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SECURE BORDER ACT OF 2011

NOVEMBER 10, 2011.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. KING of New York, from the Committee on Homeland Security, submitted the following

R E P O R T

[To accompany H.R. 1299]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 1299) to achieve operational control of and improve security at the international land 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.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Secure Border Act of 2011".

19–006

SEC. 2. STRATEGY TO ACHIEVE OPERATIONAL CONTROL OF THE BORDER.

(a) STRATEGY TO SECURE THE BORDER BETWEEN THE PORTS OF ENTRY.—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 a comprehensive strategy for gaining, within five years, operational control of the international borders between the ports of entry of the United States. The strategy shall include an analysis of the following:

(1) Staffing requirements for all border security functions.

(2) Investment in infrastructure, including pedestrian fencing, vehicle barriers, and roads.

(3) The use of unmanned aerial vehicles, camera technology, sensors, and other innovative technology as the Secretary may determine.

(4) Cooperative agreements with international, State, local, tribal, and other Federal law enforcement agencies that have jurisdiction on the northern border and southern border.

(5) Other means designed to detect, respond to, and interdict unlawful cross-border activity and to reduce the level of violence.

(6) A schedule for implementing security measures, including a prioritization for future investments.

(7) A comprehensive technology plan for major surveillance and detection technology programs, including a justification and rationale for technology choices and deployment locations.

(8) The recommendations made in the December 2010 Government Accountability Office report entitled "Enhanced DHS Oversight and Assessment of Interagency Coordination is Needed for the Northern Border".

(b) SECURING THE BORDER AT PORTS OF ENTRY.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall develop metrics to measure the effectiveness of security at ports of entry, which shall consider, at minimum, the following:

(1) The number of infractions related to personnel and cargo committed by major violators who are apprehended by U.S. Customs and Border Protection at such ports of entry.

(2) The estimated number of such infractions committed by major violators who are not so apprehended.

(3) The required number of U.S. Customs and Border Protection Officers, Agricultural Specialists, and Canine Enforcement Officers necessary to achieve operational control at such ports of entry.

(4) Infrastructure improvements required to achieve operational control at such ports of entry, including the installation of nonintrusive detection equipment, radiation portal monitors, biometrics, and other sensors and technology that the Secretary determines necessary.

(5) The deployment of resources based on the overall commercial and passenger traffic, cargo volume, and threat environment at such ports of entry.

(6) The recommendations made in the December 2010 Government Accountability Office report entitled "Enhanced DHS Oversight and Assessment of Interagency Coordination is Needed for the Northern Border".

(c) EVALUATION BY DEPARTMENT OF ENERGY NATIONAL LABORATORY.—The Secretary of Homeland Security shall request the head of an appropriate Department of Energy National Laboratory with prior expertise in border security to evaluate the measurement system required under subsection (b) to ensure its suitability and statistical validity for analyzing progress for the interdiction of illegal crossing and contraband at ports of entry.

(d) CONSIDERATION OF ALTERNATIVE BORDER SECURITY STANDARDS.—If in developing the strategic plan required under subsection (a) the Secretary of Homeland Security makes a determination to measure security between border ports of entry by a standard other than operational control, the Secretary shall request the head of an appropriate Department of Energy National Laboratory with prior expertise in border security to evaluate such alternative standard to ensure the suitability and statistical validity of such standard with respect to measuring the progress for the interdiction of illegal crossings and contraband that pass between such ports of entry.

(e) 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 the appropriate congressional committee a report on 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 across all mission areas.

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

(f) DEFINITIONS.—In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEE.—The term "appropriate congressional committee" means the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate.

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

(3) 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).

PURPOSE AND SUMMARY

The purpose of H.R. 1299 is to achieve operational control of and improve security at the international land borders of the United States, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The 2004 National Border Patrol Strategy, produced by the U.S. Border Patrol, was predicated on the concept of gaining and maintaining operational control of the borders. The Department of Homeland Security in the Fiscal Year 2012 Budget Justification documents provided to Congress indicated that the Department had no plans to gain additional miles of operational control during Fiscal Year 2011 or 2012.

The Government Accountability Office report, "Preliminary Observations on Border Control Measures for the Southwest Border" (GAO–11–374T), indicated that only 44 percent of the southwest border was under operational control, and an earlier report, "Enhanced DHS Oversight and Assessment of Interagency Coordination Is Needed for the Northern Border" (GAO–11–97), indicated that only 32 of the nearly 4,000 northern border miles in fiscal year 2010 had reached an acceptable level of security.

Since September 11th, 2001, Congress has spent billions of dollars to secure the borders through investments in personnel, technology and infrastructure. The Committee believes that investments in border security should not be ad hoc; rather investments should only be made as part of a larger strategic plan.

The Committee believes that the Department of Homeland Security should produce a comprehensive and coherent plan to gain and maintain operational control, as defined by the Secure Fence Act of 2006, to guide future investments for the Nation's border security efforts.

Security at the ports of entry is also of concern to the Committee. The Department of Justice reports that 90 percent of the illegal drugs that enter the Nation come though just 20 ports of entry. Customs and Border Protection's Office of Field Operations has no National measurement tool to gauge security progress at the ports of entry. Government Accountability Office "red team" exercises indicate that security challenges exist at the Nation's ports of entry. A clear and verifiable way to measure security progress at the

ports of entry is needed to inform training requirements, infrastructure spending and staffing requirements.

The Department of Homeland Security is currently working on a metric called the Border Condition Index, which has been explained as a means to capture several disparate indicators of border security to present a more holistic view of the conditions along the Nation's borders. While the Committee does not oppose such work, we believe that any proposed replacement for the statutorily defined operational control standard should be vigorously vetted by a Department of Energy National Laboratory to ensure its suitability.

HEARINGS

No hearings were held on H.R. 1299 in the 112th Congress, however the Committee conducted oversight hearings on the issues involved.

On February 15, 2011, the Subcommittee on Border and Maritime Security held a hearing entitled "Securing Our Borders—Operational Control and the Path Forward." The Subcommittee received testimony from Mr. Michael J. Fisher, Chief, Border Patrol, U.S. Customs and Border Protection, Department of Homeland Security; Mr. Richard M. Stana, Director, Homeland Security and Justice, Government Accountability Office; and Hon. Raul G. Salinas, Mayor, City of Laredo, Texas. The hearing focused on the Department's efforts to gain and maintain operational control of the borders. It examined the effectiveness of the U.S. Border Patrol's measures for obtaining operational control including statistics on apprehensions, contraband seized, and number of Border Patrol Agents assigned to the southwest border. Additionally, the hearing provided Members an opportunity to explore whether a Department-wide strategy to secure the borders exists.

On March 15, 2011, the Subcommittee Border and Maritime Security held a hearing entitled "Strengthening the Border—Finding the Right Mix of Personnel, Infrastructure, and Technology." The Subcommittee received testimony from Mr. Michael J. Fisher, Chief of the Border Patrol, U.S. Customs and Border Protection, Department of Homeland Security; Mr. Mark Borkowski, Assistant Commissioner, Office of Technology Innovation and Acquisition, U.S. Customs and Border Protection, Department of Homeland Security; Mr. Michael C. Kostelnik, (Maj. Gen. Ret.) Assistant Commissioner, Office of Air & Marine, U.S. Customs and Border Protection, Department of Homeland Security; Major General Hugo E. Salazar, Adjutant General, Arizona National Guard; and Mr. Richard M. Stana, Director, Homeland Security and Justice, Government Accountability Office.

On April 5, 2011, the Subcommittee Border and Maritime Security held a hearing entitled "Using Resources Effectively to Secure Our Border at Ports of Entry—Stopping the Illicit Flow of Money, Guns, and Drugs." The Subcommittee received testimony from Mr. Thomas Winkowski, Assistant Commissioner, U.S. Customs and Border Protection, Department of Homeland Security; Mr. Stan Korosec, Vice President, Operations, Blue Water Bridge Canada; Mr. Timothy J. Koerner, Vice President & Chief Security Officer, Canadian National Railway Company; and Hon. Richard F. Cortez, Mayor, City of McAllen, Texas.

COMMITTEE CONSIDERATION

The Subcommittee on Border and Maritime Security met on June 2, 2011, to consider H.R. 1299, and ordered the measure to be reported to the Full Committee with a favorable recommendation, amended, by voice vote. The Committee took the following actions:

The following amendments were offered:

An Amendment in the Nature of a Substitute to H.R. 1299 offered by Mrs. Miller (#1); was AGREED TO by voice vote.

A unanimous consent request by Mrs. Miller to consider the Amendment in the Nature of a Substitute as base text for purposes of amendment was not objected to.

An amendment to the Amendment in the Nature of a Substitute to H.R. 1299 offered by Ms. Jackson Lee (#1A); was NOT AGREED TO by voice vote.

Page 1, beginning line 7, strike "The border shared by the United States and Mexico, and numerous Mexican towns in close proximity to that border," and insert "Numerous Mexican towns in close proximity to the United States border."

Page 1, beginning line 14, insert a new paragraph (2) (and redesignate subsequent paragraphs accordingly).

An amendment to the Amendment in the Nature of a Substitute to H.R. 1299 offered by Ms. Jackson Lee (#1B); WAS NOT AGREED TO by a roll call vote of 4 yeas and 7 nays (Roll Call Vote No. 1).

Page 3, beginning line 16, insert the following new paragraph (and redesignate subsequent paragraphs accordingly): "(8) Efforts to protect the civil and constitutional rights of persons encountered along the United States border."

An amendment to the Amendment in the Nature of a Substitute to H.R. 1299 offered by Ms. Jackson Lee (#1C); was NOT AGREED TO by a roll call vote of 4 yeas and 7 nays (Roll Call Vote No. 2).

Page 3, beginning line 16, insert the following new paragraph (and redesignate subsequent paragraphs accordingly): "(8) Efforts to protect the life and safety of persons who may be subjected to harsh and life-threatening weather conditions and terrain."

The Committee met on September 21, 2011, to consider H.R. 1299, and ordered the measure to be reported to the House with a favorable recommendation, amended, by voice vote. The Committee took the following actions:

The following amendments were offered:

An Amendment in the Nature of a Substitute offered by Mrs. Miller (#1); was AGREED TO by voice vote.

An amendment offered by Ms. Hochul to the Amendment in the Nature of a Substitute (#1A); was AGREED TO by voice vote.

Page 2, beginning line 18, insert the following:

(8) The recommendations made in the December 2010 Government Accountability Office report entitled "Enhanced DRS Oversight and Assessmentof Interagency Coordination is Needed for the Northern Border".

Page 3, beginning line 19, insert the following:

(6) The recommendations made in the December 2010 Government Accountability Office report entitled "Enhanced DRS Oversight and Assessment of Interagency Coordination is Needed for the Northern Border".

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 Subcommittee on Border and Maritime Security considered H.R. 1299 on June 2, 2011. The following recorded votes were requested:

An Amendment to the Amendment in the Nature of a Substitute offered by Ms. Jackson Lee (#1B); was NOT AGREED TO by Recorded vote of 4 yeas and 7 nays (Roll Call Vote No. 1). The vote was as follows:

YEAS	NAYS
MR. CUELLAR	MRS. MILLER
MS. SANCHEZ	MR. ROGERS
MS. JACKSON LEE	MR. MCCAUL
MR. CLARKE	MR. BROUN
	MR. QUAYLE
	MR. RIGELL
	MR. DUNCAN

An Amendment to the Amendment in the Nature of a Substitute offered by Ms. Jackson Lee (#1C); was NOT AGREED TO by Recorded vote of 4 yeas and 7 nays (Roll Call Vote No. 2). The vote was as follows:

YEAS	NAYS
MR. CUELLAR	MRS. MILLER
MS. SANCHEZ	MR. ROGERS
MS. JACKSON LEE	MR. MCCAUL
MR. CLARKE	MR. BROUN
	MR. QUAYLE
	MR. RIGELL
	MR. DUNCAN

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. 1299, the Secure Border Act of 2011, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

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.

The Committee believes that the de minimis costs associated with development of a strategy to gain operational control of the

border and the requirement for a new security measurement at the ports of entry as required by H.R. 1299 should be supported using existing funds appropriated for border security.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 21, 2011.

Hon. PETER T. KING,
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. 1299. the Secure Border Act of 2011.

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. 1299—Secure Border Act of 2011

H.R. 1299 would require the Department of Homeland Security (DHS), within 60 days of the bill's enactment and annually thereafter, to submit to the Congress a report on staffing levels at U.S. ports of entry. Within 180 days of enactment, DHS would have to devise a comprehensive strategy to gain control of United States borders and develop metrics to evaluate the effectiveness of security measures at ports of entry. In addition, H.R. 1299 would require a Department of Energy (DOE) national laboratory to evaluate the port security metrics developed by DHS.

In recent years, DHS has made considerable planning and operational efforts to gain control of U.S. borders and has collaborated with DOE to identify ways to improve border and port security. CBO expects that many of the departmental activities that are currently underway would be useful in meeting the bill's reporting requirements and deadlines. Thus, we estimate that implementing H.R. 1299 would cost less than $500,000 annually from appropriated funds. Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 1299 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1299 contains the following general performance goals, and objectives, including outcome related goals and objectives authorized.

The performance goals and objectives of H.R. 1299 are the development of a strategy to secure the Nation's borders both between, and at, the ports of entry along with associated measurements which will inform and guide future investments in border security.

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 in intended to preempt State, local, or Tribal law, the Committee finds that H.R. 1299 does not preempt any State, local, or Tribal law.

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

This section provides that bill may be cited as the "Secure Border Act of 2011."

Section 2. Strategy to achieve operational control of the border

(a) STRATEGY TO SECURE THE BORDER BETWEEN THE PORTS OF ENTRY.

This section requires the Secretary of Homeland Security to submit a comprehensive strategy within 180 days to gain and maintain operational control of the U.S. Borders within five (5) years.

This section requires the Secretary of Homeland Security to submit a comprehensive strategy within 180 days to gain and maintain operational control of the U.S. Borders within five (5) years.

In preparing this strategy the Secretary of Homeland Security shall take into account: staffing requirements; investment in infrastructure, including pedestrian fencing, vehicle barriers, and roads; the use of unmanned aerial vehicles, camera technology, and sensors; cooperative agreements with international, State, local, tribal, and other Federal law enforcement agencies that have jurisdiction on the border; and a comprehensive technology lay down plan for major surveillance and detection technology programs, including a

justification and rationale for technology choices and deployment locations.

(b) SECURING THE BORDER AT PORTS OF ENTRY.

This section requires the Secretary of Homeland Security to submit a comprehensive measurement system to the Committee within 180 days that analyzes the effectiveness of security at all land, air, and sea ports of entry. The measurement system shall take into account: infractions by major violators, related to personnel and cargo, apprehended by U.S. Customs and Border Protection; estimates of infractions by major violators, related to personnel and cargo, not apprehended by U.S. Customs and Border Protection; staffing requirements for all U.S. Customs and Border Protection Officers, Agricultural Specialists, and Canine Enforcement Officers for use in the detection of contraband, including agricultural products, drugs, currency, and explosives at such ports of entry; infrastructure; the use of technology, including nonintrusive detection equipment, radiation portal monitors, biometrics, and other sensors and technology as the Secretary may determine at such ports of entry; commercial, and passenger traffic, and cargo volume; and consideration of the threat environment.

(c) EVALUATION BY DEPARTMENT OF ENERGY NATIONAL LABORATORY.

The Secretary of Homeland Security shall request the head of an appropriate Department of Energy National Laboratory with prior expertise in border security to evaluate the measurement system required under subsection (b) to ensure its suitability and statistical validity for analyzing progress for the interdiction of illegal crossing and contraband at ports of entry.

(d) CONSIDERATION OF ALTERNATIVE BORDER SECURITY STANDARDS.

If the Secretary of Homeland Security makes a determination to measure security between border ports of entry by a standard other than operational control, the Secretary shall request an appropriate Department of Energy National Laboratory with prior expertise in border security to evaluate such alternative standard.

(f) REPORTS.

The Secretary of Homeland Security shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report that includes information on the resource allocation model for current and future year staffing requirements at all land, air, and sea ports of entry and an explanation of U.S. Customs and Border Protection methodology. Additionally, the Secretary shall submit detailed information on the level of manpower available at all land, air, and sea ports of entry.

(g) DEFINITIONS.

This section defines the terms appropriate "Congressional Committee", "major violator" and "operational control".

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 1299 makes no changes to existing law.

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