(l) PENALTIES FOR FAILURE TO SUBMIT METRICS.—

(1) IN GENERAL.—If any of the officials referred to in subsection (h), (i), (j), or (k) fail to meet any of the deadlines required under any of such subsections, no political appointee of the Department of Homeland Security may perform any function described in paragraph (2) until all such officials have met all of such deadlines.

(2) FUNCTIONS DESCRIBED.—The functions described in this paragraph are the following:

- (A) Travel using Government aircraft.
- (B) Receipt of any non-essential training.
- (C) Receipt of bonus pay, excluding overtime pay.
- (D) Receipt of any salary increase.

(m) EVALUATION BY THE GOVERNMENT ACCOUNTABILITY OFFICE.—

(1) IN GENERAL.—The metrics required under subsections (h), (i), (j), and (k) shall be made available to the appropriate congressional committees, the BSVC, and the Comptroller General of the United States, together with the data and methodology used to develop such metrics.

(2) REPORT.—Not later than 270 days after receiving the data and methodology referred to in paragraph (1), the Comptroller General of the United States shall submit to the appropriate congressional committees and the BSVC a report on the suitability and statistical validity of such data and methodology, and shall make recommendations to the Secretary of Homeland Security for other suitable metrics that may be used to measure the effectiveness of border security. Such report shall inform the BSVC in reviewing the notifications required under subsection (n)(2).

(n) BSVC CERTIFICATION OF METRICS AND OPERATIONAL CONTROL.—

(1) SECRETARY OF HOMELAND SECURITY NOTIFICATIONS.—

(A) TWO YEARS.—If the Secretary of Homeland Security determines that situational awareness and operational control of high traffic areas have been achieved by the date that is not later than two years after the date of the enactment of this Act, the Secretary shall, under penalty of perjury, submit to the appropriate congressional committees and the BSVC a notification that so attests.

(B) FIVE YEARS.—If the Secretary of Homeland Security determines that operational control along the southern land border of the United States has been achieved by the date that is not later than five years after the date of the enactment of this Act, the Secretary shall, under penalty of perjury, submit to the appropriate congressional committees and the BSVC a notification that so attests.

(C) ANNUAL UPDATES.—Every year beginning with the year after the Secretary of Homeland Security submits the notification under subparagraph (B), if the Secretary determines that operational control along the southern land border of the United States is being maintained, the Secretary shall submit to the appropriate congressional committees and the BSVC a notification that so attests.

(2) BSVC CERTIFICATION.—

(A) OPERATIONAL CONTROL REVIEWS.—The BSVC shall review the notifications of the Secretary of Homeland Security under subparagraphs (A), (B), and (C) of paragraph (1) to assess such notifications relating to the

achievement of situational awareness, operational control, or both, as the case may be, in accordance with such subparagraphs.

(B) REVIEW OF METRICS.—Beginning with the second annual submission of each of the metrics required under subsection (m) and pursuant to subsections (h), (i), (j), and (k) and annually thereafter until the termination of the BSVC under section 4(q), the BSVC shall review such metrics to assess the statistical validity and methodology of the data used to implement such metrics.

(C) REPORTS.—

(i) OPERATIONAL CONTROL.—Not later than 120 days after conducting a review described in subparagraph (A), the BSVC shall submit to the appropriate congressional committees a report on the results of each such review and a certification of the accuracy of the notification reviewed, in accordance with subparagraph (D).

(ii) OPERATIONAL CONTROL NOT ACHIEVED.—If the BSVC determines that any notification required under subparagraph (A), (B), or (C) of paragraph (1) is not accurate, the BSVC shall include in the report under clause (i) an explanation of why situational awareness, operational control, or both, as the case may be, was not achieved. Such explanation shall include, at a minimum—

(I) impediments incurred;

(II) potential remedies; and

(III) recommendations to achieve situational awareness, operational control, or both, as the case may be.

(iii) METRICS.—Not later than 120 days after conducting a review described in subparagraph (B), the BSVC shall submit to the appropriate congressional committees a report on the results of each such review and a determination of the accuracy of the metrics implemented under subsections (h), (i), (j), and (k).

(D) OPERATIONAL CONTROL CERTIFICATION.—

(i) IN GENERAL.—For purposes of subparagraph (C)(i), the BSVC shall certify the accuracy of a notification of the Secretary if four members of the BSVC vote that such certification is accurate.

(ii) PUBLIC VOTING.—A vote referred to under clause (i) shall be conducted in public.

(iii) CONSULTATION.—Before conducting a vote referred to in clause (i), the BSVC shall consult with the governors of each southern land border State, representatives of the National Border Patrol Council, representatives of the ranching industry in each southern land border State, and relevant State and local government agencies that have jurisdiction on the southern land border.

(E) METRICS DETERMINATION.—For purposes of subparagraph (C)(iii), the BSVC shall concur in the accuracy of the metrics required under subsections (h), (i), (j), and (k) if four members of the BSVC vote that such certification is accurate.

(o) FAILURE TO ACHIEVE OPERATIONAL CONTROL.—

(1) PENALTIES.—

(A) IN GENERAL.—If the Secretary of Homeland Security determines that situational awareness, operational control, or both, as the case may be, has not been achieved by the dates referred to in subsection (n)(1) (and thus fails to submit a notification to the BSVC), or if the BSVC determines pursuant to subsection (n)(2) that the Secretary has failed to achieve situational awareness and operational control of high traffic areas or has failed to achieve operational control along the southern land border by such respective dates, no political appointee of the Department of Homeland Security may perform any function described in subparagraph (B) until the BSVC certifies that the Secretary has achieved such situational awareness, operational control, or both, as the case may be.

(B) FUNCTIONS DESCRIBED.—The functions described in this subparagraph are each of the following:

(i) Travel using Government aircraft.

(ii) Receipt of any non-essential training, including conferences.

(iii) Receipt of bonus pay.

(iv) Receipt of any salary increase.

(2) NATIONAL SECURITY EXCEPTION.—The Secretary of Homeland Security may waive the travel prohibition in paragraph (1)(B)(i) if the Secretary determines and notifies the appropriate congressional committees that—

(A) such a waiver is in the national security interests of the United States; or

(B) such travel is being carried out to achieve operational control of the southern land border of the United States.

(3) **FURTHER ACTION REQUIRED.**—If the Secretary of Homeland Security determines that situational awareness, operational control, or both, as the case may be, has not been achieved by the dates referred to in subsection (n)(1) (and thus fails to submit a notification to the BSVC), or if the BSVC determines pursuant to subsection (n)(2) that the Secretary has failed to achieve situational awareness and operational control of high traffic areas or fails to achieve operational control along the southern land border by such respective dates, the Secretary of Homeland Security shall, within 180 days, submit to the appropriate congressional committees and the BSVC and implement a revised plan to achieve situational awareness, operational control, or both, as the case may be, that adopts the recommendations of the BSVC referred to in subsection (n)(2)(C)(ii)(III).

(p) **REPORTS.**—Not later than 60 days after the date of the enactment of this Act and annually thereafter, the Secretary of Homeland Security shall submit to the appropriate congressional committees a report that includes each of the following:

(1) A resource allocation model for current and future year staffing requirements that includes optimal staffing levels at all land, air, and sea ports of entry, and an explanation of U.S. Customs and Border Protection methodology for aligning staffing levels and workload to threats and vulnerabilities and their effects on cross border trade and passenger travel across all mission areas.

(2) Detailed information on the level of manpower available at all land, air, and sea ports of entry and between ports of entry, including the number of canine and agricultural specialists assigned to each such port of entry.

(3) Detailed information describing the difference between the staffing the model suggests and the actual staffing at each port of entry and between the ports of entry.

(4) Monthly per passenger wait times, including data on per passenger processing wait times at all land, air, and sea ports of entry.

(5) A description of the infrastructure, security resources, and other measures that are necessary to achieve substantial reductions in the average wait times of vehicles at land border ports of entry.

(q) **ADHERENCE TO CERTAIN STANDARDS.**—The Under Secretary for Management of the Department of Homeland Security, in coordination with the Assistant Commissioner of the Office of Administration of U.S. Customs and Border Protection, shall ensure component program managers who are responsible for carrying out subsections (b) and (c) adhere to internal control standards identified by the Comptroller General of the United States. The Assistant Commissioner shall provide information, as needed, to assist the Under Secretary for Management in monitoring proper program management of border security programs carried out pursuant to such subsections.

#### **SEC. 4. ESTABLISHMENT OF BORDER SECURITY VERIFICATION COMMISSION.**

(a) **IN GENERAL.**—There is established a Border Security Verification Commission (in this Act referred to as the “BSVC”).

(b) **PURPOSE.**—The BSVC shall certify the accuracy of the notifications regarding situational awareness and operational control required from the Secretary pursuant to section 3(n).

(c) **COMPOSITION.**—The BSVC shall be composed of—

(1) the head of a national laboratory within the Department of Homeland Security laboratory network with prior expertise in border security, appointed by the President, in coordination with the Speaker and minority leader of the House of Representatives and the majority and minority leaders of the Senate;

(2) the head of a border security university-based center within the Department of Homeland Security Centers of Excellence network, appointed by the President, in coordination with the Speaker and minority leader of the House of Representatives and the majority and minority leaders of the Senate; and

(3) three individuals, appointed by the President, based on the recommendations of the special congressional commission on border security established pursuant to subsection (d).

(d) **SPECIAL CONGRESSIONAL COMMISSION ON BORDER SECURITY.**—

(1) **ESTABLISHMENT.**—There is established a special congressional commission on border security (in this subsection referred to as the “commission”). The commission shall determine the criteria for making recommendations for the individuals to be appointed by the President under subsection (c)(3), and shall recommend not more than five individuals for such appointments. The commission shall consist of—

(A) the Speaker and minority leader of the House of Representatives;

(B) the majority and minority leaders of the Senate;

(C) the chairman and ranking member of the Committee on Homeland Security of the House of Representatives; and

(D) the chairman and ranking member of the Committee on Homeland Security and Governmental Affairs of the Senate.

(2) VOTING PROCEDURES.—

(A) IN GENERAL.—The commission may make a recommendation to the President concerning an individual referred to in subsection (c)(3) only if such recommendation is approved by a majority vote of the full membership of the commission.

(B) TIE VOTE.—In the event of a tie vote of the commission during its consideration of whether or not to recommend an individual to the President under paragraph (1), the Speaker of the House of Representatives shall cast the deciding vote.

(e) QUALIFICATIONS.—The individuals referred to in subsection (c)(3) shall have a minimum of five years professional experience in law enforcement and border security.

(f) CHAIR.—The BSVC shall be chaired by the individual referred to in subsection (c)(1).

(g) APPOINTMENT.—The members of the BSVC shall be appointed not later than 60 days after the date of the enactment of this Act.

(h) PROHIBITION ON COMPENSATION.—Members of the BSVC may not receive pay, allowances, or benefits from the Federal Government by reason of their service on the BSVC.

(i) PROHIBITION ON CERTAIN MEMBERSHIP.—Members of the BSVC may not be current Federal employees or current Members of Congress.

(j) SECURITY CLEARANCES.—A member or employee of the BSVC shall receive an appropriate security clearance, as determined by the BSVC in consultation with the Secretary of Homeland Security, that is commensurate with the sensitivity of the classified information to which such member or employee will be given access by reason of membership in or employment by the BSVC.

(k) MEETINGS.—The BSVC shall meet on the call of the chairperson. The BSVC shall meet and begin operations not later than 180 days after the date of the enactment of this Act.

(l) PUBLIC HEARINGS.—

(1) IN GENERAL.—The BSVC shall hold not fewer than two public hearings each calendar year.

(2) WITNESS TESTIMONY.—In holding the hearings required under paragraph (1), the BSVC shall request the public testimony of Federal, State, and local officials, and any private citizen or organization the BSVC determines is relevant to carrying out its mission.

(m) QUORUM.—Four members of the BSVC shall constitute a quorum to conduct business, but the BSVC may establish a lesser quorum for conducting hearings scheduled by the BSVC.

(n) RULES.—The BSVC may establish by majority vote any other rules for the conduct of business, if such rules are not inconsistent with this Act.

(o) VACANCIES.—Any vacancy in the membership of the BSVC shall be filled within 60 days and in the same manner as the original appointment.

(p) PERSONNEL MATTERS.—

(1) TRAVEL EXPENSES.—The members of the BSVC shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of service for the BSVC.

(2) DETAIL OF FEDERAL EMPLOYEES.—With the affirmative vote of four of the members of the BSVC, any Federal Government employee, with the approval of the head of the appropriate Federal agency or congressional office, may be detailed to the BSVC without reimbursement, and such detail shall be without interruption or loss of civil service status, salary, benefits, or privileges.

(3) OFFICE SPACE AND ASSISTANCE.—Upon the request of the BSVC, the Secretary of Homeland Security shall provide reasonable and appropriate office space, supplies, and administrative assistance.

(q) TERMINATION.—The BSVC shall terminate after determining the accuracy of the tenth annual metrics submission required under subsection (n)(2) of section 3.

**SEC. 5. REQUIRED CONSEQUENCE.**

The Chief of the Border Patrol shall impose a consequence for each alien apprehended pursuant to the Border Patrol's Consequence Delivery System.

**SEC. 6. PATROL BY THE BORDER PATROL OF PHYSICAL LAND BORDER.**

(a) **IN GENERAL.**—The Chief of the Border Patrol shall direct agents of the Border Patrol to patrol as close to the physical land border as possible, consistent with the accessibility to such areas.

(b) **FORWARD OPERATING BASE PERSONNEL.**—The Chief of the Border Patrol shall deploy the maximum practicable number of Border Patrol agents to forward operating bases along the southern land border of the United States to meet the requirements of this section.

**SEC. 7. TACTICAL FLEXIBILITY.**

(a) **SOUTHERN LAND BORDER.**—The Chief of the Border Patrol may alter the capability deployment referred to in subsection (b) of section 3 if the Chief determines, after consultation with the appropriate congressional committees, that the principal border security threats referred to in subsection (f)(2)(A) of such section require such alteration.

(b) **NORTHERN LAND BORDER.**—The Chief of the Border Patrol may alter the capability deployment referred to in subsection (c) of section 15 if the Chief determines, after consultation with the appropriate congressional committees, that the threat analysis referred to in subsection (a) of such section requires such alteration.

**SEC. 8. DEPLOYMENT OF CERTAIN AVIATION ASSETS TO THE SOUTHERN LAND BORDER.**

(a) **IN GENERAL.**—The Secretary of Defense, in collaboration with the Secretary of Homeland Security, may allocate additional aviation assets of the Department of Defense to the southern land border of the United States to assist the Secretary of Homeland Security in achieving situational awareness and operational control in accordance with section 3(a).

(b) **ADDITIONAL REQUIREMENTS.**—

(1) **PLAN.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the appropriate congressional committees and the BSVC a plan for the Department of Homeland Security to acquire and deploy aviation capabilities of the Department along the southern land border of the United States.

(2) **DHS DEPLOYMENT.**—Not later than 180 days after the submission of the plan under paragraph (1), the Secretary of Homeland Security shall begin acquiring and deploying to the southern land border of the United States aviation capabilities of the Department of Homeland Security acquired in accordance with such plan.

**SEC. 9. U.S. CUSTOMS AND BORDER PROTECTION OFFICER AND AGENT AUTHORIZATION.**

(a) **BORDER PATROL.**—The Border Patrol shall maintain an active duty presence of not fewer than 21,370 full time equivalent agents.

(b) **OFFICE OF FIELD OPERATIONS.**—The Office of Field Operations of U.S. Customs and Border Protection shall maintain not fewer than 23,775 full time equivalent officers.

(c) **OFFICE OF AIR AND MARINE.**—The Office of Air and Marine of U.S. Customs and Border Protection shall maintain not fewer than 1,675 full time equivalent agents.

**SEC. 10. OFFICE OF AIR AND MARINE FLIGHT HOURS.**

(a) **INCREASED FLIGHT HOURS.**—The Secretary of Homeland Security shall ensure not fewer than 130,000 annual flight hours of the Office of Air and Marine of U.S. Customs and Border Protection.

(b) **UNMANNED AERIAL SYSTEMS.**—The Office of Air and Marine of U.S. Customs and Border Protection shall operate unmanned aerial systems not less than 16 hours per day, seven days per week.

(c) **UNMANNED AERIAL SYSTEMS REPORT.**—The Office of Air and Marine of U.S. Customs and Border Protection shall annually submit to the appropriate congressional committees a report regarding the requirement referred to in subsection (b). Such report shall describe the number of hours the Office of Air and Marine operated unmanned aerial systems—

- (1) in a transit zone;
- (2) on a land border;
- (3) on a maritime border; and
- (4) to assist other Federal, State, local, and tribal law enforcement agencies.

**SEC. 11. AIR AND MARINE PRIORITIZATION.**

The Assistant Commissioner for the Office of Air and Marine of U.S. Customs and Border Protection shall assign the greatest prioritization to support requests from the Chief of the Border Patrol to carry out the requirements of section 3(a).

**SEC. 12. BORDER PATROL FLEXIBILITY.**

(a) **TRANSFER.**—The Chief of the Border Patrol may transfer Border Patrol agents, on a voluntary basis, to high traffic areas, as determined by the Chief.

(b) **INCENTIVE BONUS.**—At the discretion of the Chief of the Border Patrol, a Border Patrol agent may be eligible for an incentive bonus for any transfer carried out pursuant to subsection (a) if the Chief determines that such transfer is critical to the risk-based approach of the Border Patrol to patrolling the international borders of the United States.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this section \$30,000,000 for each fiscal year.

**SEC. 13. PROHIBITION ON ACTIONS THAT IMPEDE BORDER SECURITY ON CERTAIN FEDERAL LAND.**

(a) **PROHIBITION ON SECRETARIES OF THE INTERIOR AND AGRICULTURE.**—The Secretary of the Interior or the Secretary of Agriculture shall not impede, prohibit, or restrict activities of U.S. Customs and Border Protection on Federal land located within 100 miles of the United States border with Mexico and the United States border with Canada that is under the jurisdiction of the Secretary of the Interior or the Secretary of Agriculture, to execute search and rescue operations, and to prevent all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband through such international borders. These authorities of U.S. Customs and Border Protection on such Federal land apply whether or not a state of emergency exists.

(b) **AUTHORIZED ACTIVITIES OF U.S. CUSTOMS AND BORDER PROTECTION.**—U.S. Customs and Border Protection shall have immediate access to Federal land within 100 miles of the United States borders with Mexico and Canada that are under the jurisdiction of the Secretary of the Interior or the Secretary of Agriculture for purposes of conducting the following activities on such land to prevent all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband through such international border:

(1) Construction and maintenance of roads.

(2) Construction and maintenance of barriers.

(3) Use of vehicles to patrol, apprehend, or rescue.

(4) Installation, maintenance, and operation of communications and surveillance equipment and sensors.

(5) Deployment of temporary tactical infrastructure.

(c) **CLARIFICATION RELATING TO WAIVER AUTHORITY.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of law (including any termination date relating to the waiver referred to in this subsection), the waiver by the Secretary of Homeland Security on April 1, 2008, under section 102(c)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note; Public Law 104–208) of the laws described in paragraph (2) with respect to certain sections of the international borders between the United States and Mexico and the United States and Canada shall be considered to apply to all Federal land under the jurisdiction of the Secretary of the Interior or the Secretary of Agriculture within 100 miles of such international borders for the activities of U.S. Customs and Border Protection described in subsection (b).

(2) **DESCRIPTION OF LAWS WAIVED.**—The laws referred to in paragraph (1) are limited to the Wilderness Act (16 U.S.C. 1131 et seq.), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), the National Historic Preservation Act (16 U.S.C. 470 et seq.), Public Law 86–523 (16 U.S.C. 469 et seq.), the Act of June 8, 1906 (commonly known as the “Antiquities Act of 1906”; 16 U.S.C. 431 et seq.), the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.), the Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the “Administrative Procedure Act”), the National Park Service Organic Act (16 U.S.C. 1 et seq.), the General Authorities Act of 1970 (Public Law 91–383) (16 U.S.C. 1a–1 et seq.), sections 401(7), 403, and 404 of the National Parks and Recreation Act of 1978 (Public Law 95–625, 92 Stat. 3467), and the Arizona Desert Wilderness Act of 1990 (16 U.S.C. 1132 note; Public Law 101–628).

(d) **PROTECTION OF LEGAL USES.**—This section may not be construed to provide—

(1) authority to restrict legal uses, such as grazing, hunting, mining, or public-use recreational and backcountry airstrips on land under the jurisdiction of the Secretary of the Interior or the Secretary of Agriculture; or

- (2) any additional authority to restrict legal access to such land.
- (e) EFFECT ON STATE AND PRIVATE LAND.—This section shall—
  - (1) have no force or effect on State or private lands; and
  - (2) not provide authority on or access to State or private lands.
- (f) TRIBAL SOVEREIGNTY.—Nothing in this section supersedes, replaces, negates, or diminishes treaties or other agreements between the United States and Indian tribes.

**SEC. 14. BIOMETRIC EXIT DATA SYSTEM.**

- (a) ESTABLISHMENT.—The Secretary of Homeland Security shall—
  - (1) not later than 180 days after the date of the enactment of this Act, submit to the Committee on Homeland Security and the Committee on the Judiciary of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on the Judiciary of the Senate an implementation plan to establish a biometric exit data system to complete the integrated biometric entry and exit data system required under section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (8 U.S.C. 1365b), including—
    - (A) an integrated master schedule and cost estimate, including requirements and design, development, operational, and maintenance costs, of such a system that takes into account prior reports on such matters issued by the Government Accountability Office and the Department of Homeland Security;
    - (B) cost-effective staffing and personnel requirements of such a system that leverages existing resources of the Department of Homeland Security that takes into account prior reports on such matters issued by the Government Accountability Office and the Department of Homeland Security;
    - (C) a consideration of training programs necessary to establish such a system that takes into account prior reports on such matters issued by the Government Accountability Office and the Department of Homeland Security;
    - (D) a consideration of how such a system will affect wait times that takes into account prior reports on such matter issued by the Government Accountability Office and the Department of Homeland Security;
    - (E) information received after consultation with private sector stakeholders, including—
      - (i) the trucking industry;
      - (ii) the airport industry;
      - (iii) the airline industry;
      - (iv) the seaport industry;
      - (v) the travel industry; and
      - (vi) the biometric technology industry;
    - (F) a consideration of how trusted traveler programs in existence as of the date of the enactment of this Act may be impacted by, or incorporated into, such a system;
    - (G) defined metrics of success and milestones;
    - (H) identified risks and mitigation strategies to address such risks; and
    - (I) a consideration of how other countries have implemented a biometric exit data system; and
  - (2) not later than two years after the date of the enactment of this Act, establish a biometric exit data system at—
    - (A) the 15 United States airports that support the highest volume of international air travel, as determined by available Federal flight data;
    - (B) the 15 United States seaports that support the highest volume of international sea travel, as determined by available Federal travel data; and
    - (C) the 15 United States land ports of entry that support the highest volume of pedestrian crossings, as determined by available Federal border crossing data.
- (b) IMPLEMENTATION.—
  - (1) PILOT PROGRAM AT LAND PORTS OF ENTRY FOR NON-PEDESTRIAN OUTBOUND TRAFFIC.—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security, in collaboration with industry stakeholders, shall establish a six-month pilot program to test the biometric exit data system referred to in subsection (a)(2) on non-pedestrian outbound traffic at not fewer than three land ports of entry with significant cross-border traffic, including at not fewer than two land ports of entry on the southern land border and at least one land port of entry on the northern land border. Such pilot program

may include a consideration of more than one biometric mode, and shall be implemented to determine the following:

- (A) How a nationwide implementation of such biometric exit data system at land ports of entry shall be carried out.
- (B) The infrastructure required to carry out subparagraph (A).
- (C) The effects of such pilot program on legitimate travel and trade.
- (D) The effects of such pilot program on wait times, including processing times, for such non-pedestrian traffic.
- (E) Its effectiveness in combating terrorism.
- (F) Its effectiveness in identifying visa holders who violate the terms of their visas.

(2) AT LAND PORTS OF ENTRY FOR NON-PEDESTRIAN OUTBOUND TRAFFIC.—

(A) IN GENERAL.—Not later than five years after the date of the enactment of this Act, the Secretary of Homeland Security shall expand the biometric exit data system referred to in subsection (a)(2) to all land ports of entry, and such system shall apply only in the case of non-pedestrian outbound traffic.

(B) EXTENSION.—The Secretary of Homeland Security may extend for a single two year period the date specified in subparagraph (A) if the Secretary certifies to the Committee on Homeland Security and the Committee on the Judiciary of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on the Judiciary of the Senate that the 15 land ports of entry that support the highest volume of passenger vehicles, as determined by available Federal data, do not have the physical infrastructure or characteristics to install the systems necessary to implement a biometric exit data system.

(3) AT AIR AND SEA PORTS OF ENTRY.—Not later than five years after the date of the enactment of this Act, the Secretary of Homeland Security shall expand the biometric exit data system referred to in subsection (a)(2) to all air and sea ports of entry.

(4) AT LAND PORTS OF ENTRY FOR PEDESTRIANS.—Not later than five years after the date of the enactment of this Act, the Secretary of Homeland Security shall expand the biometric exit data system referred to in subsection (a)(2) to all land ports of entry, and such system shall apply only in the case of pedestrians.

(c) EFFECTS ON AIR, SEA, AND LAND TRANSPORTATION.—The Secretary of Homeland Security, in consultation with appropriate private sector stakeholders, shall ensure that the collection of biometric data under this section causes the least possible disruption to the movement of people or cargo in air, sea, or land transportation, while fulfilling the goals of improving counterterrorism efforts and identifying visa holders who violate the terms of their visas.

(d) TERMINATION OF PROCEEDING.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall, on the date of the enactment of this Act, terminate the proceeding entitled “Collection of Alien Biometric Data Upon Exit From the United States at Air and Sea Ports of Departure”, issued on April 24, 2008 (73 C.F.R. 22065; DHS Docket No. 2008–0039).

(e) DATA-MATCHING.—The biometric exit data system established under this section shall—

(1) require that the biometric data that is obtained for a person upon entry to the United States is matched against the biometric data of such person when such person exits the United States;

(2) leverage the infrastructure and databases of the current entry system established pursuant to section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (8 U.S.C. 1365b) for the purpose described in paragraph (1); and

(3) be interoperable with, and allow matching against, other Federal databases that store biometrics of known or suspected terrorists, and visa holders who have violated the terms of their visas.

(f) SCOPE.—

(1) IN GENERAL.—The biometric exit data system established under this section shall include a requirement for the collection of biometric exit data for all categories of individuals who are required to provide biometric exit data.

(2) EXCEPTION.—This section shall not apply in the case of a citizen of the United States.

(g) COLLECTION OF DATA.—The Secretary of Homeland Security may not require any non-Federal person to collect biometric data pursuant to the biometric exit data system established under this section, except through a contractual agreement.

(h) **MULTI-MODAL COLLECTION.**—In carrying out subsections (a)(1) and (b), the Secretary of Homeland Security shall make every effort to collect biometric data using additional modes of biometric technology.

(i) **PENALTIES FOR FAILURE TO MEET DEADLINES.**—

(1) **BIOMETRIC EXIT DATA SYSTEM.**—If the Secretary fails to meet any of the following requirements by the applicable deadline, no political appointee of the Department of Homeland Security may perform any function described in paragraph (2) until the Secretary has complied with the requirement:

(A) The submission of the implementation plan under subsection (a)(1).

(B) The establishment of a biometric exit data system under subsection (a)(2).

(C) The establishment a six-month pilot program to test such biometric exit data system under subsection (b)(1)(A).

(D) The expansion of such biometric exit data system under subsection (b)(2)(A).

(E) Any extension of the deadline for such expansion authorized by the Secretary under subsection (b)(2)(B)(ii).

(2) **FUNCTIONS DESCRIBED.**—The functions described in this subparagraph are each of the following:

(A) Travel using government aircraft.

(B) Receipt of any non-essential training.

(C) Receipt of bonus pay.

(D) Receipt of any salary increase.

(j) **CONGRESSIONAL REVIEW.**—Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the Committee on Homeland Security and the Committee on the Judiciary of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on the Judiciary of the Senate reports and recommendations of the Department of Homeland Security Science and Technology Directorate's Air Entry and Exit Re-Engineering Program and the reports and recommendations of the U.S. Customs and Border Protection entry and exit mobility program demonstrations.

**SEC. 15. NORTHERN BORDER THREAT ANALYSIS.**

(a) **IN GENERAL.**—Not later than six months after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the appropriate congressional committees a northern border threat analysis. Such analysis, at a minimum, shall include the following:

(1) An analysis of current and potential terrorism threats posed by individuals seeking to enter the United States through the northern border.

(2) An analysis of improvements needed at ports of entry along the northern border to prevent terrorists and instruments of terror from entering the United States.

(3) An analysis of gaps in law, policy, international agreements, or tribal agreements that hinder the border security and counter-terrorism efforts along the northern border.

(4) An analysis of unlawful cross border activity between ports of entry, including the maritime borders of the Great Lakes.

(b) **CLASSIFIED THREAT ANALYSIS.**—The threat analysis required under subsection (a) may be submitted in classified form, if the Secretary of Homeland Security determines that such is appropriate.

(c) **REQUIRED NORTHERN BORDER CAPABILITY DEPLOYMENT.**—Not later than 18 months after the date of the enactment of this Act, the Secretary of Homeland Security, acting through the appropriate component of the Department of Homeland Security, shall, at a minimum, deploy to each sector of the northern border, in a prioritized, risk-based manner, the following additional capabilities:

(1) **BLAINE SECTOR.**—For the Blaine sector, the following:

(A) Coastal radar surveillance systems.

(B) Mobile vehicle-mounted and man-portable surveillance systems.

(C) Advanced unattended surveillance sensors.

(D) Improved agent communications capabilities.

(E) Increased flight hours for aerial detection, interdiction, and monitoring operations capability.

(F) Man-portable unmanned aerial vehicles.

(G) Ultralight aircraft detection capabilities.

(H) Modernized port of entry surveillance capabilities.

(I) Increased maritime interdiction capabilities.

(2) **SPOKANE SECTOR.**—For the Spokane sector, the following:

(A) Mobile vehicle-mounted and man-portable surveillance systems.

- (B) Advanced unattended surveillance sensors.
  - (C) Improved agent communications capabilities.
  - (D) Increased flight hours for aerial detection, interdiction, and monitoring operations capability.
  - (E) Man-portable unmanned aerial vehicles.
  - (F) Completion of six miles of the Bog Creek road.
  - (G) Ultralight aircraft detection capabilities.
  - (H) Modernized port of entry surveillance capabilities.
- (3) HAVRE SECTOR.—For the Havre sector, the following:
- (A) Mobile vehicle-mounted and man-portable surveillance systems.
  - (B) Advanced unattended surveillance sensors.
  - (C) Improved agent communications capabilities.
  - (D) Increased flight hours for aerial detection, interdiction, and monitoring operations capability.
  - (E) Man-portable unmanned aerial vehicles.
  - (F) Ultralight aircraft detection capabilities.
  - (G) Modernized port of entry surveillance capabilities.
- (4) GRAND FORKS SECTOR.—For the Grand Forks sector, the following:
- (A) Mobile vehicle-mounted and man-portable surveillance systems.
  - (B) Advanced unattended surveillance sensors.
  - (C) Improved agent communications capabilities.
  - (D) Increased flight hours for aerial detection, interdiction, and monitoring operations capability.
  - (E) Man-portable unmanned aerial vehicles.
  - (F) Ultralight aircraft detection capabilities.
  - (G) Modernized port of entry surveillance capabilities.
- (5) DETROIT SECTOR.—For the Detroit sector, the following:
- (A) Coastal radar surveillance systems.
  - (B) Mobile vehicle-mounted and man-portable surveillance systems.
  - (C) Advanced unattended surveillance sensors.
  - (D) Improved agent communications capabilities.
  - (E) Increased flight hours for aerial detection, interdiction, and monitoring operations capability.
  - (F) Man-portable unmanned aerial vehicles.
  - (G) Ultralight aircraft detection capabilities.
  - (H) Modernized port of entry surveillance capabilities.
  - (I) Increased maritime interdiction capabilities.
- (6) BUFFALO SECTOR.—For the Buffalo sector, the following:
- (A) Coastal radar surveillance systems.
  - (B) Mobile vehicle-mounted and man-portable surveillance systems.
  - (C) Advanced unattended surveillance sensors.
  - (D) Improved agent communications capabilities.
  - (E) Increased flight hours for aerial detection, interdiction, and monitoring operations capability.
  - (F) Man-portable unmanned aerial vehicles.
  - (G) Ultralight aircraft detection capabilities.
  - (H) Modernized port of entry surveillance capabilities.
  - (I) Increased maritime interdiction capabilities.
- (7) SWANTON SECTOR.—For the Swanton sector, the following:
- (A) Mobile vehicle-mounted and man-portable surveillance systems.
  - (B) Advanced unattended surveillance sensors.
  - (C) Improved agent communications capabilities.
  - (D) Increased flight hours for aerial detection, interdiction, and monitoring operations capability.
  - (E) Man-portable unmanned aerial vehicles.
  - (F) Ultralight aircraft detection capabilities.
  - (G) Modernized port of entry surveillance capabilities.
- (8) HOULTON SECTOR.—For the Houlton sector, the following:
- (A) Mobile vehicle-mounted and man-portable surveillance systems.
  - (B) Advanced unattended surveillance sensors.
  - (C) Improved agent communications capabilities.
  - (D) Increased flight hours for aerial detection, interdiction, and monitoring operations capability.
  - (E) Man-portable unmanned aerial vehicles.
  - (F) Ultralight aircraft detection capabilities.
  - (G) Modernized port of entry surveillance capabilities.
- (d) ADHERENCE TO CERTAIN STANDARDS.—The Under Secretary for Management of the Department of Homeland Security, in coordination with the Assistant Commissioner of the Office of Administration of U.S. Customs and Border Protection,

shall ensure component program managers who are responsible for carrying out this section adhere to internal control standards identified by the Comptroller General of the United States. The Assistant Commissioner shall provide information, as needed, to assist the Under Secretary for Management in monitoring proper program management of border security programs carried out pursuant to this section.

**SEC. 16. OPERATION STONEGARDEN PROGRAM.**

(a) **IN GENERAL.**—Title XX of the Homeland Security Act of 2002 (6 U.S.C. 601 et seq.) is amended by adding the following new subtitle:

**“Subtitle C—Other Grant Programs**

**“SEC. 2031. OPERATION STONEGARDEN.**

“(a) **ESTABLISHMENT.**—There is established in the Department a program to be known as ‘Operation Stonegarden’. Under such program, the Secretary, acting through the Administrator, shall make grants to eligible law enforcement agencies to enhance border security in accordance with this section.

“(b) **ELIGIBLE RECIPIENTS.**—To be eligible to receive a grant under this section, a law enforcement agency shall—

“(1) be located in—

“(A) a State bordering either Canada or Mexico; or

“(B) a State or territory with a maritime border; and

“(2) be involved in an active ongoing U.S. Customs and Border Protection operation coordinated through a sector office.

“(c) **PERMITTED USES.**—The recipient of a grant under this section may use the grant for any of the following activities:

“(1) Equipment, including maintenance and sustainment costs.

“(2) Personnel, including overtime and backfill, in support of enhanced border law enforcement activities.

“(3) Any activity permitted under the Department of Homeland Security’s Fiscal Year 2014 Funding Opportunity Announcement for Operation Stonegarden.

“(4) Any other appropriate activity, as determined by the Administrator.

“(d) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated \$110,000,000 for each of fiscal years 2015 through 2019 for grants under this section.

“(e) **REPORT.**—The Administrator shall annually submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a report containing information on the expenditure of grants made under this section by each grant recipient.”.

(b) **CLERICAL AMENDMENT.**—The table of contents in section 1(b) of such Act is amended by inserting after the items relating to subtitle B of title XX the following new items:

“Subtitle C—Other Grant Programs

“Sec. 2031. Operation Stonegarden.”.

**SEC. 17. SALE OR DONATION OF EXCESS PERSONAL PROPERTY FOR BORDER SECURITY ACTIVITIES.**

Section 2576a of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1)(A), by striking “counter-drug and counter-terrorism activities” and inserting “counterdrug, counterterrorism, and border security activities”; and

(B) in paragraph (2), by striking “the Attorney General and the Director of National Drug Control Policy” and inserting “the Attorney General, the Director of National Drug Control Policy, and the Secretary of Homeland Security, as appropriate.”; and

(2) in subsection (d), by striking “counter-drug or counter-terrorism activities” and inserting “counterdrug, counterterrorism, or border security activities”.

**SEC. 18. REIMBURSEMENT OF STATES FOR DEPLOYMENT OF NATIONAL GUARD TO THE SOUTHERN LAND BORDER.**

Of the amounts authorized to be appropriate pursuant to section 21, not more than \$35,000,000 may be used for any fiscal year to reimburse States for the cost of the deployment of any units or personnel of the National Guard to perform operations and missions under State Active Duty status in support of a southern land border mission.

**SEC. 19. OPERATION OF THE BORDER PATROL.**

The Border Patrol shall operate using intelligence-based operations to combat terrorist and transnational criminal threats along the international borders of the United States. In carrying out this section, the Border Patrol shall coordinate with international, Federal, State, local, and tribal law enforcement partners.

**SEC. 20. DEFINITIONS.**

In this Act:

(1) **ADVANCED UNATTENDED SURVEILLANCE SENSORS.**—The term “advanced unattended surveillance sensors” means sensors that utilize an onboard computer to analyze detections in an effort to discern between vehicles, humans, and animals, and ultimately filter false positives prior to transmission.

(2) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate.

(3) **COCAINE REMOVAL EFFECTIVENESS RATE.**—The term “cocaine removal effectiveness rate” means the percentage that results from dividing the amount of cocaine removed by the Department of Homeland Security’s maritime security components inside or outside a transit zone, as the case may be, by the total documented cocaine flow rate as contained in Federal drug databases.

(4) **CONSEQUENCE DELIVERY SYSTEM.**—The term “Consequence Delivery System” means the series of consequences applied to persons unlawfully entering the United States by the Border Patrol to prevent unlawful border crossing recidivism.

(5) **GOT AWAY.**—The term “got away” means an unlawful border crosser who, after making an unlawful entry into the United States, is not turned back or apprehended.

(6) **HIGH TRAFFIC AREAS.**—The term “high traffic areas” means sectors along the northern and southern land borders of the United States that are within the responsibility of the Border Patrol that have significant unlawful cross-border activity, informed through situational awareness.

(7) **UNLAWFUL BORDER CROSSING EFFECTIVENESS RATE.**—The term “unlawful border crossing effectiveness rate” means the percentage that results from dividing the number of apprehensions and turn backs by the number of apprehensions, turn backs, and got aways. The data used by the Secretary of Homeland Security to determine such rate shall be collected and reported in a consistent and standardized manner across all Border Patrol sectors, informed by situational awareness.

(8) **MAJOR VIOLATOR.**—The term “major violator” means a person or entity that has engaged in serious criminal activities at any land, air, or sea port of entry, including possession of illicit drugs, smuggling of prohibited products, human smuggling, weapons possession, use of fraudulent United States documents, or other offenses serious enough to result in arrest.

(9) **OPERATIONAL CONTROL.**—The term “operational control” has the meaning given such term in section 2(b) of the Secure Fence Act of 2006 (8 U.S.C. 1701 note; Public Law 109–367).

(10) **SITUATIONAL AWARENESS.**—The term “situational awareness” means knowledge and an understanding of current unlawful cross-border activity, including cross-border threats and trends concerning illicit trafficking and unlawful crossings along the international borders of the United States, the ability to forecast future shifts in such threats and trends, and the operational capability to conduct continuous and integrated surveillance of the international borders of the United States.

(11) **TRANSIT ZONE.**—The term “transit zone” means the sea corridors of the western Atlantic Ocean, the Gulf of Mexico, the Caribbean Sea, and the eastern Pacific Ocean through which undocumented migrants and illicit drugs transit, either directly or indirectly, to the United States.

(12) **TURN BACK.**—The term “turn back” means an unlawful border crosser who, after making an unlawful entry into the United States, returns to the country from which such crosser entered.

**SEC. 21. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated for each of fiscal years 2016 through 2025 \$1,000,000,000 to carry out this Act and the amendments made by this Act.

## PURPOSE AND SUMMARY

The purpose of H.R. 399 is to require the Secretary of Homeland Security to gain and maintain operational control of the international borders of the United States, and for other purposes.

## BACKGROUND AND NEED FOR LEGISLATION

Our homeland security hinges in part on how well we control who and what enters this country. A porous border is a conduit for drug smugglers and human traffickers, and a vulnerability terrorists may exploit. Supporting and overseeing the Department of Homeland Security's efforts to secure the Nation's borders is a principal responsibility of the Congress.

Over ten years after the creation of the Department of Homeland Security (DHS), the Department still lacks a National strategy to secure the borders or reliable metrics to measure border security progress. Since the attacks of September 11th, 2001, Congress has appropriated billions of dollars to enhance border security, primarily through new investments in personnel, technology, and infrastructure. Despite billions of dollars and decades of policy debates, the border is not secure. Illegal entries into this country continue at an astounding pace, and criminal enterprises have continued to exploit our weaknesses to get drugs, weapons, and other illicit goods into our communities.

The Committee believes that operational control must be achieved through smart deployments of technology and infrastructure and progress must be assessed using robust border security performance measures. The required operational plan should be a roadmap to enable the Department to achieve requirements set forth in the legislation.

Achieving situational awareness and operational control must be based on a solid understanding of the border landscape, particularly as relates to illegal border crossings and trafficking of contraband. Increases in situational awareness through the use of sophisticated technologies and other means should give the Department an ability to predict and identify changes in illegal activity and respond accordingly. Gaining situational awareness over the vast areas of the northern and southern border will also increase confidence in the effectiveness standard the committee expects the Department to achieve.

In the past, the Department has relied on incomplete or inconsistent measures of border security progress, such as the resources sent to the border or the number of people apprehended. The Committee believes that, going forward, border security progress must be assessed based on accurate, verifiable data. The development of border security metrics at—and between—the ports of entry, and in the maritime environment will increase confidence that the Nation's border security efforts are based on measurable data.

The Committee does not agree that with the assertion that, "the border is more secure than ever." No valid statistical proof has ever been offered, by this administration or others, to verify such a statement. Therefore, the Committee is left with no choice but to mandate specific metrics from the Department, and create an independent, third party commission to review and verify the metrics and achievements of the Department.

Rather than continue the flawed approaches of the past, this bill's emphasis on deploying the proper assets, planning, measuring, and achieving results, and a strong third party verification process, will help ensure the Department is on the path to gaining situational awareness and operational control of the borders.

#### HEARINGS

No hearings were held on H.R. 399 in the 114th Congress. However, the Committee has held hearings related to issues examined in H.R. 399.

##### *113th Congress*

On February 26, 2013, the Subcommittee on Border and Maritime Security held a hearing entitled "What Does a Secure Border Look Like?" The Subcommittee received testimony from Mr. Michael J. Fisher, Chief, Border Patrol, Department of Homeland Security; Mr. Kevin K. McAleenan, Acting Assistant Commissioner, Office of Field Operations, U.S. Customs and Border Protection, U.S. Department of Homeland Security; RAdm William D. Lee, Deputy, Operations Policy and Capabilities, U.S. Coast Guard, U.S. Department of Homeland Security; Ms. Rebecca Gambler, Acting Director, Homeland Security and Justice, Government Accountability Office; and Marc R. Rosenblum, PhD, Specialist in Immigration Policy, Congressional Research Service, The Library of Congress.

On March 20, 2013, the Subcommittee on Border and Maritime Security held a hearing entitled "Measuring Outcomes to Understand the State of Border Security." The Subcommittee received testimony from Mr. Michael J. Fisher, Chief, Border Patrol, Department of Homeland Security; Mr. Kevin K. McAleenan, Acting Assistant Commissioner, Office of Field Operations, U.S. Customs and Border Protection, U.S. Department of Homeland Security; Mr. Mark Borkowski, Assistant Commissioner, Office of Technology Innovation and Acquisition, U.S. Customs and Border Protection, U.S. Department of Homeland Security; and Hon. Veronica Escobar, County Judge, El Paso County, Texas.

On May 21, 2013, the Subcommittee on Border and Maritime Security held a hearing entitled "Visa Security and Overstays: How Secure is America?" The Subcommittee received testimony from Mr. John P. Wagner, Acting Deputy Assistant Commissioner, Office of Field Operations, U.S. Customs and Border Protection, U.S. Department of Homeland Security; Mr. James A. Dinkins, Executive Associate Director, Homeland Security Investigations, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security; Ms. Rebecca Gambler, Director of the Homeland Security and Justice, Government Accountability Office; and Mr. Shonnie Lyon, Acting Director, Office of Biometric Identity Management, National Protection and Programs Directorate, U.S. Department of Homeland Security.

On June 23, 2013, the Subcommittee on Border and Maritime Security held a hearing entitled "A Study in Contrasts: House and Senate Approaches to Border Security." The Subcommittee received testimony from Hon. John Cornyn, Senator, State of Texas; Hon. Xavier Bercerra, a Representative in Congress from the 34th District, State of California; Mr. Jayson Ahern, Principal, Chertoff Group; Mr. Edward Alden, Bernard L. Schwartz Senior Fellow,

Council on Foreign Relations; and Mr. Richard M. Stana, Former Director, Homeland Security and Justice, Government Accountability Office.

On September 26, 2013, the Subcommittee on Border and Maritime Security held a hearing entitled “Fulfilling A Key 9/11 Commission Recommendation: Implementing Biometric Exit.” The Subcommittee received testimony from Mr. John P. Wagner, Acting Deputy Assistant Commissioner, Office of Field Operations, U.S. Customs and Border Protection, U.S. Department of Homeland Security; Mr. John Woods, Assistant Director, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security; and Ms. Rebecca Gambler, Director, Homeland Security and Justice Issues, U.S. Government Accountability Office.

On November 19, 2013, the Subcommittee on Border and Maritime Security held a hearing entitled “What Does a Secure Maritime Border Look Like?” The Subcommittee received testimony from RADM William D. Lee, Deputy, Operations Policy and Capabilities, U.S. Coast Guard, U.S. Department of Homeland Security; Mr. Stephen L. Caldwell, Director, Homeland Security and Justice, Government Accountability Office; and Capt. Marcus Woodring, (Ret. USCG), Managing Director, Health, Safety, Security and Environmental, Port of Houston Authority.

On February 4, 2014, the Subcommittee on Border and Maritime Security held a hearing entitled “Future of the Homeland Security Missions of the Coast Guard.” The Subcommittee received testimony from ADM Robert J. Papp, Jr., Commandant, U.S. Coast Guard, U.S. Department of Homeland Security.

On March 12, 2014, the Subcommittee on Border and Maritime Security held a hearing entitled “The Arizona Border Surveillance Technology Plan and its Impact on Border Security.” The Subcommittee received testimony from Mr. Mark Borkowski, Assistant Commissioner, Office of Technology Innovation and Acquisition, U.S. Customs and Border Protection, U.S. Department of Homeland Security; and Ms. Rebecca Gambler, Director, Homeland Security and Justice Issues, U.S. Government Accountability Office.

On April 2, 2014, the Full Committee held a hearing entitled “Taking Down the Cartels: Examining United States—Mexico Cooperation.” The Committee received testimony from Mr. James A. Dinkins, Executive Associate Director, Homeland Security Investigations, U.S. Immigrations and Customs Enforcement, U.S. Department of Homeland Security; Mr. John D. Feeley, Principal Deputy, Bureau of Western Hemisphere Affairs, U.S. Department of State; Mr. Christopher Wilson, Associate, Mexico Institute, Woodrow Wilson International Center for Scholars; and Hon. Alan D. Bersin, Assistant Secretary of International Affairs and Chief Diplomatic Officer, Office of International Affairs, U.S. Department of Homeland Security.

On April 8, 2014, the Subcommittee on Border and Maritime Security held a hearing entitled “Authorizing U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement.” The Subcommittee received testimony from Mr. Kevin K. McAleenan, Acting Deputy Commissioner, U.S. Customs and Border Protection, U.S. Department of Homeland Security; and Mr. Daniel H. Ragsdale, Acting Director, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security. The

purpose of this hearing was to examine the first attempt by the Congress, since the HSA was enacted, to clearly delineate the current authorities and responsibilities of two of the largest law enforcement agencies in the Nation. The hearing focused on the Committee's authorizing legislation: H.R. 3846 the United States U.S. Customs and Border Protection Authorization Act, which authorizes the border security functions and offices of U.S. Customs and Border Protection, including: the Office of Border Patrol, Office of Field Operations, Office of Air and Marine, the Office of Intelligence, and the Office of International Affairs; and H.R. 4279, the United States U.S. Immigration and Customs Enforcement Authorization Act, which authorizes the basic functions and offices of U.S. Immigration and Customs Enforcement, including: the Office of Homeland Security Investigations, the Office of Enforcement and Removal Operations, and the Office of Professional Responsibility.

On June 24, 2014, the Full Committee held a hearing entitled "Dangerous Passage: The Growing Problem of Unaccompanied Children Crossing the Border." The Committee received testimony from The Honorable Jeh C. Johnson, Secretary, U.S. Department of Homeland Security; The Honorable W. Craig Fugate, Administrator, Federal Emergency Management Agency, U.S. Department of Homeland Security; and Mr. Ronald D. Vitiello, Deputy Chief, U.S. Customs and Border Protection, U.S. Department of Homeland Security.

The Full Committee held a field hearing in McAllen, Texas on July 3, 2014, entitled "Crisis on the Texas Border: Surge of Unaccompanied Minors." The Committee received testimony from Hon. Rick Perry, Governor, State of Texas; Mr. Kevin W. Oaks, Chief Patrol Agent, Rio Grande Valley Sector, Border Patrol, U.S. Customs and Border Protection, U.S. Department of Homeland Security; Mr. Steven C. McCraw, Director, Texas Department of Public Safety; Mr. J. E. "Eddie" Guerra, Interim Sheriff, Sheriff's Office, Hidalgo County, Texas; The Honorable Ramon Garcia, Hidalgo County Judge, Hidalgo County, Texas; and the Most Reverend Mark J. Seitz, Bishop, Catholic Diocese of El Paso, Texas, U.S. Conference of Catholic Bishops.

On July 10, 2014, the Subcommittee on Oversight and Management Efficiency held a hearing entitled "The Executive Proclamation Designating the Organ Mountains-Desert Peaks a National Monument: Implications for Border Security." The Subcommittee received testimony from the Hon. Stevan Pearce, Representative in Congress from the 2nd District, State of New Mexico; Mr. Brandon Judd, President, National Border Patrol Council; Mr. Todd Garrison, Sheriff, Sheriff's Office, Doña Ana County, New Mexico; and Marc R. Rosenblum, Ph.D., Deputy Director, U.S. Immigration Policy Program, Migration Policy Institute.

On July 16, 2014, the Subcommittee on Border and Maritime Security held a hearing entitled "Port of Entry Infrastructure: How Does the Federal Government Prioritize Investments?" The Subcommittee received testimony from Mr. John P. Wagner, Assistant Commissioner, Office of Field Operations, U.S. Customs and Border Protection, U.S. Department of Homeland Security; *accompanied by Mr. Eugene H. Schied, Assistant Commissioner, Office of Administration, U.S. Customs and Border Protection, U.S. Department of Homeland Security*; Hon. Michael Gelber, Deputy Commissioner,

Public Buildings Service, U.S. General Services Administration; and Hon. Oscar Leeser, Mayor, City of El Paso, Texas.

On December 2, 2014, the Full Committee held a hearing entitled "Open Borders: The Impact of Presidential Amnesty on Border Security." The Committee received testimony from Hon. Jeh C. Johnson, Secretary, U.S. Department of Homeland Security.

#### COMMITTEE CONSIDERATION

The Committee met on January 21, 2015, to consider H.R. 399, and ordered the measure to be reported to the House with a favorable recommendation, amended, by a recorded vote of 18 yeas and 12 nays (Roll No. 11). The Committee took the following actions:

The following amendments were offered:

An Amendment in the Nature of a Substitute to H.R. 399 offered by MRS. MILLER of Michigan (#1); was AGREED TO by a recorded vote of 18 yeas and 12 nays (Roll No. 10).

An amendment to the Amendment in the Nature of a Substitute to H.R. 399 offered by MS. LORETTA SANCHEZ of California (#1A); was NOT AGREED TO by a recorded vote of 12 yeas and 18 nays (Roll No. 5).

Page 81, line 9, strike paragraph (9) and insert a new paragraph (9) entitled "Operational Control".

An amendment to the Amendment in the Nature of a Substitute to H.R. 399 offered by MR. LANGEVIN (#1B); was NOT AGREED TO by a recorded vote of 12 yeas and 18 nays (Roll No. 6).

Strike section 13, redesignate the subsequent section accordingly, and conform the table of contents.

An amendment to the Amendment in the Nature of a Substitute to H.R. 399 offered by MR. VELA (#1C); was NOT AGREED TO by a recorded vote of 12 yeas and 18 nays (Roll No. 7).

In section 3, strike subsection (c).

In section 3, redesignate subsections (d) through (q) as subsections (c) through (p), respectively, and conform all cross-references accordingly.

An amendment to the Amendment in the Nature of a Substitute to H.R. 399 offered by MS. JACKSON LEE (#1D); was NOT AGREED TO by a recorded vote of 12 yeas and 18 nays (Roll No. 8).

Page 51, line 9, strike "The Chief of the Border Patrol" and insert "The Secretary of Homeland Security in consultation with the Commissioner for U.S. Customs and Border Protection and the Chief of the Border Patrol".

An amendment to the Amendment in the Nature of a Substitute offered by MR. HIGGINS (#1E); was NOT AGREED TO by a recorded vote of 12 yeas and 18 nays (Roll No. 9).

In section 14, add at the end a new subclause entitled "(k) Rule of Construction."

#### 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.

The Committee on Homeland Security considered H.R. 399 on January 21, 2015, and took the following votes:

On agreeing to the amendment to the Amendment in the Nature of a Substitute offered by *MS. LORETTA SANCHEZ* of California (#1A); was NOT AGREED TO by a recorded vote of 12 yeas and 18 nays (Roll Call Vote No. 5). The vote was as follows:  
 Not Agreed to: 12 yeas and 18 nays.

Representative	Yea	Nay	Representative	Yea	Nay
Mr. McCaul, Chair .....		X	Mr. Thompson of Mississippi, Ranking Member.	X	
Mr. Smith of Texas .....	X		Ms. Loretta Sanchez of California	X	
Mr. King of New York .....	X		Ms. Jackson Lee .....	X	
Mr. Rogers of Alabama .....	X		Mr. Langevin .....	X	
Mrs. Miller of Michigan .....	X		Mr. Higgins .....	X	
Mr. Duncan of South Carolina .....	X		Mr. Richmond .....	X	
Mr. Marino .....	X		Mr. Keating .....	X	
Mr. Palazzo .....	X		Mr. Payne .....	X	
Mr. Barletta .....	X		Mr. Vela .....	X	
Mr. Perry .....	X		Mrs. Watson Coleman .....	X	
Mr. Clawson of Florida .....	X		Miss Rice .....	X	
Mr. Katko .....	X		Mrs. Torres .....	X	
Mr. Hurd of Texas .....	X				
Mr. Carter of Georgia .....	X				
Mr. Walker .....	X				
Mr. Loudermilk .....	X				
Ms. McSally .....	X				
Mr. Ratcliffe .....	X				
<b>Vote Total:</b>				<b>12</b>	<b>18</b>

On agreeing to the amendment to the Amendment in the Nature of a Substitute offered by *MR. LANGEVIN* (#1B); was NOT AGREED TO by a recorded vote of 12 yeas and 18 nays (Roll Call Vote No. 6). The vote was as follows:  
 Not Agreed to: 12 yeas and 18 nays.

Representative	Yea	Nay	Representative	Yea	Nay
Mr. McCaul, Chair .....		X	Mr. Thompson of Mississippi, Ranking Member.	X	
Mr. Smith of Texas .....	X		Ms. Loretta Sanchez of California	X	
Mr. King of New York .....	X		Ms. Jackson Lee .....	X	
Mr. Rogers of Alabama .....	X		Mr. Langevin .....	X	
Mrs. Miller of Michigan .....	X		Mr. Higgins .....	X	
Mr. Duncan of South Carolina .....	X		Mr. Richmond .....	X	
Mr. Marino .....	X		Mr. Keating .....	X	
Mr. Palazzo .....	X		Mr. Payne .....	X	
Mr. Barletta .....	X		Mr. Vela .....	X	
Mr. Perry .....	X		Mrs. Watson Coleman .....	X	
Mr. Clawson of Florida .....	X		Miss Rice .....	X	
Mr. Katko .....	X		Mrs. Torres .....	X	
Mr. Hurd of Texas .....	X				
Mr. Carter of Georgia .....	X				
Mr. Walker .....	X				
Mr. Loudermilk .....	X				
Ms. McSally .....	X				
Mr. Ratcliffe .....	X				

Representative	Yea	Nay	Representative	Yea	Nay
			<b>Vote Total:</b>	<b>12</b>	<b>18</b>

On agreeing to the amendment to the Amendment in the Nature of a Substitute offered by *MR. VELA* (#1C); was NOT AGREED TO by a recorded vote of 12 yeas and 18 nays (Roll Call Vote No. 7). The vote was as follows:

Not Agreed to: 12 yeas and 18 nays.

Representative	Yea	Nay	Representative	Yea	Nay
Mr. McCaul, Chair .....		X	Mr. Thompson of Mississippi, Ranking Member.	X	
Mr. Smith of Texas .....		X	Ms. Loretta Sanchez of California	X	
Mr. King of New York .....		X	Ms. Jackson Lee .....	X	
Mr. Rogers of Alabama .....		X	Mr. Langevin .....	X	
Mrs. Miller of Michigan .....		X	Mr. Higgins .....	X	
Mr. Duncan of South Carolina .....		X	Mr. Richmond .....	X	
Mr. Marino .....		X	Mr. Keating .....	X	
Mr. Palazzo .....		X	Mr. Payne .....	X	
Mr. Barletta .....		X	Mr. Vela .....	X	
Mr. Perry .....		X	Mrs. Watson Coleman .....	X	
Mr. Clawson of Florida .....		X	Miss Rice .....	X	
Mr. Katko .....		X	Mrs. Torres .....	X	
Mr. Hurd of Texas .....		X			
Mr. Carter of Georgia .....		X			
Mr. Walker .....		X			
Mr. Loudermilk .....		X			
Ms. McSally .....		X			
Mr. Ratcliffe .....		X			
			<b>Vote Total:</b>	<b>12</b>	<b>18</b>

On agreeing to the amendment to the Amendment in the Nature of a Substitute offered by *MS. JACKSON LEE* (#1D); was NOT AGREED TO by a recorded vote of 12 yeas and 18 nays (Roll Call Vote No. 8). The vote was as follows:

Not Agreed to: 12 yeas and 18 nays.

Representative	Yea	Nay	Representative	Yea	Nay
Mr. McCaul, Chair .....		X	Mr. Thompson of Mississippi, Ranking Member.	X	
Mr. Smith of Texas .....		X	Ms. Loretta Sanchez of California	X	
Mr. King of New York .....		X	Ms. Jackson Lee .....	X	
Mr. Rogers of Alabama .....		X	Mr. Langevin .....	X	
Mrs. Miller of Michigan .....		X	Mr. Higgins .....	X	
Mr. Duncan of South Carolina .....		X	Mr. Richmond .....	X	
Mr. Marino .....		X	Mr. Keating .....	X	
Mr. Palazzo .....		X	Mr. Payne .....	X	
Mr. Barletta .....		X	Mr. Vela .....	X	
Mr. Perry .....		X	Mrs. Watson Coleman .....	X	
Mr. Clawson of Florida .....		X	Miss Rice .....	X	
Mr. Katko .....		X	Mrs. Torres .....	X	
Mr. Hurd of Texas .....		X			
Mr. Carter of Georgia .....		X			

Representative	Yea	Nay	Representative	Yea	Nay
Mr. Walker .....		X			
Mr. Loudermilk .....		X			
Ms. McSally .....		X			
Mr. Ratcliffe .....		X			
<b>Vote Total:</b>				<b>12</b>	<b>18</b>

On agreeing to the amendment to the Amendment in the Nature of a Substitute offered by *MR. HIGGINS* (#1E); was NOT AGREED TO by a recorded vote of 12 yeas and 18 nays (Roll Call Vote No. 9). The vote was as follows:.

Not Agreed to: 12 yeas and 18 nays.

Representative	Yea	Nay	Representative	Yea	Nay
Mr. McCaul, Chair .....		X	Mr. Thompson of Mississippi, Ranking Member.	X	
Mr. Smith of Texas .....	X		Ms. Loretta Sanchez of California	X	
Mr. King of New York .....	X		Ms. Jackson Lee .....	X	
Mr. Rogers of Alabama .....	X		Mr. Langevin .....	X	
Mrs. Miller of Michigan .....	X		Mr. Higgins .....	X	
Mr. Duncan of South Carolina .....	X		Mr. Richmond .....	X	
Mr. Marino .....	X		Mr. Keating .....	X	
Mr. Palazzo .....	X		Mr. Payne .....	X	
Mr. Barletta .....	X		Mr. Vela .....	X	
Mr. Perry .....	X		Mrs. Watson Coleman .....	X	
Mr. Clawson of Florida .....	X		Miss Rice .....	X	
Mr. Katko .....	X		Mrs. Torres .....	X	
Mr. Hurd of Texas .....	X				
Mr. Carter of Georgia .....	X				
Mr. Walker .....	X				
Mr. Loudermilk .....	X				
Ms. McSally .....	X				
Mr. Ratcliffe .....	X				
<b>Vote Total:</b>				<b>12</b>	<b>18</b>

On agreeing to the Amendment in the Nature of a Substitute offered by *MRS. MILLER* of Michigan (#1); was AGREED TO by a recorded vote of 18 yeas and 12 nays (Roll Call Vote No. 10). The vote was as follows:.

Agreed to: 18 yeas and 12 nays.

Representative	Yea	Nay	Representative	Yea	Nay
Mr. McCaul, Chair .....	X		Mr. Thompson of Mississippi, Ranking Member.		X
Mr. Smith of Texas .....	X		Ms. Loretta Sanchez of California		X
Mr. King of New York .....	X		Ms. Jackson Lee .....		X
Mr. Rogers of Alabama .....	X		Mr. Langevin .....		X
Mrs. Miller of Michigan .....	X		Mr. Higgins .....		X
Mr. Duncan of South Carolina .....	X		Mr. Richmond .....		X
Mr. Marino .....	X		Mr. Keating .....		X
Mr. Palazzo .....	X		Mr. Payne .....		X
Mr. Barletta .....	X		Mr. Vela .....		X
Mr. Perry .....	X		Mrs. Watson Coleman .....		X

Representative	Yea	Nay	Representative	Yea	Nay
Mr. Clawson of Florida .....	X		Miss Rice .....		X
Mr. Katko .....	X		Mrs. Torres .....		X
Mr. Hurd of Texas .....	X				
Mr. Carter of Georgia .....	X				
Mr. Walker .....	X				
Mr. Loudermilk .....	X				
Ms. McSally .....	X				
Mr. Ratcliffe .....	X				
<b>Vote Total:</b>				<b>18</b>	<b>12</b>

On ordering H.R. 399 to be reported to the House of Representatives with a favorable recommendation, as amended; was AGREED TO by a recorded vote of 18 yeas and 12 nays (Roll No. 11). The vote was as follows:  
Agreed to: 18 yeas and 12 nays.

Representative	Yea	Nay	Representative	Yea	Nay
Mr. McCaul, Chair .....	X		Mr. Thompson of Mississippi, Ranking Member.		X
Mr. Smith of Texas .....	X		Ms. Loretta Sanchez of California		X
Mr. King of New York .....	X		Ms. Jackson Lee .....		X
Mr. Rogers of Alabama .....	X		Mr. Langevin .....		X
Mrs. Miller of Michigan .....	X		Mr. Higgins .....		X
Mr. Duncan of South Carolina .....	X		Mr. Richmond .....		X
Mr. Marino .....	X		Mr. Keating .....		X
Mr. Palazzo .....	X		Mr. Payne .....		X
Mr. Barletta .....	X		Mr. Vela .....		X
Mr. Perry .....	X		Mrs. Watson Coleman .....		X
Mr. Clawson of Florida .....	X		Miss Rice .....		X
Mr. Katko .....	X		Mrs. Torres .....		X
Mr. Hurd of Texas .....	X				
Mr. Carter of Georgia .....	X				
Mr. Walker .....	X				
Mr. Loudermilk .....	X				
Ms. McSally .....	X				
Mr. Ratcliffe .....	X				
<b>Vote Total:</b>				<b>18</b>	<b>12</b>

#### 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. 399, the Border Security First Act of 2015, provides for the authorization of \$1,000,000,000 in appropriations to enact this measure for each of fiscal years 2016 through 2025.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, January 26, 2015.*

Hon. MICHAEL MCCAUL,  
*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. 399, the Secure Our Borders First Act of 2015.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*H.R. 399—Secure Our Borders First Act of 2015*

Summary: H.R. 399 would authorize the appropriation of \$1 billion for each of fiscal years 2016 through 2025 for the Department of Homeland Security (DHS) to carry out a wide range of border security activities required by the bill. The bill also would authorize the appropriation of \$110 million annually over the 2015–2019 period for Federal Emergency Management Agency (FEMA) grants and \$30 million annually to fund transfers of border patrol agents to new locations along the border.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 399 would cost about \$4.2 billion over the 2015–2020 period. Pay-as-you-go procedures do not apply to this legislation because it would not affect direct spending or revenues.

H.R. 399 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

H.R. 399 would impose a private-sector mandate, as defined in UMRA, on landowners if, in order to comply with provisions of the bill, DHS acquires property by means of condemnation. The cost of the mandate would be the fair-market value of the property taken from landowners and would depend on the location and size of the property. CBO expects DHS would make limited use of its authority to take land by condemnation and that, if the authority is used, the cost of the mandate in any one year would probably fall below the annual threshold established in UMRA for private-sector mandates (\$154 million in 2015, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 399 is shown in the following table. The costs of this legislation fall within budget functions 750 (administration of justice) and 450 (community and regional development).

	By fiscal year, in millions of dollars—						
	2015	2016	2017	2018	2019	2020	2015–2020
CHANGES IN SPENDING SUBJECT TO APPROPRIATION							
Authorization Level .....	140	1,140	1,140	1,140	1,140	1,030	5,730
Estimated Outlays .....	15	290	620	1,000	1,120	1,135	4,180

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted in the first half of 2015, that the specified amounts will be appropriated for each fiscal year, and that outlays will follow the historical rate of spending for similar activities and programs.

H.R. 399 would authorize the appropriation of \$1 billion annually over the 2016–2025 period for DHS to carry out many programs and activities aimed at increasing the security of U.S. borders, including the following major directives:

- Deploy tower-based surveillance technology, subterranean detection technologies, radar surveillance systems, unmanned aerial vehicles, and other assets along the southern and northern U.S. borders;
- Construct or repair about 120 miles of fencing, build or maintain about 1,800 miles of roads, and construct 12 security bases along the southern U.S. border;
- Maintain and increase, if necessary, certain staffing levels for officers and agents in Customs and Border Protection; and
- Increase the use of aircraft and unmanned aerial systems by Customs and Border Protection.

The bill would require DHS to carry out many of these activities in a prioritized, risk-based manner and to complete some of them within 18 months of the bill’s enactment and others within one year of enactment. Based on the time needed to implement previous infrastructure improvements at U.S. borders, CBO expects that DHS will be unable to meet those deadlines for nearly all construction projects and our spending estimates reflect this expectation. CBO expects that attempting to meet all of the deadlines in the legislation would increase both the amounts that would have to be provided, particularly in the initial years following enactment, as well as the speed with which those funds would be spent.

In addition, H.R. 399 would authorize the appropriation of \$110 million annually over the 2015–2019 period for FEMA to make grants to state and local law enforcement agencies to enhance border security and \$30 million annually for the border patrol to transfer agents to new locations along U.S. borders.

Pay-As-You-Go considerations: None.

Estimated impact on state, local, and tribal governments: H.R. 399 contains no intergovernmental mandates as defined in UMRA. State and local governments would benefit from assistance authorized in the bill for border activities. Any costs to those governments would be incurred voluntarily as a condition of federal assistance.

Estimated impact on the private sector: H.R. 399 would impose a private-sector mandate, as defined in UMRA, on landowners if DHS acquires property by means of condemnation in the process of constructing additional fencing, roads, boat ramps, or operating bases along the border of the United States and Mexico. The cost of the mandate would be the fair-market value of the property

taken from landowners and would depend on the location and size of the property. The use of condemnation for the construction projects would depend on several factors, and CBO cannot determine how often or whether the authority would be exercised. Therefore, the cost of the mandate is uncertain. However, CBO expects DHS would make limited use of its authority to take land by condemnation and that, if the authority is used, the cost of the mandate in any one year would probably fall below the annual threshold established in UMRA for private-sector mandates (\$154 million in 2015, adjusted annually for inflation).

Estimate prepared by: Federal costs: Mark Grabowicz; Impact on state, local, and tribal governments: Melissa Merrell; Impact on the private sector: Paige Piper/Bach.

Estimate 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. 399 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

The performance goals and objectives of H.R. 399 are the requirements to achieve and maintain situational awareness and operational control of our Nation's borders through a strategic deployment of technology, fencing, and infrastructure.

Additionally, the development of associated metrics at and between the ports of entry, and the maritime environment will inform and guide future investments in border security allowing the Congress to hold the Department accountable for the success or failure of border security operations.

#### DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 399 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

#### 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(e), 9(f), or 9(g) 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.

#### PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or

joint resolution is intended to preempt State, local, or Tribal law, the Committee finds that H.R. 399 does not preempt any State, local, or Tribal law.

#### DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 399 would require no directed rule makings.

#### ADVISORY COMMITTEE STATEMENT

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

#### 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; Table of Contents*

This section provides that bill may be cited as the “Border Security First Act of 2015.”

This section also includes the table of contents for the bill.

##### *Section 2. Reports on Current Border Security Status*

###### *(a) In General*

This subsection requires the Department of Homeland Security (DHS) to provide a baseline report to Congress, the Government Accountability Office (GAO) and the Border Security Verification Commission (BSVC) (see section 4 below) describing the level of situational awareness and operational control along the northern and southern borders of the United States. This report shall first be submitted 30 days after enactment, every 180 days within the first two years after the initial report, and annually thereafter.

The Committee believes that it is vitally important for DHS to be open and transparent to account for the current state of the border as the first step on the path to achieve the mandates outlined in this bill. The Committee expects the frequency of the required reports to facilitate the necessary oversight to ensure steady progress is made toward the goal of achieving operational control.

###### *(b) GAO Report*

This subsection requires the Government Accountability Office (GAO) to conduct a review of the report provided by DHS and report to the appropriate congressional committees and the BSVC not later than 90 days after receiving the initial baseline report, regarding the verification of the data and methodology used to determine high traffic areas and unlawful border crossing effectiveness rate.

The Committee expects the high traffic areas will consist of multiple sectors along the northern and southern borders. The GAO review of the data and methodology used by DHS in the baseline re-

port is necessary to increase transparency and confidence in the illegal border crossing effectiveness rates required in this bill.

### *Section 3. Operational Control of the Border*

#### *(a) Securing the Border*

This subsection mandates that DHS achieve situational awareness and operational control of the high traffic areas not later than two years after enactment and achieve operational control and situational awareness along the southern land border not later than five years after enactment.

The Committee expects the Department will comply with the mandates in this section by prioritizing the application of resources in subsection (b) and infrastructure in subsection (c) to the areas of greatest flow before applying resources to other sectors of the border. Further, the deadlines in this bill are a reflection of the time it will take to acquire, and deploy technology, infrastructure and move personnel to the high traffic sectors and then build on that progress in lower threat/flow areas. However, the Committee expects the Department to move as quickly as possible as situational awareness is the predicate for operational control of the border.

#### *(b) Required Capability Deployment*

This subsection requires DHS to deploy to each sector along the southern border, additional minimum capabilities to achieve situational awareness and operational control of the border.

The Committee identifies the following resource needs to adequately secure the border. These capabilities are then evaluated and assigned in a specific risk-based, sector-by-sector manner.

*Subterranean surveillance and detection technologies*—This technology will provide the Border Patrol with situational awareness underground. The Committee believes that underground situational awareness is essential in stopping illicit cross-border activity through tunnels.

*Deployable, lighter than air surface surveillance equipment*—This technology will provide a persistent aerial view of the area on the border in which it is deployed. The Committee believes that the lighter than air surveillance is an important complement to aviation assets because it provides a more continuous picture of the region.

*Unmanned aerial vehicles with maritime surveillance capability*—Unmanned aerial vehicles used over land differ from those that are used over water and the Committee believes that more maritime equipped UAVs are important to complement the manned aircraft that fly in the maritime domain because of the vast geographical area that must be monitored.

*Maritime patrol aircraft*—Equipped with surface search radar and other sensors that make them well suited to identify illicit traffic in the maritime domain, maritime patrol aircraft are essential to developing situational awareness in the maritime domain. The Committee believes that more maritime patrol aircraft are necessary to obtain more persistent awareness because of the vast geographical area of the maritime domain.

*Coastal radar surveillance systems*—The Committee believes that understanding illicit trends in the coastal regions of the maritime border requires persistent awareness of those regions. Coastal radar surveillance is important to developing that awareness.

*Maritime signals intelligence capabilities*—Because of the unique challenges associated with the maritime domain, the Committee believes that maritime signals intelligence provides a significant force multiplier to the situational awareness of the maritime domain.

*Ultralight aircraft detection capabilities*—The Committee understands the threat posed by low flying aircraft and specifically ultralight aircraft which are especially difficult to detect by radar. Enhanced detection capabilities for these aircraft are needed to minimize the threat.

*Advanced unattended surveillance sensors*—The Committee believes that greater awareness of the remote areas of the border is necessary through advanced sensors which can be left unattended and used to identify threats and trends to which Border Patrol agents can respond, maximizing the efficiency of their operations.

*A rapid reaction capability supported by aviation assets*—The Committee expects air assets will be used to mobilize and deploy agents into areas where illegal activity is detected. The Committee firmly believes that these deployments should occur at the earliest point of detection to minimize the impact of illegal activity on border communities.

*Tower-based surveillance technology*—The Committee identifies the need for fixed towers with sensors and radars that can be placed in remote regions of the border and provide awareness of the region by providing data back to command and control stations. These towers will provide more persistent awareness of these regions than that provided by aerial assets or agents on the ground.

*Man-portable unmanned aerial vehicles*—The Committee understands the importance of the capabilities offered by unmanned aerial vehicles but also the limitations of larger UAVs that can only take off and land at certain facilities. Man-portable UAVs can be deployed and launched by hand to areas which require immediate aviation surveillance support.

*Increased flight hours for aerial detection, interdiction, and monitoring operations capability*—The Committee understands the importance of aviation assets for aerial detection, interdiction, and monitoring operations and that increasing these capabilities equates to an increase in the numbers of hours flown in support of border operations. Understanding the flight limitations on many aircraft, the Committee expects that this will require prioritizing flight hours to support border security efforts.

*Mobile vehicle-mounted and man-portable surveillance systems*—Because the high traffic areas of the border shift from region to region, the Committee realizes that not all surveillance systems should be permanently fixed to one region. This portable surveillance technology will allow Border Patrol to respond quickly and with the appropriate capabilities to shifts in threats or trends.

*Improved agent communications capabilities*—In many remote areas of the border, communication between individual agents and with command and control centers is lacking. The Committee believes that agents deployed to these remote areas must have appro-

priate communications capabilities to ensure their effectiveness and safety.

*Increased monitoring for cross-river dams, culverts, and footpaths*—The Committee understands the difficulties associated with border security along the Rio Grande and especially in monitoring the various and numerous smuggling routes across the river. Enhancing capabilities to monitor the physical cross-river paths is an important step in identifying and stopping illegal activity crossing the river.

*Increased cutter and boat hours and operation platforms to conduct interdiction operations*—The maritime domain presents unique challenges because of the vast area in which illicit activities can take place. Specifically in the transit zones and coastal regions, more surface resources, both cutters and boats, are necessary to interdict this activity. The Committee recognizes the Coast Guard is an armed service charged with 11 statutorily diverse missions. As such, while any deployment of Coast Guard assets made under this Act is to support situational awareness and operational control, the Committee acknowledges that such personnel and assets remain available to support all Coast Guard missions in these areas, as well as to respond to emergent threats elsewhere.

*Increased operational hours for maritime security components dedicated to joint counter-smuggling and interdiction efforts with other Federal agencies, including the Joint Interagency Task Forces, and US Coast Guard Deployable Specialized Forces*—The Committee believes the Coast Guard's Deployable Specialized Forces, especially the Law Enforcement Detachment teams, are an important capability for border security because they provide interdiction resources to high traffic maritime regions and utilize other nations and agencies as force multipliers.

The Committee expects these additional capabilities to be deployed in a risk-based manner, beginning with high traffic areas. These additional capabilities are required based on testimony received by the Committee, information gathered through site visits to the border, constituents, extensive meetings, and consultation with various front-line personnel and border security stakeholders. It is intended to align capabilities to terrain, personnel, technological and infrastructural needs of Border Patrol sectors and maritime regions, in order to gain operational control and situational awareness of the border.

*(c) Fencing and Infrastructure*

This subsection requires, on a specific sector-by-sector basis, a tactical infrastructure deployment of: New fencing; fence repair and replacement; road construction; road maintenance; new vehicle fencing; vehicle fence replacement; boat ramps; access gates; and forward operating basis.

The Secretary shall construct new fencing in the following sectors: San Diego; Tucson; Rio Grande Valley; and Del Rio.

The Committee believes additional fencing provides value in certain areas of border, where it can be extended to take advantage of adjacent terrain. While the Committee recognizes that fencing is not a panacea, additional double layer fencing, in certain sectors, will help gain operational control of the border, by providing the

Border Patrol additional time to apprehend individuals attempting to cross in more densely populated areas.

(2) *Fence Repair and Replacement.*—Not later than 18 months after the date of enactment, the Secretary of Homeland Security shall replace specific fencing at the following sectors: San Diego; El Centro; Yuma; Tucson; and El Paso.

The Committee believes the replacement of outdated landing mat fencing, with modern bollard style pedestrian fencing, will provide added deterrence, increase agent safety and make it harder for unlawful border crossers to easily defeat existing ineffective fence. Landing mat fence was a cheap, effective option when it was installed in the mid-2000s; however, it should be replaced with robust pedestrian fencing, especially in areas where it serves as primary fencing.

(3) *Road Construction.*—Not later than 18 months after enactment to allow greater access for the Border Patrol, the Secretary of Homeland Security shall complete specific road construction in the following sectors: San Diego; El Centro; Yuma; Tucson; Big Bend; El Paso; Del Rio; Laredo; and Rio Grande Valley.

Access to remote areas of the border is a key challenge for Border Patrol agents across many sectors of the border. The Committee's intent is to provide agents with access roads to allow them to patrol remote areas of the border with more regularity and to increase effectiveness and response times.

(4) *Road Maintenance.*—Not later than 18 months after enactment, the Secretary of Homeland Security shall complete road maintenance in the following sectors: San Diego; Del Rio; Laredo; and Rio Grande.

In addition to the construction of new roads and infrastructure, the Committee recognizes that the maintenance of current roads is important to allowing access to certain areas of the border and will also help improve effectiveness and Border Patrol response times.

(5) *New Vehicle Fencing.*—Not later than one year after enactment, the Secretary of Homeland Security shall complete an additional six miles of vehicle in the Big Bend sector.

(6) *Vehicle Fence Replacement.*—Not later than one year after enactment, the Secretary of Homeland Security shall replace five miles of vehicle fencing in the Tucson sector.

(7) *Boat Ramps.*—Not later than 180 days after enactment, the Secretary of Homeland Security shall complete construction of specified new boat ramps in the following sectors: Del Rio; Laredo; and Rio Grande Valley.

The Committee understands that limited launching points are available to launch boats in the Rio Grande River. This has a detrimental impact on CBP's ability to patrol the international border with Mexico because without adequate launching points, Border Patrol agents have to trailer response boats many miles before being capable of responding to threats along the river.

(8) *Access Gates.*—Not later than 180 days after the date of enactment, the Secretary of Homeland Security shall construct 34 additional access gates in the Rio Grande Valley sector.

Border fences are built several feet onto the United States side of the border which allows Border Patrol agents to conduct maintenance on the Mexican side of the fence. The Committee understands that a lack of access gates to allow Border Patrol agents to

transit to the other side of a fence increases maintenance times and reduces the Border Patrol's ability to respond to illicit activity in a timely manner. Additional access gates will allow quicker access to areas of the border with long stretches of fencing.

(9) *Forward Operating Bases.*—Not later than one year after the date of enactment, the Secretary of Homeland Security shall construct a specific number of Forward Operating Bases in the following sectors: El Paso; Tucson; Big Bend; Del Rio; Laredo; and Rio Grande Valley.

The Committee believes it is important for the Border Patrol to patrol as close to the physical land borders as possible in order to protect American citizens who live near the border. The construction of additional forward operating bases will increase border security in the most remote areas of the border by reducing agent transit time to and from these locations. The Committee expects these bases will increase the number of patrol hours actually spent on the border and allow agents to respond to unlawful border crossers nearest to the point of illegal entry.

(10) *Roads.*—This subsection specifies that roads referred to in this section include border roads, patrol roads, access roads, and Federal, State, local and privately owned roads.

(11) *Minimum Forward Operating Base Requirement.*—This subsection requires the Forward Operating Bases described in this section to be equipped with certain requirements, including water, power, wide area network connectivity, temporary detention space, perimeter security, an interview room, and a helicopter landing zone.

The Committee believes that Forward Operating Bases must meet certain minimum standards to adequately meet the needs of agents assigned to forward operating bases. These requirements ensure that agents can sustain operations in remote areas of the border.

(d) *Carrizo Cane Eradication*

This subsection includes findings on the safety and security hazards of Carrizo cane. The Carrizo cane is a non-native invasive plant that has grown tall along the Rio Grande River and hampers enforcement by Border Patrol Agents. This subsection requires the Chief of the Border Patrol, in coordination with each Federal and State agency, to eradicate, to the greatest extent practicable, the Carrizo cane plant along the Rio Grande River.

Carrizo cane is a non-native, invasive plant that grows along the Rio Grande River in Texas. Its unchecked growth provides concealment to criminals, drug smugglers, illegal aliens, and potential terrorists who could use it to their advantage to enter the United States. The Committee expects CBP to coordinate with relevant Federal and State agencies to eradicate the Carrizo cane plant along the Rio Grande.

(e) *Consultation*

This subsection requires the Secretary of Homeland Security to consult with each Governor representing a southern border state, including southern maritime border States, representatives of CBP and relevant Federal, State, local and tribal agencies that have ju-

isdiction on the southern border, in developing the operational plan and metrics described in this section.

The Committee believes that stakeholder input is important for the Department to hear the perspectives of other relevant parties as they work to achieve operational control. The Committee expects the Secretary consult with the Governors of each border and southern maritime border state, and relevant Federal, State and tribal agency officials and to build such input into the development of the operational plan and metrics.

*(f) Operational Plan*

*(1) In General.*—This subsection requires the Secretary of Homeland Security to submit to the appropriate congressional committees, the BSVC, and GAO, a comprehensive operational plan for each component of DHS, describing how the Department will meet the mandates in the bill and requirements to gain operational control and situational awareness not later than 120 days after the date of enactment.

The purpose of the operational plan is to describe in significant detail how the Department will operationalize the requirements outlined in this subsection as well as subsection (b) and (c) to achieve situational awareness and operational control of the border.

*(2) Contents of Plan.*—The plan shall include a border threat assessment, required capability deployments under subsection (b), a plan to analyze and disseminate threat information, a plan to achieve situational awareness using capabilities described in subsection (b), a plan to ensure any new assets will be operationally integrated, a plan to eradicate Carrizo cane as required in subsection (d), lessons learned from National Guard operations, a description of information received from consultation with border community stakeholders, a description of staffing requirements for all border security functions, a prioritized list of research and development objectives, an assessment of border security impact on crossing times, metrics required under this section, an integrated master schedule and cost estimates for activities contained in such operational plan, justification for technology choices, deployment locations, a timetable for procurement and deployment, estimates of operations and maintenance costs, and an identification of impediments.

The Committee's intent is that the Department coordinates an operational plan that clearly outlines the role of major operational components with border security responsibilities that details how each will gain operational control and situational awareness in their area of responsibility. The Committee expects that this detailed operational plan will closely follow the requirements under this subsection.

*(3) Classified Assessment.*—The assessment of principal border security threats may be submitted in a classified form.

The Committee expects that as much of the assessment as possible be published in an unclassified and transparent form. The Committee understands, however, that this assessment will contain sensitive information and stresses the need to balance properly classifying material with the need to share such information.

(4) *Implementation*—The Secretary of Homeland Security shall commence the implementation of the operational plan under paragraph (1) not later than 30 days after the submission to the appropriate congressional committees of the GAO report required under subparagraph (C).

Not later than 90 days after receiving the operational plan under paragraph (1) the GAO shall submit to the appropriate congressional committees and the BSVC a report on the operational plan required under paragraph (1).

The Committee believes the Department must act in a swift, yet responsible manner while increasing efforts to gain situational awareness and operational control of the border as quickly as possible. The Department should not delay the process under the false assumption that it must wait until the GAO has completed its report on the operational plan.

(g) *Periodic Updates*

This subsection requires that the Operational Plan required under subsection (f) be updated and submitted to Congress every four years and not later than 180 days after the submission of each Quadrennial Homeland Security Review (QHSR).

By requiring the update to follow the delivery of the QHSR, the Committee believes the Department will better coordinate the Operational Plans to gain and maintain situational awareness and operational control of the border with other strategic department guidance provided by the Department.

(h) *Metrics for Securing the Border Between the Ports of Entry*

(1) *In General*—The Chief of the Border Patrol is required to submit and implement eight separate metrics for securing the border between the Ports of Entry not later than 120 days after enactment. These metrics include: An unlawful border crossing effectiveness rate; a probability of detection; a weight-to-frequency rate; a situational awareness achievement metric; an illicit drugs seizure rate; a cocaine seizure effectiveness rate; estimates of total attempted unlawful border crossings, the rate of apprehension of attempted unlawful border crossers, and the inflow into the United States of unlawful border crossers who evade apprehension; and estimates of the impact the Border Patrol's Consequence Deliver System has on the rate of unlawful border crossing recidivism.

The Committee designed these metrics with insight from members of the Department and academic community to provide an objective, outcome-based perspective of the state of the border between the ports of entry. While there is no single metric that can show the totality of border security, each of these metrics provide a different data point to develop a more holistic picture of the state border security between ports of entry.

The Committee believes DHS needs to develop comprehensive outcome-based metrics to evaluate the effectiveness of border security operations and to inform border security progress. DHS currently lacks a mechanism to effectively measure border security since it abandoned the use of the metric "operational control" in 2010. At the time, only 44 percent of the border was under some degree of "operational control." Without a clearly-defined set of

metrics, there is no means to measure the success or failure at our nation's borders.

The Committee believes there is a need for additional outcome-based metrics to measure border security between ports of entry, at ports of entry, and along the maritime border. These metrics must be implemented consistently across all the departments and agencies that address border security.

(2) *Metrics Consultation*—In developing the metrics required in this section, the Chief of the Border Patrol shall consult with certain staff members and offices at the Department of Homeland Security.

The Committee understands that offices within the Department have significant expertise to offer in the development and calculation of metrics. The Committee expects that the Chief of the Border Patrol will interact with the non-political members of these offices to develop statistically valid performance metrics that accurately reflect the state of border security.

(3) *Metrics Not Reviewable*—In addition, the metrics described in subsection (1) may not be reviewed prior to the submission to the appropriate congressional committees, the BSVC, and GAO, by: The President; any staff employed by the Executive Office of the President (does not apply to Office of National Drug Control Policy); the Secretary of Homeland Security; the Deputy Secretary of Homeland Security; the Commissioner of Customs and Border Protection; or the Deputy Commissioner of Customs and Border Protection.

The Committee does not want the performance metrics to be influenced, altered, or otherwise changed by political leaders that may try to use this data for political purposes. The Committee intends that these metrics be used as an objective way to measure border security efforts.

(i) *Metrics for Securing the Border at the Ports of Entry*

(1) *In General*—CBP's Assistant Commissioner for Field Operations is required to develop and submit eight separate metrics for securing the border at the Ports of Entry not later than 120 days after enactment. These metrics include: An inadmissible border crossing rate; an illicit drugs seizure rate; a cocaine seizure effectiveness rate; estimates, using alternative methodologies, of total attempted inadmissible border crossings, the rate of apprehension, and the inflow of inadmissible border crossers who evade apprehension; the number of infractions related to personnel and cargo committed by major violators at ports of entry; a measurement of how border security operations affect crossing times; the amount and type of illicit drugs seized by the Office of Field Operations at each seaport; a cargo scanning rate at each seaport.

The Committee requires these metrics with insight from members of the Department and as well as academic community to provide an objective, outcome-based perspective of the state of the security at the ports of entry. While there is no single metric that can show the totality of border security, each of these metrics provide a different data point to develop a more holistic picture of border security at the ports of entry.

(2) *Metrics Consultation*—In developing the metrics required in this section, the Assistant Commissioner for OFO shall consult

with certain staff members and offices at the Department of Homeland Security.

The Committee understands that offices within the Department have significant expertise to offer in the development and calculation of metrics. The Committee expects that the Assistant Commissioner for OFO will interact with the non-political members of these offices to develop statistically valid performance metrics that accurately reflect the state of border security.

(3) *Metrics Not Reviewable*—In addition, the metrics described in subsection (1) may not be reviewed prior to the submission to the appropriate congressional committees, the BSVC, and GAO, by: The President; any staff employed by the Executive Office of the President (does not apply to Office of National Drug Control Policy); the Secretary of Homeland Security; the Deputy Secretary of Homeland Security; the Commissioner of Customs and Border Protection; or the Deputy Commissioner of Customs and Border Protection.

The Committee does not want the performance metrics to be influenced, altered, or otherwise changed by political leaders that may try to use this data for political purposes. The Committee intends that these metrics be used as an objective way to measure border security efforts.

(j) *Metrics for Securing the Maritime Border*

(1) *In General*—The Commandant of the Coast Guard and the CBP Assistant Commissioner for Air and Marine are required to jointly submit seven separate metrics in for securing the border in the maritime environment not later than 120 days after enactment. These metrics include: An estimate of the total number of undocumented migrants the Department fails to interdict; an undocumented migrant interdiction rate; an illicit drugs removal rate inside a transit zone; an illicit drugs removal rate outside a transit zone; a cocaine removal effectiveness rate inside a transit zone; a cocaine removal effectiveness rate outside a transit zone; a maritime security response rate.

The Committee designed these metrics with insight from members of the Department and members of the academic community to provide an objective, outcome-based perspective of the state of the border security in the maritime domain. While there is no single metric that can show the totality of border security, each of these metrics provides a different data point to develop a holistic picture of border security along the maritime border and better understand effectiveness of components responsible for border security.

(2) *Metrics Consultation*—In developing the metrics required in this section, the Commandant of the Coast Guard and Assistant Commissioner for the Office of Air and Marine shall consult with certain staff members and offices at the Department of Homeland Security.

The Committee understands that offices within the Department have significant expertise to offer in the development and calculation of metrics. The Committee expects that the Commandant of the Coast Guard and Assistant Commissioner for the Office of Air and Marine will interact with the non-political members of these

offices to develop statistically valid performance metrics that accurately reflect the state of border security.

(3) *Metrics Not Reviewable*—In addition, the metrics described in subsection (1) may not be reviewed prior to the submission to the appropriate congressional committees, the BSV, and GAO, by: the President; any staff employed by the Executive Office of the President (does not apply to Office of National Drug Control Policy); the Secretary of Homeland Security; the Deputy Secretary of Homeland Security; the Commissioner of Customs and Border Protection; or the Deputy Commissioner of Customs and Border Protection.

The Committee does not want the performance metrics to be influenced, altered, or otherwise changed by political leaders that may try to use this data for political purposes. The Committee intends that these metrics be used as an objective way to measure border security efforts.

(k) *Air and Marine Security Metrics in the Land Domain*

(1) *In General*—CBP's Assistant Commissioner for Air and Marine is required to submit seven separate metrics in for securing the border through the use of air assets not later than 120 days after enactment. These metrics include: A requirement effectiveness rate; a funded flight hours effectiveness rate; an aviation mission readiness rate; the number of subjects detected through the use of UAVs; the number of apprehensions assisted through the use of UAVs; the number and quantity of illicit drugs seizures assisted through the use of UAVs; and a detailed description of how, where, and for how long data images collected by unmanned aerial systems are collected and stored.

The Committee designed these metrics with insight from members of the Department and the academic community to provide an objective, outcome-based perspective of the effectiveness of the Office of Air and Marine along the international land border. While there is no single metric that can show the totality of border security, each of these metrics provide a different data point to develop a more holistic picture of the Office of Air and Marine's effectiveness along the land border.

(2) *Metrics Consultation*—In developing the metrics required in this section, the Commandant of the Coast Guard and Assistant Commissioner for the Office of Air and Marine shall consult with certain staff members and offices at the Department of Homeland Security.

The Committee understands that offices within the Department have significant expertise to offer in the development and calculation of metrics. The Committee expects that the Assistant Commissioner for the Office of Air and Marine will interact with the non-political members of these offices to develop statistically valid performance metrics that accurately reflect the state of border security.

(3) *Metrics Not Reviewable*—In addition, the metrics described in subsection (1) may not be reviewed prior to the submission to the appropriate congressional committees, the BSV, and GAO, by: The President; any staff employed by the Executive Office of the President (does not apply to Office of National Drug Control Policy); the Secretary of Homeland Security; the Deputy Secretary of Homeland Security; the Commissioner of Customs and Border Protection;

tection; or the Deputy Commissioner of Customs and Border Protection.

The Committee does not want the performance metrics to be influenced, altered, or otherwise changed by political leaders that may try to use this data for political purposes. The Committee intends that these metrics be used as an objective way to measure border security efforts.

*(l) Penalties for Failure to Submit Metrics*

This subsection prevents political appointees of the Department of Homeland Security from performing certain functions if any of the deadlines required under any subsection are not met. These functions include: Travel using Government aircraft; receipt of any non-essential training; receipt of any bonus pay, excluding overtime pay; or receipt of any salary increase.

Penalties provided in the section are designed for one purpose: to encourage the political leadership of the Department to comply with the requirements of this bill as Congress intends. Far too often the Executive branch chooses not to comply with deadlines imposed by statute, and so the Committee has no choice but to ensure that significant penalties are brought to bear in that event. The Committee intends that the deadlines in this bill be respected by the Executive branch. The national security exception makes clear that the intent is not to prevent travel by political appointees to respond to events such as terrorist attacks, or natural disasters or travel connected to the requirement to achieve operational control.

*(m) Evaluation by the Government Accountability Office*

This subsection requires all metrics required under subsections (h), (i), (j), and (k) shall be made available to the appropriate congressional committees, the GAO, and the BSVC. This subsection also requires the GAO to submit a report to the appropriate congressional committees and the BSVC, not later than 270 days after receiving the data on the statistical validity of the metrics submitted by DHS, as well as make recommendations to the Secretary for other suitable metrics to measure border security effectiveness.

The Committee understands that metrics and methodologies can be subject to various interpretations. While the metrics prescribed in this bill are designed to be objective and outcome-based, the Committee believes that an evaluation by the GAO of their statistical validity as well as recommendations for improvement of metrics will provide additional oversight and transparency to the metrics.

*(n) BSVC Certification of Metrics and Operational Control*

*(1) Secretary of Homeland Security Notifications*—This section authorizes the manner in which the Secretary of Homeland Security shall provide notifications to the appropriate congressional committees and the BSVC for determining whether situational awareness and operational control of high traffic areas have been achieved, not later than two years after enactment, and that operational control along the southwest border has been achieved by the date that is not later than five years after the date of enactment.

This section also requires the Secretary to submit annual updates after the notification that operational control along the southwest border has been achieved, and make such notifications to the appropriate congressional committees and BSVC.

The Committee understands that obtaining operational control and situational awareness is not a one-time event. Once the Department obtains full operational control and situational awareness of the high traffic areas and then of the entire border, it must sustain its border security efforts. Therefore the Committee believes the Secretary must continue to report the status of the border to Congress on an ongoing basis.

(2) *BSVC Certification*—This section requires the BSVC to review the notifications provided by the Secretary of Homeland Security, of operational control and situational awareness, and review such metrics to assess the statistical validity and methodology of such data.

Not later than 120 days after conducting a review described in subparagraph (A), the BSVC shall submit a report on the results of such review certifying the accuracy of the notification. In addition, not later than 120 days after conducting the review described in subparagraph (B) the BSVC shall submit to the appropriate congressional committees a report to determine the accuracy of the metrics required for submission. If the BSVC determines that Operational Control has not been met, they must include in their report the impediments in the DHS plan, identify potential remedies, and make recommendations on how to achieve situational awareness going forward.

The BSVC is authorized to certify the accuracy of a notification if four members of the BSVC vote that such certification is accurate. Similarly four members of the BSVC must concur in the accuracy of the metrics submitted to the BSVC for review. Before voting on whether Operational Control and Situational Awareness have been achieved, the BSVC must consult with each southern border state Governor, the National Border Patrol Council, and relevant State and local government agencies. All BSVC votes must be conducted in public.

When the Department provides evidence of operational control or situational awareness of the border, the Committee expects the BSVC to thoroughly examine the state of the border, both through the evidence provided by the Department and through hearings, meetings with stakeholders, to determine whether the notification by the Department can be substantiated. If the BSVC does not substantiate the notification of the Secretary, the BSVC will provide recommendations to remedy any and all impediments that prevent the Department from achieving operational control. These could include organizational changes, additional authority, funding, or technological barriers.

*(o) Failure to Achieve Operational Control*

This section outlines the penalties for failing to achieve operational control of the border which are the same penalties for failing to implement the biometric exit data system within the prescribed timelines as described in Section (14), subparagraph (i). This section identifies the penalties as limitations on the ability of a political appointee of the Department of Homeland Security to

travel using a government aircraft; receive non-essential training; receive bonus pay, excluding overtime pay; or receive any salary increase. In the event that travel is in the national security interests of the United States or is required to achieve operational control of the southern border of the United States, the Secretary of the Department of Homeland Security may waive the travel prohibition after notifying Congress.

If the Secretary determines that situational awareness, operational control, or both, has not been achieved by the dates referred to in subsection (n)(1) and thus fails to submit a notification to the BSVC, or if the BSVC determines pursuant to subsection (n)(2) that the Secretary has failed to achieve situational awareness and operational control, the Secretary must submit, within 180 days, to the appropriate congressional committees and the BSVC and implement a revised plan to achieve situational awareness and operational control that adopts the recommendations of the BSVC referred in subsection (n).

Penalties provided in the section are designed for one purpose: to encourage the political leadership of the Department to comply with the requirements of this bill as Congress intends. Far too often the Executive branch chooses not to comply with deadlines imposed by statute, and so the Committee has no choice but to ensure that significant penalties are brought to bear in that event. The Committee intends that the deadlines in this bill be respected by the Executive branch. The national security exception makes clear that the intent is not to prevent travel by political appointees to respond to terrorist attacks, natural disasters or travel connected to the requirement to achieve operational control.

*(p) Reports*

This section requires the Secretary of Homeland Security to submit to the appropriate congressional committees within 60 days, and annually thereafter, a report including a resource allocation model for current and future year staffing requirements and an explanation of the methodology for aligning staffing levels and workload to mitigate threats and vulnerabilities; detailed information on the level of manpower available at all land, air, and sea ports of entry and between ports of entry; detailed information describing the difference between the staffing model and the actual staffing of each port of entry and between ports of entry; monthly per passenger wait times, including processing times, at all land, air and sea ports of entry; and a description of the infrastructure, security resources, and other measures necessary to reduce average vehicle wait times at land ports of entry.

The Committee expects that the Department will continually review and update its staffing requirements for ports of entry and provide detailed information to Congress to allow proper oversight of CBP.

*(q) Adherence to Certain Standards*

This section requires the Under Secretary for Management of the Department of Homeland Security to ensure that internal control standards identified by the Comptroller General are adhered to in carrying out the capability and resource deployment along the southern border.

The Committee believes that in carrying out the provisions of this bill, the Department should follow existing internal control standards to prevent fraud, waste and abuse and effectively expend the amounts authorized in this bill.

*Section 4. Establishment of Border Security Verification Commission*

(a) *In General*—This section establishes a Border Security Verification Commission (BSVC).

(b) *Purpose*—The BSVC shall certify the accuracy of notifications from the Secretary regarding situational awareness and operational control.

(c) *Composition*—The BSVC shall be composed of:

(1) The head of a national laboratory within the Department of Homeland Security laboratory network with prior expertise in border security appointed by the President, in coordination with the Speaker and minority leader of the House of Representatives and the majority and minority leaders of the Senate.

(2) The head of a border security university-based center within the Department of Homeland Security Centers of Excellence network, appointed in the same manner as above.

(3) Three individuals, appointed by the President, based on the recommendations of the special congressional commission on border security established pursuant to subsection (d).

(d) *Special Congressional Commission on Border Security.*

(1) *Establishment*—This section establishes a special congressional commission on border security (referred to in this section as the “Commission”). The Commission shall determine the criteria for making recommendations for the individuals to be appointed by the President for the BSVC. The Commission shall recommend not more than five individuals for appointments.

The Commission shall consist of the Speaker and minority leader of the House of Representatives, the majority and minority leaders of the Senate, the chairman and ranking member of the Committee on Homeland Security of the House of Representatives, and the chairman and ranking member of the Committee on Homeland Security and Government Affairs of the Senate.

(2) *Voting Procedures*—The section establishes voting procedures for the Commission to make recommendations for individuals to be referred to the BSVC. The Speaker of the House shall cast the deciding vote in the case of a tie vote.

(e) *Qualifications*—This section establishes the minimum qualifications for individuals to be referred by the Commission to the BSVC. These qualifications include a minimum of five years professional experience in law enforcement and border security.

(f) *Chair*—The BSVC shall be chaired by the head of the national laboratory described in paragraph (1) of subsection (c).

(g) *Appointment*—Members of the BSVC shall be appointed not later than 60 days after the date of enactment of this Act.

(h) *Prohibition on Compensation*—Members of the BSVC may not receive pay, allowances, or benefits from the Federal Government by reason of their service on the BSVC.

(i) *Prohibition on Certain Membership*—Members of the BSVC may not be current Federal employees or current Members of Congress.

(j) *Security Clearances*—A Member or employee of the BSVC shall receive an appropriate security clearance that is commensurate with the sensitivity of the information Member or employees of the BSVC will require access.

(k) *Meetings*—The BSVC shall meet on the call of the chairperson and not later than 180 days after enactment of this Act.

(l) *Public Hearings*—The BSVC shall carry out not less than two public hearings each calendar year and shall request public testimony of Federal, State, and local officials, and any private citizen or organization relevant to carry out its mission.

(m) *Quorum*—This section establishes that four members of the BSVC shall constitute a quorum to conduct business, and may establish a lesser quorum for conducting scheduled hearings.

(n) *Rules*—This section establishes that the BSVC may establish by majority vote any other rules which are consistent with this Act for the conduct of business.

(o) *Vacancies*—This section establishes that any vacancy in the BSVC membership shall be filled within 60 days in the same manner as the original appointment.

(p) *Personnel Matters*—This section establishes certain personnel related matters, including manner for receiving reimbursement for travel expenses, detail of Federal employees to the BSVC, and office space and supplies to assist the BSVC in carrying out their official duties.

(q) *Termination*—This section establishes that the BSVC shall terminate after determining the accuracy of the seventh annual metrics submission required in section 3 of this bill.

The Committee expects that the BSVC will consist of non-partisan border security and law enforcement experts that can objectively evaluate the state of the border without bias from the Administration, Congress, or special interest groups. The BSVC will work transparently by conducting public hearings and making all votes public. While the Committee understands that some of the materials created by the BSVC may be classified or law enforcement sensitive and not releasable, the Committee does expect the work of the BSVC to be made available to the public to the greatest extent possible.

The Committee's intent through the creation of the BSVC is to validate any claims by the Department that the border is secure and to ensure accountability and transparency throughout the process. The Committee is frustrated with the unsubstantiated comments that the border is "more secure than ever" and the BSVC is designed to take the certification of operational control and situational awareness out of the hands of the executive and legislative branches in order to bring an objective party into border security validation.

#### *Section 5. Required consequence*

This section requires the Chief of the Border Patrol to impose a consequence for each alien apprehended pursuant to the Border Patrol's Consequence Delivery System.

The Committee believes efforts to reduce illicit border crossing recidivism are necessary to gain operational control of the border. The Committee supports the Border Patrol's use of a consequence delivery system to apply a consequence to each individual who is apprehended crossing the border illegally. The committee believes that voluntary return is not an appropriate consequence and does not deter recidivism.

*Section 6. U.S. Border Patrol of Physical Land Border*

*(a) In General*—This section requires the Chief of the Border Patrol to direct agents to patrol as close to the physical land border as possible, consistent with accessibility to such areas.

The Border Patrol currently employs what is called a “defense in depth strategy,” which instead of placing agents in close proximity to the border, funnels traffic to certain corridors preventing access to key transit points and highways, in some instances hundreds of miles from the border. While the Committee understands that such a strategy may allow the Border Patrol the time in certain circumstances to respond to threats, the Committee believes this strategy often puts residents who live on the border at risk, including ranchers and their families who have their property infiltrated by smuggling organizations on a regular basis. The Committee believes patrolling close to the border will allow for faster response times, and will better protect citizens along the border.

*(b) Forward Operating Base Personnel*—This section requires the Chief of the Border Patrol to ensure that Border Patrol deploys the maximum practicable number of agents to forward operating bases along the southern land border of the United States to meet the requirements of this section.

The Committee understands that the concentration of Border Patrol personnel near the border is limited in certain sectors, like Tucson, by the transit time from border patrol stations to the actual border, using up several hours of an agent's shift. Forward operating bases (FOBs) were built to address this challenge, and more need to be built as directed by this legislation, to reduce agent hours not spent on the border. The Committee believes that in these areas, the border patrol should be using intelligence driven operations consistent with section 19, and dedicate the maximum number of agents to patrol at the international boundary, instead of hundreds of miles away from the border. These provisions will reduce the public safety risk to ranchers and other residents who live and work along the border.

*Section 7. Tactical Flexibility*

This section authorizes the Chief of the Border Patrol to alter the capability deployment along the southern and northern borders referred to in sections 3(b) and 15(c) of this Act in consultation with the appropriate congressional committees if the principal border security threats require such alteration.

While this legislation is prescriptive in its requirements for capability deployments, the Committee recognizes that threats along the border change, and therefore the Chief of the Border Patrol, as an operational commander, should have some flexibility altering capability deployments, in a risk-based manner, in order to achieve operational control. The Committee fully intends that this flexi-

bility be provided to the operational leadership of the Border Patrol and has purposefully denied this flexibility to the political leadership of the Department.

*Section 8. Deployment of Certain Aviation Assets to the Southern Land Border*

This section authorizes the Secretary of Defense, in collaboration with the Secretary of Homeland Security to allocate additional aviation assets of the Department of Defense to deploy to the southwest border to assist in achieving situational awareness and operational control.

The section also requires the Secretary of Homeland Security to submit a plan to Congress and the BSVC within 180 days, for the Department of Homeland Security to acquire and deploy additional aviation capabilities along the southwest border. Not later than 180 days after the submission of the plan, the Secretary shall begin acquiring and deploying acquired aviation capabilities to the southwest border.

The Committee recognizes that the Department of Defense currently deploys aviation assets to the southwest border of the United States in support of Department of Homeland Security missions. In light of the ongoing security challenges at the border and during such time as may be required for the Secretary of Homeland Security to implement the plan required by subsection (b), the committee believes the Secretary of Defense should endeavor to maintain aviation assets allocated to the southwest border, consistent with the interests of national defense. National Guard aviation capabilities surpass those organic to CBP, and DOD assets should continue to be utilized along the border until CBP can sufficiently obtain its own organic capability.

The Committee expects CBP Office of Air and Marine to quickly outline for both the authorizing and appropriating committees what it will take to develop an organic aviation capability to take over the role that is currently filled by the National Guard as well as fulfill the requirements in section 10.

*Section 9. U.S. Customs and Border Protection Officer and Agent Authorization*

This section requires the Border Patrol to maintain not fewer than 21,370 full time agents, the Office of Field Operations to maintain not less than 23,775 full time officers and the Office of Air and Marine to maintain not less than 1,675 full time agents.

The Committee intends this authorization to align with the current appropriated levels.

*Section 10. Office of Air and Maritime Flight Hours*

This section requires that the Office of Air and Marine conduct 130,000 flight hours each year with a minimum of not less than 16 hours of Unmanned Aerial Vehicles seven days a week.

This section also requires the Office of Air and Marine to annually submit to the appropriate congressional committees a report which describes the number of hours the Office of Air and Marine (OAM) operated unmanned aerial systems in a transit zone, on a land border, on a maritime border, and to assist other Federal, State, local, and tribal law enforcement agencies.

OAM is an essential component to achieving situational awareness of the border. In order to provide that situational awareness, however, OAM must keep its aircraft in the air as much as possible and maintain a high operational tempo. In Fiscal Year 2014, OAM assets flew only 90,700 hours, which with over 250 aircraft in its fleet, averages out to less than an hour per day for each asset. The Committee believes CBP should maintain a more persistent aviation presence along the border.

The Committee is also concerned by reports from the Department of Homeland Security's Office of the Inspector General, OIG-15-17, "U.S. Customs and Border Protection's Unmanned Aircraft System Program Does Not Achieve Intended Results or Recognize All Costs of Operations." As a result, the Committee expects annual metrics from CBP on the effectiveness of the UAV program including detailed reporting on the number of hours UAVs are used in each domain.

#### *Section 11. Air and Maritime Prioritization*

This section directs the Assistant Commissioner for the Office of Air and Marine to prioritize the assignment of assets to meet requests from the Chief of the United States Border Patrol in gaining and maintaining situational awareness and operational control of the border in accordance with this Act.

OAM often responds to support requests from various DHS law enforcement agencies. While the Committee believes OAM should continue to provide assistance to other law enforcement agencies, the committee also believes that obtaining and maintaining situational awareness and operational control should be the first priority of OAM.

#### *Section 12. Border Patrol Flexibility*

This section provides the Chief of the United States Border Patrol the authority to transfer Border patrol agents, voluntarily, to high traffic areas along the border and, at the Chief's discretion, to provide an incentive bonus for such a transfer if the transfer is determined to be critical to the risk-based approach of the Border Patrol in patrolling the international border. This section authorizes \$30,000,000 to be appropriated each fiscal year to carry out this section.

The committee acknowledges that the threats along the border are constantly changing and are never static. Previous border security efforts have only succeeded in shifting threats to other areas of the border. Transnational Criminal Organizations will always seek out areas of least resistance. The Border Patrol does not currently have the same agility to move personnel to address the threat.

As a result, the Committee has authorized the Chief of the Border Patrol to provide incentive bonuses to permanently transfer agents to high-risk sectors of the border.

#### *Section 13. Prohibition on Actions that Impede Border Security on Certain Federal Land*

This section provides U.S. Customs and Border Protection unimpeded access to conduct their missions on Federal land located within 100 miles of the U.S. border with Mexico and within 100

miles of the U.S. border with Canada that is under the jurisdiction of the Secretaries of the Interior or Agriculture. This section specifically provides U.S. Customs and Border Protection authority on this Federal land to: construct and maintain roads; construct and maintain barriers; use vehicles to patrol, apprehend, or rescue; install, maintain, and operate communications and surveillance equipment and sensors; and deploy temporary tactical infrastructure, to prevent illicit activities across the international land border.

This section does not provide the authority to restrict legal uses of or access to the land under the jurisdiction of the Secretaries of the Interior or Agriculture and has no effect on and provides no specific authorities or access to State or private lands and does not impact treaties or agreements with respect to tribal sovereignties.

The Committee remains concerned that longstanding disagreements between the Border Patrol and federal land managers within the Department of the Interior and the Department of Agriculture have put national security at risk. Currently, land management bureaus have the power to impede border security activities under authorities created by environmental laws such as the Wilderness Act and the Endangered Species Act. Unfortunately, these laws are used to restrict Border Patrol activity needed to protect these federal lands and control the border.

The Committee believes the Border Patrol requires unimpeded access to patrol the remote landscapes found on much of the border. The legislation would facilitate access to federal lands by extending the waiver authority previously granted to the Department of Homeland Security and exercised to build portions of the border fence. This authority would only encompass federal land within the current jurisdiction of the Border Patrol, defined as 100 miles from the international border.

#### *Section 14. Biometric Exit Data System*

This section strengthens current law by establishing deadlines for DHS to implement a biometric exit program required under section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004.

*(a) Establishment*—This section directs the Secretary of Homeland Security to submit not later than 180 days after the enactment of this Act to the Committee on Homeland Security and the Committee on the Judiciary of the House of Representatives and to the Committee on Homeland Security and Governmental Affairs and the Committee on the Judiciary of the Senate an implementation plan to establish a biometric exit data system to complete the integrated biometric entry and exit data system required by the Intelligence Reform and Terrorism Prevention Act.

This section specifies that the implementation plan should include, an integrated master schedule and cost estimate; cost-effective staffing and personnel requirements that leverage existing resources; a consideration of necessary training programs; a consideration of how the system will affect wait times; information received after consultation with private sector stakeholders; consideration of the impact to existing trusted traveler programs; defined metrics of success and milestones; identified risks and mitigation strategies;

and a consideration of how other countries have implemented similar systems.

This section also requires the establishment of a biometric exit data system at the 15 United States airports, 15 United States seaports, and 15 United States land ports of entry that support the highest volume of international travel in their respective domains as determined by available federal data within two years of the date of enactment.

The Committee expects the Department to finally implement a biometric exit program, as was recommended by the 9/11 commission and required by the Intelligence Reform and Terrorism Prevention Act. The Committee believes that this bill strengthens current law by creating definitive timelines for completion of a biometric exit system and holds the Department accountable for failing to comply with the terms of the bill.

*(b) Implementation—*

*(1) Pilot Program at Land Ports of Entry for Non-pedestrian Outbound Traffic—*This section requires the Secretary of Homeland Security in collaboration with industry stakeholders, within one year after the date of enactment of this Act, to establish a six-month pilot program to test the biometric exit system on non-pedestrian outbound traffic. This pilot program must be implemented at no less than three significant land ports of entry, two on the southern border and one on the northern border. The pilot program shall be used to determine, how a nationwide implementation shall be carried out at land ports; the infrastructure required; the effects on legitimate travel and trade; the effects on wait times for non-pedestrian traffic; the effectiveness in combatting terrorism; and the effectiveness in identifying visa holders who violate the terms of their visas.

*(2) At Land Ports of Entry for Non-pedestrian Outbound Traffic—*This section requires that the Secretary of Homeland Security expand the biometric exit data system to all land ports of entry, to apply to all non-pedestrian outbound traffic, not later than five years after enactment of this Act.

This section provides the Secretary of Homeland Security authority to extend the completion date for non-pedestrian outbound traffic at land ports of entry for a single two year period if the Secretary certifies to the Committee on Homeland Security and the Committee on the Judiciary of the House of Representatives and to the Committee on Homeland Security and Governmental Affairs and the Committee on the Judiciary of the Senate that the 15 land ports of entry that support the highest volume of passenger vehicles, do not have the physical infrastructure or characteristics to install the systems necessary to implement a biometric exit data system.

*(3) At Air and Sea Ports of Entry—*This section requires the Secretary of Homeland Security to expand the biometric exit data system to all air and sea ports of entry within five years of enactment of this Act.

*(4) At Land Ports of Entry for Pedestrians—*This section requires the Secretary of Homeland Security to expand the biometric exit data system to all land ports of entry for pedestrian traffic within five years of enactment of this Act.

The Committee believes a staggered approach is necessary to quickly implement biometric exit, first at the highest volume air, land and sea ports, and then use the lessons learned to expand the system nationwide. The Committee believes that current mandates for biometric exit are being willfully ignored by the Executive Branch, and as a result, this bill provides clear direction and timelines to meet a long standing statutory requirement. The Committee is convinced that the technology exists to implement biometric exit quickly in air, sea and pedestrian lanes and looks forward to the completion of this system.

(c) *Effects on Air, Sea, and Land Transportation*—This section requires the Secretary of Homeland Security to consult with appropriate private sector stakeholders to minimize the disruption to the movement of people or cargo in air, sea, or land transportation while fulfilling the goals of improving counterterrorism efforts and identifying visa holders who violate the terms of their visas.

(d) *Termination of Proceeding*—Notwithstanding any other provision of law, this section requires the Secretary of Homeland Security to terminate the proceeding entitled “Collection of Alien Biometric Data Upon Exit From the United States at Air and Sea Ports of Departure”, issued on April 24, 2008.

(e) *Data-Matching*—This section requires that the biometric exit data system, match a person’s exit data against available biometric entry data when the person exits the United States; leverage the infrastructure and databases of the current entry system; and be interoperable with Federal databases that store biometrics of known or suspected terrorists.

(f) *Scope*—This section establishes the scope of the biometric exit data system to include the collection of biometric exit data for all categories of individuals who are required to provide such data but shall not apply to United States citizens.

(g) *Collection of Data*—This section prohibits the Secretary of Homeland Security from requiring any non-federal person to collect biometric data pursuant to the biometric exit data system except through a contractual agreement.

(h) *Multi-modal Collection*—This section requires the Secretary of Homeland Security to collect biometric data under this Act using various types of biometric technology.

(i) *Penalties for Failure to Meet Deadlines*—This section establishes penalties if the Secretary of Homeland Security fails to meet the deadlines set forth in this section. These penalties are the same penalties established in paragraph (2) for political appointees. These deadlines relate to the submission of the implementation plan; establishment of a biometric exit system; establishment of a six-month pilot program; the expansion of such biometric exit data system; and any extension of the deadline for expansion authorized by the Secretary.

Implementing a biometric exit system will allow border security officials to know with certainty who has left the country and who has violated the terms of their visa. The timelines provided by the Committee are the result of extensive consultation with, and full support of industry. The Committee intends to hold the Department accountable for meeting deadlines in the bill.

(j) *Congressional Review*—This section requires the Secretary of Homeland Security to, not later than 90 days after the date of en-

actment, submit to the Committee on Homeland Security and the Committee on the Judiciary of the House of Representatives and to the Committee on Homeland Security and Governmental Affairs and the Committee on the Judiciary of the Senate reports and recommendations from the Department's Science and Technology Directorate's Air Entry and Exit Re-Engineering Program and the U.S. Customs and Border Protection entry and exit mobility program.

The Department has several biometric pilots currently planned, or in process to evaluate the concept of operations for a biometric exit system. The Committee expects the Department to share the reports and recommendations of these projects to provide full accounting of these pilots.

*Section 15. Northern Border Threat Analysis*

(a) *In General*—This section requires the Secretary of Homeland Security to submit to the appropriate congressional committees, within six months from the date of enactment of this Act, a northern border threat analysis. The threat analysis shall include, at a minimum, an analysis of current and potential terrorist threats posed by individuals seeking to enter the United States through the northern border; an analysis of improvements needed at ports of entry along the northern border to prevent terrorists and instruments of terror from crossing the border; an analysis of gaps in law, policy, international agreements, or tribal agreements that hinder border security efforts along the northern border; and an analysis of unlawful cross border activity between ports of entry, including the maritime border of the Great lakes.

The Committee recognizes that while there is significant attention paid to the security of the southern border of the United States, there are also real terror threats to the northern border which cannot be neglected. The Committee believes a threat analysis of the unique challenges along the northern border is necessary to better determine capability deployment required in section (c).

(b) *Classified Threat Analysis*—This threat analysis may be submitted in classified form if the Secretary of Homeland Security deems it appropriate.

(c) *Required Northern Border Capability Deployment*—This subsection requires the Secretary of Homeland Security to deploy to each sector along the northern border, additional minimum capabilities to achieve situational awareness and operational control of the border. The capabilities are listed in a specific risk-based, sector-by-sector manner.

The Committee identified the following additional capabilities as required based on testimony received by the Committee, information gathered through site visits to the border, constituents, extensive meetings, and consultation with various front-line personnel and border security stakeholder and experts.

*Coastal radar surveillance systems*—The Committee believes that understanding illicit trends in the coastal regions of the maritime border requires persistent awareness of those regions. Coastal radar surveillance is important to developing that awareness.

*Mobile vehicle-mounted and man-portable surveillance systems*—Because the high traffic areas of the border shift from region to re-

gion, the Committee realizes that not all surveillance systems should be permanently fixed to one region. This portable surveillance technology will allow Border Patrol to respond quickly and with the appropriate capabilities to shifts in threats or trends.

*Advanced unattended surveillance sensors*—The Committee believes that greater awareness of the remote areas of the border is necessary through advanced sensors which can be left unattended and used to identify threats and trends to which Border Patrol agents can respond, maximizing the efficiency of their operations.

*Improved agent communications capabilities*—In many remote areas of the border, communication between individual agents and with command and control centers is lacking. The Committee believes that agents deployed to these remote areas must have appropriate communications capabilities to ensure their effectiveness and safety.

*Increased flight hours for aerial detection, interdiction, and monitoring operations capability*—The Committee understands the importance of aviation assets for aerial detection, interdiction, and monitoring operations and that increasing these capabilities equates to an increase in the numbers of hours flown in support of border operations. Understanding the flight limitations on many aircraft, the Committee understands that this will require prioritizing flight hours to support border security efforts.

*Man-portable unmanned aerial vehicles*—The Committee understands the importance of the capabilities offered by unmanned aerial vehicles but also the limitations of larger UAVs that can only take off and land at certain facilities. Man-portable UAVs can be deployed and launched by hand to areas which require immediate aviation surveillance support.

*Ultralight aircraft detection capabilities*—The Committee understands the threat posed by low flying aircraft and specifically ultralight aircraft which are especially difficult to detect by radar. Enhanced detection capabilities for these aircraft are needed to minimize the threat.

*Modernized port of entry surveillance capabilities*—The Committee understands that securing the ports of entry along the northern border is an essential step to securing the border. Modernizing these ports of entry and updating the surveillance capabilities is an important component of securing the ports.

*Increased maritime interdiction capabilities*—The maritime domain presents unique challenges because of its vast area in which illicit activities can take place. The Committee believes that more surface resources, both cutters and boats, are necessary to interdict this activity.

The Committee expects these additional capabilities to be deployed in a risk-based manner, beginning with high traffic areas. The identified sector-by-sector approach is intended to align capabilities to geographic, personnel, technological and infrastructural needs of Border Patrol sectors and maritime regions, in order to gain operational control and situational awareness of the border. Each sector (Blaine, Spokane, Havre, Grand Forks, Detroit, Buffalo, Swanton, and Houlton) shall deploy appropriate systems appropriate for their sector including: Coastal radar surveillance systems; mobile vehicle-mounted and man-portable surveillance systems; advanced unattended surveillance sensors; improved agent

communications; increased flight hours for aerial detection, interdiction, and monitoring operations capability; man-portable unmanned aerial vehicles; ultralight aircraft detection capabilities; modernized port of entry surveillance capabilities; and increased maritime interdiction capabilities.

*(d) Adherence to Certain Standards*—This section requires the Under Secretary for Management of the Department of Homeland Security to ensure that internal control standards identified by the Comptroller General are adhered to in carrying out the capability and resource deployment along the northern border.

The Committee believes that in carrying out the provisions of this bill, the Department should follow existing internal control standards to prevent fraud, waste and abuse and effectively expend the amounts authorized in this bill.

#### *Section 16. Operation Stonegarden Program*

This section amends Title XX of the Homeland Security Act of 2002 by adding a new subtitle, entitled “subtitle C—Other Grant Programs”

*(a) Establishment*—This subsection establishes a Department program known as ‘Operation Stonegarden’ and directs the Secretary of Homeland Security, acting through the Administrator of the Federal Emergency Management Agency, to make grants to eligible law enforcement agencies to enhance border security.

*(b) Eligible Recipients*—This subsection limits eligibility for these grants to law enforcement agencies located in a state bordering either Canada or Mexico or in a state or territory with a maritime border; and involved in an active ongoing U.S. Customs and Border Protection operation coordinated through a sector office.

*(c) Permitted Uses*—This subsection authorizes the Operation Stonegarden grant to be used for equipment, including maintenance and sustainment costs; personnel, including overtime and backfill, in support of enhanced border law enforcement activities; any activity permitted under the Department of Homeland Security’s Fiscal Year 2014 Funding Opportunity Announcement for Operation Stonegarden; or any other appropriate activity, as determined by the grant administrator.

*(d) Authorization of Appropriations*—This subsection authorizes \$110,000,000 for each of fiscal years 2015 through 2019 for grants under this section.

*(e) Report*—This subsection directs the grant administrator to annually submit a report to the Committee on Homeland Security and the Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives containing information on the expenditure of Operation Stonegarden grants by each grant recipient.

*(f) Clerical Amendment*—This subsection amends the table of contents of the Homeland Security Act of 2002 to include the added “subtitle C”.

The Committee believes state and local law enforcement are an effective force multiplier for border security. While the federal government bears the principal responsibility of securing the border, the local knowledge provided by state, local and tribal law enforcement partners is vital to obtaining operational control of the borders.

The Committee supports authorization increases for Operation Stonegarden grants, which are intended to enhance and expand cooperation and interoperability between federal, state, and local law enforcement partners.

*Section 17. Sale or Donation of Excess Personal Property for Border Security Activities*

This section amends Section 2576a of Title 10, United States Code, to allow the Secretary of Defense to transfer excess Department of Defense property to support border security activities and directs that the Secretary of Homeland Security shall also be consulted in the transfer of Department of Defense excess property to federal and state agencies.

The Committee recognizes the capability that excess Department of Defense equipment can bring to the southern border. As a result, the Committee ensured that the Secretary of Homeland Security is given priority for such technology when it becomes available as excess. If declaring equipment suitable for border security excess is not feasible, the Committee expects the Department to pursue long-term leasing arrangements with the Department of Defense to leverage the entire universe of transferrable Department of Defense equipment.

*Section 18. Reimbursement of States for Deployment of National Guard to the Southern Land Border*

This section authorizes up to \$35,000,000 of the funds authorized by this Act to be used each fiscal year to reimburse States for the cost of deployment of National Guard units or personnel to perform operations in support of the southern land border.

Securing the international borders of the United States is the responsibility of the Federal Government. However, the Committee believes that States who deploy their National Guards in support of border security operations, should be reimbursed. The Committee believes the National Guard is an effective force multiplier to deter illicit activity along the border; however, CBP should quickly acquire the ability to fill the role the National Guard performs on the border.

*Section 19. Operation of the Border Patrol*

This section requires the Border Patrol to operate using intelligence-based operations to combat terrorist and transnational criminal threats along the international borders. This section also requires Border Patrol to coordinate with international, Federal, State, local, and tribal law enforcement partners.

The Committee expects that as surveillance along the border increases, the quality and type of intelligence will increase. The Committee believes the Border Patrol should use this intelligence to conduct operations that will combat the most dangerous threats to the homeland—Terror and Transnational Criminal Organizations. The Committee understands that absent intelligence, prior border security efforts have only been successful in shifting threats to other areas of the border. Therefore the Border Patrol must utilize intelligence-based operations. In addition, the Committee expects such intelligence will be coordinated and shared with State and

local law enforcement partners who serve as force multipliers on the border.

*Section 20. Definitions*

This section sets forth the definitions of key terms as used in the bill including: “advanced unattended surveillance sensors”; “appropriate congressional committees”; “cocaine removal effectiveness rate”; “consequence delivery system”; “got away”; “high traffic areas”; “unlawful border crossing effectiveness rate”; “major violator”; “operational control”; “situational awareness”; “transit zone”; and “turn back”.

*Sec. 21. Authorization of Appropriations*

This section authorizes \$1,000,000,000 to be appropriated for each of fiscal years 2016 through 2025 to carry out this Act and the amendments made by this Act.

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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, 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) **SHORT TITLE.**—This Act may be cited as the “Homeland Security Act of 2002”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

*	*	*	*	*	*	*
<b>TITLE XX—HOMELAND SECURITY GRANTS</b>						
*	*	*	*	*	*	*
<i>Subtitle C—Other Grant Programs</i>						

*Sec. 2031. Operation Stonegarden.*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

**TITLE XX—HOMELAND SECURITY GRANTS**

*	*	*	*	*	*	*
---	---	---	---	---	---	---

***Subtitle C—Other Grant Programs***

**SEC. 2031. OPERATION STONEGARDEN.**

(a) **ESTABLISHMENT.**—*There is established in the Department a program to be known as “Operation Stonegarden”. Under such program, the Secretary, acting through the Administrator, shall make grants to eligible law enforcement agencies to enhance border security in accordance with this section.*

(b) *ELIGIBLE RECIPIENTS.*—To be eligible to receive a grant under this section, a law enforcement agency shall—

(1) be located in—

- (A) a State bordering either Canada or Mexico; or
- (B) a State or territory with a maritime border; and

(2) be involved in an active ongoing U.S. Customs and Border Protection operation coordinated through a sector office.

(c) *PERMITTED USES.*—The recipient of a grant under this section may use the grant for any of the following activities:

(1) Equipment, including maintenance and sustainment costs.

(2) Personnel, including overtime and backfill, in support of enhanced border law enforcement activities.

(3) Any activity permitted under the Department of Homeland Security’s Fiscal Year 2014 Funding Opportunity Announcement for Operation Stonegarden.

(4) Any other appropriate activity, as determined by the Administrator.

(d) *AUTHORIZATION OF APPROPRIATIONS.*—There is authorized to be appropriated \$110,000,000 for each of fiscal years 2015 through 2019 for grants under this section.

(e) *REPORT.*—The Administrator shall annually submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a report containing information on the expenditure of grants made under this section by each grant recipient.

\* \* \* \* \*

**TITLE 10, UNITED STATES CODE**

\* \* \* \* \*

**SUBTITLE A—GENERAL MILITARY LAW**

\* \* \* \* \*

**PART IV—SERVICE, SUPPLY, AND PROCUREMENT**

\* \* \* \* \*

**CHAPTER 153—EXCHANGE OF MATERIAL AND DISPOSAL OF OBSOLETE, SURPLUS, OR UNCLAIMED PROPERTY**

\* \* \* \* \*

**§ 2576a. Excess personal property: sale or donation for law enforcement activities**

(a) *TRANSFER AUTHORIZED.*—(1) Notwithstanding any other provision of law and subject to subsection (b), the Secretary of Defense may transfer to Federal and State agencies personal property of the Department of Defense, including small arms and ammunition, that the Secretary determines is—

(A) suitable for use by the agencies in law enforcement activities, including **counter-drug and counter-terrorism activities** *counterdrug, counterterrorism, and border security activities*; and

(B) excess to the needs of the Department of Defense.

(2) The Secretary shall carry out this section in consultation with **the Attorney General and the Director of National Drug Control Policy** *the Attorney General, the Director of National Drug Control Policy, and the Secretary of Homeland Security, as appropriate.*

(b) CONDITIONS FOR TRANSFER.—The Secretary of Defense may transfer personal property under this section only if—

(1) the property is drawn from existing stocks of the Department of Defense;

(2) the recipient accepts the property on an as-is, where-is basis;

(3) the transfer is made without the expenditure of any funds available to the Department of Defense for the procurement of defense equipment; and

(4) all costs incurred subsequent to the transfer of the property are borne or reimbursed by the recipient.

(c) CONSIDERATION.—Subject to subsection (b)(4), the Secretary may transfer personal property under this section without charge to the recipient agency.

(d) PREFERENCE FOR CERTAIN TRANSFERS.—In considering applications for the transfer of personal property under this section, the Secretary shall give a preference to those applications indicating that the transferred property will be used in the **counter-drug or counter-terrorism activities** *counterdrug, counterterrorism, or border security activities* of the recipient agency.

\* \* \* \* \*

#### COMMITTEE CORRESPONDENCE

COMMITTEE ON ARMED SERVICES,  
HOUSE OF REPRESENTATIVES,  
*Washington, DC, January 23, 2015.*

Hon. MICHAEL T. MCCAUL,  
*Chairman, Committee on Homeland Security,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: I write concerning H.R. 399, the Secure Our Borders First Act of 2015, as amended. This legislation was additionally referred to the Committee on Armed Services, and includes matters that fall within the Rule X jurisdiction of the committee.

Our committee recognizes the importance of H.R. 399, and the need for the legislation to move expeditiously. Our committee also appreciates efforts by your staff to coordinate on matters that fall in our Rule X jurisdiction in advance. Therefore, while we have a valid claim to jurisdiction over this legislation, the Committee on Armed Services will waive further consideration of H.R. 399. By waiving consideration of the bill, the Committee on Armed Services does not waive any future jurisdictional claim over the subject matters contained in the bill which fall within its Rule X jurisdiction. I request that you urge the Speaker to name members of this com-

mittee to any conference committee which is named to consider the provisions over which we have jurisdiction.

Please place this letter and your committee's response into the Congressional Record during consideration of the measure on the House floor. Thank you for the cooperative spirit in which you have worked regarding this matter and others between our respective committees.

Sincerely,

WILLIAM T. "MAC" THORNBERRY,  
*Chairman.*

---

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
*Washington, DC, January 23, 2015.*

Hon. MAC THORNBERRY,  
*Chairman, Committee on Armed Services,  
Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter regarding H.R. 399, the Border Security First Act of 2015. I appreciate your support in bringing this legislation before the House of Representatives, and accordingly, understand that the Committee on Armed Services will forego action on the bill.

The Committee on Homeland Security concurs with the mutual understanding that by foregoing consideration of this bill at this time, the Committee on Armed Services does not waive any jurisdiction over the subject matter contained in this bill or similar legislation in the future. In addition, should a conference on this bill be necessary, I would support your request to have the Committee on Armed Services represented on the conference committee.

I will insert copies of this exchange in the Congressional Record during consideration of this bill on the House floor, I appreciate your cooperation regarding this legislation and look forward to continuing to work with the Armed Services Committee as the bill moves through the legislative process.

Sincerely,

MICHAEL T. MCCAUL,  
*Chairman, Committee on Homeland Security.*

---

CONGRESS OF THE UNITED STATES,  
*Washington, DC, January 22, 2015.*

Hon. MICHAEL T. MCCAUL,  
*Chairman, Committee on Homeland Security,  
Washington, DC.*

DEAR MR. CHAIRMAN: I write regarding H.R. 399, the Secure Our Borders First Act of 2015. This bill contains provisions under the jurisdiction of the Committee on Natural Resources.

I recognize and appreciate your desire to bring this bill before the House of Representatives in an expeditious manner, and accordingly, I will agree that the Committee on Natural Resources be discharged from further consideration of the bill. I do so with the understanding that this action does not affect the jurisdiction of the Committee on Natural Resources, and that the Committee expressly reserves its authority to seek conferees on any provision

within its jurisdiction during any House-Senate conference that may be convened on this, or any similar legislation. I ask that you support any such request.

I also ask that a copy of this letter and your response be included in the Congressional Record during consideration of H.R. 399 bill on the House floor.

Thank you for your work on this important issue, and I look forward to its enactment soon.

Sincerely,

ROB BISHOP,  
*Chairman, Committee on Natural Resources.*

---

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
*Washington, DC, January 22, 2015.*

Hon. ROB BISHOP,  
*Chairman, Committee on Natural Resources,*  
*Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter regarding H.R. 399, the Border Security First Act of 2015. I appreciate your support in bringing this legislation before the House of Representatives, and accordingly, understand that the Committee on Natural Resources will forego action on the bill.

The Committee on Homeland Security concurs with the mutual understanding that by foregoing consideration of this bill at this time, the Committee on Natural Resources does not waive any jurisdiction over the subject matter contained in this bill or similar legislation in the future. In addition, should a conference on this bill be necessary, I would support your request to have the Committee on Natural Resources represented on the conference committee.

I will insert copies of this exchange in the Congressional Record during consideration of this bill on the House floor. I appreciate your cooperation regarding this legislation and look forward to continuing to work with the Natural Resources Committee as the bill moves through the legislative process.

Sincerely,

MICHAEL T. MCCAUL,  
*Chairman, Committee on Homeland Security.*

---

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON AGRICULTURE,  
*Washington, DC, January 22, 2015.*

Hon. MICHAEL MCCAUL,  
*Chairman, Committee on Homeland Security,*  
*Washington, DC.*

DEAR CHAIRMAN MCCAUL: I am writing concerning H.R. 399, "The Secure Our Border First Act of 2015," which was favorably reported out of your committee on January 21, 2015.

As you know, provisions of H.R. 399 have been referred to the Committee on Agriculture. In order to expedite floor consideration of the bill, the Committee on Agriculture will forego action on H.R. 399. This is also being done with the understanding that it does

not in any way prejudice the Committee with respect to the appointment of conferees or its jurisdictional prerogatives on this or similar legislation.

I would appreciate your response to this letter, confirming this understanding with respect to H.R. 399, and would ask that a copy of our exchange of letters on this matter be included in the Congressional Record during Floor consideration.

Sincerely,

K. MICHAEL CONAWAY,  
*Chairman.*

---

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
*Washington, DC, January 22, 2015.*

Hon. K. MICHAEL CONAWAY,  
*Chairman, Committee on Agriculture,  
Washington, DC.*

DEAR CHAIRMAN CONAWAY: Thank you for your letter regarding H.R. 399, the Border Security First Act of 2015. I appreciate your support in bringing this legislation before the House of Representatives, and accordingly, understand that the Committee on Agriculture will forego action on the bill.

The Committee on Homeland Security concurs with the mutual understanding that by foregoing consideration of this bill at this time, the Committee on Agriculture does not waive any jurisdiction over the subject matter contained in this bill or similar legislation in the future. In addition, should a conference on this bill be necessary, I would support your request to have the Committee on Agriculture represented on the conference committee.

I will insert copies of this exchange in the Congressional Record during consideration of this bill on the House floor. I appreciate your cooperation regarding this legislation and look forward to continuing to work with the Agriculture Committee as the bill moves through the legislative process.

Sincerely,

MICHAEL T. MCCAUL,  
*Chairman, Committee on Homeland Security.*

---

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC, January 22, 2015.*

Hon. MICHAEL MCCAUL,  
*Chairman, Committee on Homeland Security,  
Washington, DC.*

DEAR CHAIRMAN MCCAUL: I am writing concerning H.R. 399, the "Secure Our Borders First Act," which was ordered reported by your Committee yesterday. This bill contains provisions that fall within the Rule X jurisdiction of the Committee on the Judiciary.

As a result of your having consulted with me on the provisions in question, and in order to expedite the House's consideration of H.R. 399, the Committee on the Judiciary will not assert its jurisdictional claim over this bill by seeking a sequential referral. The Committee takes this action with our mutual understanding that

by foregoing consideration of H.R. 399 at this time, we do not waive any jurisdiction over subject matter contained in this or similar legislation, and that our Committee will be appropriately consulted and involved as the bill or similar legislation moves forward so that we may address any remaining issues in our jurisdiction. Our Committee also reserves the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this or similar legislation, and requests your support for any such request.

I would appreciate your response to this letter confirming this understanding with respect to H.R. 399, and would ask that a copy of our exchange of letters on this matter be included in the Congressional Record during floor consideration.

Sincerely,

BOB GOODLATTE,  
*Chairman.*

---

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
*Washington, DC, January 22, 2015.*

Hon. BOB GOODLATTE,  
*Chairman, Committee on the Judiciary,*  
*Washington, DC.*

DEAR CHAIRMAN GOODLATTE: Thank you for your letter regarding the Committee on the Judiciary's jurisdictional interest in H.R. 399, the "Secure Our Borders First Act." I acknowledge that in foregoing a sequential referral on this legislation, your Committee is not diminishing or altering its jurisdiction.

I also concur that your foregoing action on this bill does not in any way prejudice the Committee on the Judiciary with respect to its jurisdictional prerogatives on this or any similar legislation in the future, and I would support your effort to seek an appointment of conferees to a House-Senate conference involving this bill.

Finally, I will include your letter and this response in the Congressional Record during consideration of this bill on the House floor. I appreciate your cooperation regarding H.R. 399, and I look forward to working with the Committee on the Judiciary as the bill moves through the legislative process.

Sincerely,

MICHAEL T. MCCAUL,  
*Chairman.*

## DISSENTING VIEWS

The approval of H.R. 399, the so-called “Secure Our Borders First Act of 2015,” without a single Democratic vote on Wednesday night was an unfortunate and inauspicious beginning to the 114th Congress but should not have been a surprise to Chairman Michael McCaul (R-TX), given the manner in which the legislation was crafted and tactics utilized to advance it.

Let the record reflect that the Committee officially organized, with ten new freshmen members joining this 30-member committee, on that morning. The decision by Chairman McCaul to schedule a Full Committee mark up of a 72-page border security measure that had never before been introduced, had never been the subject of a legislative hearing in this Congress or any other, had never been considered by the subcommittee with expertise on the matter—the Subcommittee on Border and Maritime Security, and was only available to Members on the evening of Friday, January 16th was not in keeping with the bipartisan, coordinated and collegial approach that has been the hallmark of this Committee.

At the outset of the mark up, Democrats expressed their concern about the rushed manner in which the legislation was being advanced. Representative Filemon Vela (D-TX) made a motion that the bill be referred to the Subcommittee on Border and Maritime Security. That motion was tabled. Representative Loretta Sanchez (D-CA) then made a motion that consideration of the bill be postponed until February 11, 2015, to allow the Committee to take testimony from the Secretary of Homeland Security in advance of consideration of the measure. That motion was also tabled.

Further eroding our confidence that the Committee can return to regular order and continue our tradition of bipartisan collaboration was the fact that the Majority, in order to adhere to its own rushed timeline, violated one of the Committee rules that was adopted earlier in the day. We, of course, are referring to the decision to have Representative Candice Miller (R-MI) offer an amendment in the nature of a substitute without prior notice—certainly not 48 hour notice—as required under Rule V(A)(2)(a) of the Committee on Homeland Security Rules for the 114th Congress. Representative Sheila Jackson Lee (D-TX) raised a point of order that the Committee Rule had been violated. Chairman McCaul improperly ruled against Representative Jackson Lee and Ranking Member Bennie Thompson (D-MS) was forced to appeal the ruling of the Chair. By a straight party-line vote of 18–12, the Majority tabled Ranking Member Thompson’s appeal, thereby embracing the violation of Committee Rule V. The decision to violate the 48-hour notice rule raises larger questions about whether Members can rely on the Committee Rules to govern the activities within the Committee.

Putting aside our significant procedural concerns, we have a number of substantive issues with H.R. 399. During the markup,

Committee Democrats offered five amendments to address fundamental concerns with the bill. Each failed on a party line vote of 12–18.

The amendments offered by Democratic Members were:

- An amendment offered by Representative Sanchez to replace the definition for “operational control” in the measure with language unanimously approved by the Committee in 2013, when H.R. 1417, the McCaul-Thompson Border Security Results Act of 2013” was approved. Representative Sanchez echoed the arguments, expressed by former Department of Homeland Security Secretaries Michael Chertoff and Janet Napolitano as well as DHS Secretary Jeh Johnson that the 100% mandate is unattainable as it would require the “prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.”
- An amendment offered by Representatives Jim Langevin (D–RI) and Bill Keating (DMA) to strike the provision that waives a laundry list of environmental laws and gives the Border Patrol unfettered access to Federal lands.
- An amendment offered by Representative Vela to strike pages and pages of fencing infrastructure mandates, none of which have ever been requested by the Department to help secure the Southwest border.
- An amendment offered by Representative Jackson Lee to imbue the Secretary of Homeland Security with the authority to exercise tactical flexibility and move around resources insofar as the DHS Secretary is accountable, under the bill, for attaining operational control of the Southwest border with five years, under the bill.
- An amendment offered by Representative Brian Higgins (D–NY) to ensure that before the U.S. Visit biometric exit program is fully deployed at all land ports of entry, the Secretary certifies to Congress that significant delays to travel or trade are not expected to be caused by such action.

In broad terms, our largest concerns about the measure, are three-fold.

First, the bill requires DHS to achieve 100% operational control of the southwest border within five years, and would impose petty penalties on DHS political appointees when the Department is unable to achieve a standard that Chairman McCaul himself has deemed unrealistic. Second, despite its title, “Secure Our Borders First Act,” the bill is nearly-exclusively focused on the Southwest border, rather than taking a comprehensive approach where air, land, and maritime borders are protected. Finally, the bill directs \$10 billion over ten years towards funding prescriptive sector-by-sector fencing, technology, and road projects and directs the Defense Department to reimburse States for National Guard deployments to the Southwest Border, regardless of whether assistance was sought. The Majority could not explain how these projects, which have never been officially requested, would protect our borders or thwart efforts of potential terrorists from entering the country.

In conclusion, we would note that the approach taken to develop and advance H.R. 399 departs significantly the approach taken to

border security in the previous Congress, where, after significant consultation with the Comptroller General, the Department of Homeland Security and border stakeholders, the Committee came together and unanimously approved H.R. 1417 the “Border Security Results Act” in May 2013. H.R. 1417 was a thoughtful, commonsense bill that held the Department of Homeland Security accountable for improving border security. That bill went through regular order and was the subject of several hearings prior to consideration.

As any observer of this Committee can tell you, despite our jurisdictional limitations, we are most effective when we put politics aside and act in a unified bipartisan manner to help improve the security of our constituents. Regrettably, the tactics employed by the Majority to develop and advance H.R. 399 are not consistent with that approach. Further, as DHS Secretary Johnson stated, this measure will “actually leave the border less secure.” In substance, H.R. 399 is a fundamentally flawed bill. Accordingly, we dissent to the favorable reporting of H.R. 399 to the Full House of Representatives.

BENNIE G. THOMPSON.  
DONALD M. PAYNE, JR.  
CEDRIC L. RICHMOND.  
BRIAN HIGGINS.  
WILLIAM R. KEATING.  
JAMES R. LANGEVIN.  
SHEILA JACKSON LEE.  
LORETTA SANCHEZ.  
KATHLEEN M. RICE.  
NORMA J. TORRES.  
FILEMON VELA.  
BONNIE WATSON COLEMAN.

○