

116TH CONGRESS  
1ST SESSION

# S. 2705

To amend title 10, United States Code, to modify the requirements relating to the use of construction authority in the event of a declaration of war or national emergency, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 24, 2019

Mrs. MURRAY (for herself, Mr. DURBIN, Mr. SCHATZ, Mr. SCHUMER, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on Armed Services

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## A BILL

To amend title 10, United States Code, to modify the requirements relating to the use of construction authority in the event of a declaration of war or national emergency, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Stopping Executive  
5 Overreach on Military Appropriations Act”.

1 **SEC. 2. REQUIREMENTS RELATING TO USE OF CONSTRUC-**  
2 **TION AUTHORITY IN EVENT OF DECLARA-**  
3 **TION OF WAR OR NATIONAL EMERGENCY.**

4 Section 2808 of title 10, United States Code, is  
5 amended—

6 (1) in subsection (b), by striking “appropriate  
7 committees of Congress of the decision” and all that  
8 follows through the period at the end and inserting  
9 “appropriate committees of Congress of—

10 “(1) the decision;

11 “(2) each existing project affected by the deci-  
12 sion;

13 “(3) the amount of money to be redirected from  
14 each existing project affected by the decision;

15 “(4) a description of the projects authorized by  
16 the decision;

17 “(5) a justification for how each project author-  
18 ized by the decision directly and primarily contrib-  
19 utes to supporting the armed forces directly engaged  
20 in operations to address a war or national emer-  
21 gency; and

22 “(6) the estimated cost of the projects author-  
23 ized by the decision, including the cost of any real  
24 estate action pertaining to those projects.”;

25 (2) by redesignating subsection (c) as sub-  
26 section (d); and

1           (3) by inserting after subsection (b) the fol-  
2           lowing new subsection (c):

3           “(c)(1) In the case of a decision to undertake a mili-  
4           tary construction project authorized by this section pursu-  
5           ant to a declaration of a national emergency, no funds  
6           may be transferred, no existing project may be curtailed,  
7           and no new project may be undertaken unless the Sec-  
8           retary of Defense requests from Congress approval of the  
9           military construction project and a joint resolution is en-  
10          acted approving that project.

11          “(2) For the purpose of this subsection, the term  
12          ‘joint resolution’ means only a joint resolution—

13                 “(A) that does not have a preamble;

14                 “(B) the title of which is as follows: ‘Joint reso-  
15          lution relating to the approval of military construc-  
16          tion projects in the event of a declaration of national  
17          emergency.’; and

18                 “(C) the matter after the resolving clause of  
19          which is as follows: ‘That Congress approves the  
20          military construction project requested on \_\_\_\_\_  
21          pursuant to a declaration of a national emergency,  
22          including any transfer of funds necessary to carry  
23          out such project, as authorized under section 2808  
24          of title 10, United States Code.’ with the blank

1 space being filled with the date of the request under  
2 paragraph (1).

3 “(3)(A) Upon receipt of a request under subsection  
4 (c)(1) in the House of Representatives, the Speaker, if the  
5 House would otherwise be adjourned, shall notify the  
6 Members of the House that, pursuant to this subsection,  
7 the House shall convene not later than the fifth calendar  
8 day after receipt of such request.

9 “(B) Any committee of the House of Representatives  
10 to which a joint resolution is referred shall report it to  
11 the House not later than 15 calendar days after the date  
12 of receipt of the request described in subsection (c)(1). If  
13 a committee fails to report the joint resolution within that  
14 period, the committee shall be discharged from further  
15 consideration of the joint resolution and the joint resolu-  
16 tion shall be referred to the appropriate calendar.

17 “(C) After each committee authorized to consider a  
18 joint resolution reports it to the House or has been dis-  
19 charged from its consideration, it shall be in order, not  
20 later than the 16th day after Congress receives the request  
21 described in subsection (c)(1), to move to proceed to con-  
22 sider the joint resolution in the House. All points of order  
23 against the motion are waived. Such a motion shall not  
24 be in order after the House has disposed of a motion to  
25 proceed on the joint resolution. The previous question

1 shall be considered as ordered on the motion to its adop-  
2 tion without intervening motion. The motion shall not be  
3 debatable. A motion to reconsider the vote by which the  
4 motion is disposed of shall not be in order.

5 “(D) The joint resolution shall be considered as read.  
6 All points of order against the joint resolution and against  
7 its consideration are waived. The previous question shall  
8 be considered as ordered on the joint resolution to its pas-  
9 sage without intervening motion except two hours of de-  
10 bate equally divided and controlled by the proponent and  
11 an opponent. A motion to reconsider the vote on passage  
12 of the joint resolution shall not be in order.

13 “(4)(A) Upon receipt of a request under subsection  
14 (c)(1) in the Senate, if the Senate has adjourned or re-  
15 cessed for more than 2 days, the majority leader of the  
16 Senate, after consultation with the minority leader of the  
17 Senate, shall notify the Members of the Senate that, pur-  
18 suant to this subsection, the Senate shall convene not later  
19 than the fifth calendar day after receipt of such message.

20 “(B) Upon introduction in the Senate, a joint resolu-  
21 tion shall be placed immediately on the calendar.

22 “(C)(i) Notwithstanding Rule XXII of the Standing  
23 Rules of the Senate, it is in order at any time on or after  
24 the seventh day after the date on which Congress receives  
25 a request described in subsection (c)(1) (even though a

1 previous motion to the same effect has been disagreed to)  
2 to move to proceed to the consideration of the joint resolu-  
3 tion, and all points of order against the joint resolution  
4 (and against consideration of the joint resolution) are  
5 waived. The motion to proceed is not debatable. The mo-  
6 tion is not subject to a motion to postpone. A motion to  
7 reconsider the vote by which the motion is agreed to or  
8 disagreed to shall not be in order. If a motion to proceed  
9 to the consideration of the resolution is agreed to, the joint  
10 resolution shall remain the unfinished business until dis-  
11 posed of.

12       “(ii) Debate on the joint resolution, and on all debat-  
13 able motions and appeals in connection therewith, shall be  
14 limited to not more than 20 hours, which shall be divided  
15 equally between the majority and minority leaders or their  
16 designees. A motion further to limit debate is in order and  
17 not debatable. An amendment to, or a motion to postpone,  
18 or a motion to proceed to the consideration of other busi-  
19 ness, or a motion to recommit the joint resolution is not  
20 in order.

21       “(iii) The vote on passage shall occur immediately fol-  
22 lowing the conclusion of the debate on a joint resolution,  
23 and a single quorum call at the conclusion of the debate  
24 if requested in accordance with the rules of the Senate.

1       “(iv) Appeals from the decisions of the Chair relating  
2 to the application of the rules of the Senate, as the case  
3 may be, to the procedure relating to a joint resolution shall  
4 be decided without debate.

5       “(5)(A) If, before the passage by one House of a joint  
6 resolution of that House, that House receives from the  
7 other House a joint resolution, then the following proce-  
8 dures shall apply:

9           “(i) The joint resolution of the other House  
10 shall not be referred to a committee.

11          “(ii) With respect to a joint resolution of the  
12 House receiving the resolution—

13           “(I) the procedure in that House shall be  
14 the same as if no joint resolution had been re-  
15 ceived from the other House; but

16           “(II) the vote on passage shall be on the  
17 joint resolution of the other House.

18       “(B) If one House fails to introduce or consider a  
19 joint resolution under this section, the joint resolution of  
20 the other House shall be entitled to expedited floor proce-  
21 dures under this section.

22       “(C) If, following passage of the joint resolution in  
23 the Senate, the Senate then receives the companion meas-  
24 ure from the House of Representatives, the companion  
25 measure shall not be debatable.

1 “(D) This subsection is enacted by Congress—

2 “(i) as an exercise of the rulemaking power of  
3 the Senate and the House of Representatives, re-  
4 spectively, and as such it is deemed a part of the  
5 rules of each House, respectively, but applicable only  
6 with respect to the procedure to be followed in that  
7 House in the case of a joint resolution, and it super-  
8 sedes other rules only to the extent that it is incon-  
9 sistent with such rules; and

10 “(ii) with full recognition of the constitutional  
11 right of either House to change the rules (so far as  
12 relating to the procedure of that House) at any time,  
13 in the same manner, and to the same extent as in  
14 the case of any other rule of that House.”.

15 **SEC. 3. LIMITATION ON USE OF FUNDS OF THE DEPART-**  
16 **MENT OF DEFENSE TO ADDRESS NATIONAL**  
17 **EMERGENCY AT SOUTHERN BORDER.**

18 (a) PROHIBITION.—Unless specifically authorized by  
19 law after the date of the enactment of this Act, no funds  
20 made available to the Secretary of Defense by any provi-  
21 sion of law may be used to construct, upgrade, maintain,  
22 or replace any wall, barrier, fence, or other obstacle along  
23 the border between the United States and Mexico.

24 (b) RESTORATION OF FUNDS.—All funds transferred  
25 pursuant to the memorandum of the Secretary of Defense



1 dated September 3, 2019, entitled “Military Construction  
2 Necessary to Support the Use of the Armed Forces in Ad-  
3 dressing the National Emergency at the Southern Border”  
4 and available for obligation as of the date of the enactment  
5 of this Act, shall be restored to the military construction  
6 accounts, and obligated for the original purposes, for  
7 which appropriations of those funds were made.

8 **SEC. 4. REVIEW OF CONTRACTS TO CONSTRUCT, UPGRADE,**  
9 **MAINTAIN, OR REPLACE ANY WALL, BARRIER,**  
10 **FENCE, OR OTHER OBSTACLE ALONG BOR-**  
11 **DER BETWEEN UNITED STATES AND MEXICO.**

12 (a) IN GENERAL.—The Director of the Office of Gov-  
13 ernment Ethics shall review any contract entered into on  
14 or after October 1, 2016, between the Federal Government  
15 and a private entity to construct, upgrade, maintain, or  
16 replace any wall, barrier, fence, or other obstacle along  
17 the border between the United States and Mexico.

18 (b) ELEMENTS.—Any review of a contract conducted  
19 under subsection (a) shall include a review of whether—

20 (1) any conflict of interest exists with respect to  
21 the contract and—

22 (A) the President or the immediate family  
23 of the President;

24 (B) the Vice President or the immediate  
25 family of the Vice President; or

1           (C) any employee of the Executive Office  
2           of the President holding a title of Special As-  
3           sistant to the President or higher; or

4           (2) any financial gain would accrue to any such  
5           individual as a result of the contract.

6           (c) RECEIPT OF FULL AND COMPLETE INFORMA-  
7           TION.—If the Director does not receive full and complete  
8           information related to any request for documents or infor-  
9           mation made in the course of reviewing a contract under  
10          subsection (a), the Director shall notify Congress of the  
11          issue.

12          (d) REPORTS.—

13           (1) IN GENERAL.—Not later than 180 days  
14           after the date of the enactment of this Act, and not  
15           less frequently than every 180 days thereafter, the  
16           Director shall submit to Congress a report on the  
17           findings of the Director with respect to the reviews  
18           conducted under subsection (a) during the 180-day  
19           period preceding the report.

20           (2) CONFLICTS OF INTEREST.—If, in a review  
21           conducted under subsection (a) with respect to a  
22           contract, the Director finds a conflict of interest ex-  
23           ists under subsection (b)(1) or financial gain would  
24           accrue under subsection (b)(2), the Director shall

- 1 submit to Congress a report describing the conflict
- 2 of interest or financial accrual.

