

118TH CONGRESS
1ST SESSION

H. R. 989

To remove legal impediments preventing construction of a border barrier along the international border between the United States and Mexico, improve the construction requirements for such barrier, make previously appropriated funds available for constructing such barrier until expended, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2023

Mr. BANKS (for himself, Mr. GOODEN of Texas, Mr. BABIN, Mrs. LUNA, Mr. POSEY, Mr. CRENSHAW, Mr. HUNT, Mr. DUNCAN, Mr. BISHOP of North Carolina, Mrs. MILLER-MEEKS, Ms. VAN DUYNE, Mr. VAN DREW, Mrs. MILLER of Illinois, Mr. SANTOS, and Mr. BUCHANAN) introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committees on Natural Resources, Energy and Commerce, Transportation and Infrastructure, Armed Services, Agriculture, Small Business, the Judiciary, and Oversight and Accountability, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To remove legal impediments preventing construction of a border barrier along the international border between the United States and Mexico, improve the construction requirements for such barrier, make previously appropriated funds available for constructing such barrier until expended, 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 “Build the Wall Now
5 Act”.

6 **SEC. 2. RESUME CONSTRUCTION OF BARRIERS AND ROADS**
7 **ALONG UNITED STATES AND MEXICO BOR-**
8 **DER.**

9 (a) DEFINITIONS.—In this section:

10 (1) DEPARTMENT.—The term “Department”
11 means the Department of Homeland Security.

12 (2) PHYSICAL BARRIERS.—The term “physical
13 barriers” has the meaning given such term in sec-
14 tion 102(e) of the Illegal Immigration Reform and
15 Immigrant Responsibility Act of 1996, as added by
16 section 3(5) of this Act.

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

19 (4) TACTICAL INFRASTRUCTURE; TECH-
20 NOLOGY.—The terms “tactical infrastructure” and
21 “technology” have the meanings given such terms in
22 section 102(e) of the Illegal Immigration Reform
23 and Immigrant Responsibility Act of 1996, as added
24 by section 3(5) of this Act.

25 (b) IN GENERAL.—

1 (1) IMMEDIATE RESUMPTION OF BORDER BAR-
2 RIER CONSTRUCTION.—Not later than 1 day after
3 the date of the enactment of this Act, the Secretary
4 shall resume all projects relating to the construction
5 of physical barriers, tactical infrastructure, and
6 technology along the international border between
7 the United States and Mexico that were underway,
8 or being planned for, prior to January 20, 2021.

9 (2) NO CANCELLATIONS.—The Secretary may
10 not cancel any contract for activities related to the
11 construction of the border barrier system that was
12 entered into on or before January 20, 2021.

13 (3) USE OF FUNDS.—To carry out this section,
14 the Secretary shall expend all funds that were ap-
15 propriated or explicitly obligated for the construction
16 of the border barrier system on or after October 1,
17 2016.

18 (c) UPHOLD NEGOTIATED AGREEMENTS.—The Sec-
19 retary shall ensure that all agreements entered into before
20 January 20, 2021, that were executed in writing between
21 the Department and any State, local, or Tribal govern-
22 ment, private citizen, or other stakeholder are honored by
23 the Department relating to current and future construc-
24 tion of the border barrier system in accordance with such
25 agreements.

1 (d) AVAILABILITY OF FUNDS.—Notwithstanding any
2 other provision of law, any amount appropriated or other-
3 wise made available during fiscal year 2018, 2019, 2020,
4 or 2021 for any project relating to the construction of
5 physical barriers, tactical infrastructure, and technology
6 along the southern border shall remain available until ex-
7 pended.

8 (e) USE OF FUNDS.—Any amounts appropriated or
9 otherwise made available for fiscal year 2021 that remain
10 available pursuant to subsection (d) may only be used for
11 barriers, technology, or roads that—

12 (1) use—

13 (A) operationally effective designs deployed
14 as of the date of enactment of the Consolidated
15 Appropriations Act, 2017 (Public Law 115–31),
16 such as currently deployed steel bollard designs,
17 that prioritize agent safety; or

18 (B) operationally effective adaptations of
19 such designs that help mitigate community or
20 environmental impacts of barrier system con-
21 struction, including adaptations based on con-
22 sultation with jurisdictions within which barrier
23 system will be constructed; and

1 (2) are constructed in the highest priority loca-
2 tions as identified in the Border Security Improve-
3 ment Plan.

4 **SEC. 3. IMPROVING THE REQUIREMENTS FOR BARRIERS**
5 **ALONG THE SOUTHERN BORDER.**

6 (a) IN GENERAL.—Section 102 of the Illegal Immi-
7 gration Reform and Immigrant Responsibility Act of 1996
8 (division C of Public Law 104–208; 8 U.S.C. 1103 note)
9 is amended—

10 (1) in subsection (a), by striking “to install”
11 and all that follows and inserting “(including the re-
12 moval of obstacles to detection of illegal entrants) to
13 design, test, construct, install, deploy, integrate, and
14 operate physical barriers, tactical infrastructure, and
15 technology in the vicinity of the United States bor-
16 der to achieve situational awareness and operational
17 control of the border and deter, impede, and detect
18 illegal activity in high traffic areas.”;

19 (2) in subsection (b)—

20 (A) in the subsection heading, by striking
21 “FENCING AND ROAD IMPROVEMENTS” and in-
22 serting “PHYSICAL BARRIERS”;

23 (B) in paragraph (1)—

24 (i) in subparagraph (A)—

1 (I) by striking “subsection (a)”
2 and inserting “this section”; and

3 (II) by striking “roads, lighting,
4 cameras, and sensors to gain” and in-
5 serting “tactical infrastructure, and
6 technology to achieve situational
7 awareness and”;

8 (ii) by amending subparagraph (B) to
9 read as follows:

10 “(B) PHYSICAL BARRIERS AND TACTICAL
11 INFRASTRUCTURE.—The Secretary, in carrying
12 out this section, shall deploy along the United
13 States border the most practical and effective
14 physical barriers and tactical infrastructure
15 available for achieving situational awareness
16 and operational control of the border.”;

17 (iii) in subparagraph (C)—

18 (I) in clause (i)—

19 (aa) by striking “the Sec-
20 retary of the Interior, the Sec-
21 retary of Agriculture, States,
22 local governments, Indian tribes,
23 and” and inserting “appropriate
24 Federal agency partners, appro-
25 priate representatives of Federal,

1 State, Tribal, and local govern-
2 ments, and appropriate private”;
3 and

4 (bb) by striking “fencing is”
5 and inserting “physical barriers
6 are”; and

7 (II) in clause (ii)—

8 (aa) in subclause (I), by
9 striking “or” after the semicolon
10 at the end;

11 (bb) by amending subclause
12 (II) to read as follows:

13 “(II) delay the transfer to the
14 United States of the possession of
15 property or affect the validity of any
16 property acquisition by the United
17 States by purchase or eminent do-
18 main, or to otherwise affect the emi-
19 nent domain laws of the United States
20 or of any State; or”; and

21 (cc) by adding at the end
22 the following:

23 “(III) create any right or liability
24 for any party.”; and

25 (iv) by striking subparagraph (D);

1 (C) in paragraph (2)—

2 (i) by striking “Attorney General”
3 and inserting “Secretary of Homeland Se-
4 curity”; and

5 (ii) by striking “this subsection and
6 shall commence construction of fences”
7 and inserting “this section and shall com-
8 mence the construction of physical bar-
9 riers”;

10 (D) by amending paragraph (3) to read as
11 follows:

12 “(3) AGENT SAFETY.—In carrying out this sec-
13 tion, the Secretary of Homeland Security, when de-
14 signing, constructing, and deploying physical bar-
15 riers, tactical infrastructure, or technology, shall in-
16 corporate such safety features into such design, con-
17 struction, or deployment of such physical barriers,
18 tactical infrastructure, or technology, as the case
19 may be, that the Secretary determines, in consulta-
20 tion with the labor organization representing agents
21 of U.S. Border Patrol, are necessary to maximize
22 the safety and effectiveness of officers or agents of
23 the Department of Homeland Security or of any
24 other Federal agency deployed in the vicinity of such

1 physical barriers, tactical infrastructure, or tech-
2 nology.”; and

3 (E) in paragraph (4), by striking “this
4 subsection” and inserting “this section”;

5 (3) by striking subsection (c);

6 (4) by inserting after subsection (b) the fol-
7 lowing:

8 “(c) TECHNOLOGY.—In carrying out this section, the
9 Secretary of Homeland Security shall deploy along the
10 United States border the most practical and effective tech-
11 nology available for achieving situational awareness and
12 operational control of the border.”; and

13 (5) by adding at the end the following:

14 “(e) DEFINITIONS.—In this section:

15 “(1) ADVANCED UNATTENDED SURVEILLANCE
16 SENSORS.—The term ‘advanced unattended surveil-
17 lance sensors’ means sensors that utilize an onboard
18 computer to analyze detections in an effort to dis-
19 cern between vehicles, humans, and animals, and ul-
20 timately filter false positives prior to transmission.

21 “(2) HIGH TRAFFIC AREAS.—The term ‘high
22 traffic areas’ means areas in the vicinity of the
23 United States border that—

24 “(A) are within the responsibility of U.S.
25 Customs and Border Protection; and

1 “(B) have significant unlawful cross-border
2 activity, as determined by the Secretary of
3 Homeland Security.

4 “(3) OPERATIONAL CONTROL.—The term ‘oper-
5 ational control’ has the meaning given such term in
6 section 2(b) of the Secure Fence Act of 2006 (Public
7 Law 109–367; 8 U.S.C. 1701 note).

8 “(4) PHYSICAL BARRIERS.—The term ‘physical
9 barriers’ includes reinforced fencing, the border bar-
10 rier system, and levee walls.

11 “(5) SITUATIONAL AWARENESS.—The term ‘sit-
12 uational awareness’ has the meaning given such
13 term in section 1092(a)(7) of the National Defense
14 Authorization Act for Fiscal Year 2017 (Public Law
15 114–328; 6 U.S.C. 223(a)(7)).

16 “(6) TACTICAL INFRASTRUCTURE.—The term
17 ‘tactical infrastructure’ includes boat ramps, access
18 gates, checkpoints, lighting, and roads.

19 “(7) TECHNOLOGY.—The term ‘technology’
20 means border surveillance and detection technology,
21 including—

22 “(A) tower-based surveillance technology;

23 “(B) deployable, lighter-than-air ground
24 surveillance equipment;

1 “(C) Vehicle and Dismount Exploitation
2 Radars (VADER);

3 “(D) 3-dimensional, seismic acoustic detec-
4 tion and ranging border tunneling detection
5 technology;

6 “(E) advanced unattended surveillance
7 sensors;

8 “(F) mobile vehicle-mounted and man-
9 portable surveillance capabilities;

10 “(G) unmanned aircraft systems; and

11 “(H) other border detection, communica-
12 tion, and surveillance technology.

13 “(8) UNMANNED AIRCRAFT SYSTEM.—The term
14 ‘unmanned aircraft system’ has the meaning given
15 such term in section 44801(12) of title 49, United
16 States Code.”.

17 (b) EXISTING WAIVERS NOT AFFECTED.—A waiver
18 issued by the Secretary of Homeland Security pursuant
19 to section 102(c) of the Illegal Immigration Reform and
20 Immigrant Responsibility Act of 1996 (division C of Pub-
21 lic Law 104–208; 8 U.S.C. 1103 note) that was published
22 in the Federal Register before the date of the enactment
23 of this Act shall not be affected by the amendment made
24 by subsection (a).

1 **SEC. 4. RECODIFYING THE SECRETARY OF HOMELAND SE-**
2 **CURITY'S WAIVER AUTHORITY; ADDING PRE-**
3 **VIOUSLY WAIVED LEGAL REQUIREMENTS.**

4 (a) IN GENERAL.—Section 103 of the Immigration
5 and Nationality Act (8 U.S.C. 1103) is amended by add-
6 ing at the end the following:

7 “(h) WAIVER AUTHORITY.—

8 “(1) IN GENERAL.—Notwithstanding any other
9 provision of law, the Secretary of Homeland Security
10 shall have the authority to waive all legal require-
11 ments that the Secretary determines necessary to
12 ensure the expeditious design, testing, construction,
13 installation, deployment, integration, and operation
14 of the physical barriers, tactical infrastructure, and
15 technology under this section and section 102 of the
16 Illegal Immigration Reform and Immigrant Respon-
17 sibility Act of 1996 (division C of Public Law 104–
18 208; 8 U.S.C. 1103 note). Such waiver authority
19 shall also apply with respect to any maintenance car-
20 ried out on such physical barriers, tactical infra-
21 structure, or technology. Any such decision by the
22 Secretary shall be effective upon publication in the
23 Federal Register.

24 “(2) NOTIFICATION.—Not later than 7 days
25 after the date on which the Secretary of Homeland
26 Security exercises the waiver authority under para-

graph (1), the Secretary shall notify the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate of such waiver.

“(3) FEDERAL COURT REVIEW.—

“(A) IN GENERAL.—The district courts of the United States shall have exclusive jurisdiction to hear all causes or claims arising from any action undertaken, or any decision made, by the Secretary of Homeland Security pursuant to paragraph (1). A cause of action or claim may only be brought alleging a violation of the Constitution of the United States. The court shall not have jurisdiction to hear any claim not specified in this subparagraph.

“(B) TIME FOR FILING OF COMPLAINT.—

Any cause or claim brought pursuant to subparagraph (A) shall be filed not later than 60 days after the date of the action or decision made by the Secretary of Homeland Security. A claim shall be barred unless it is filed within the time specified.

“(C) ABILITY TO SEEK APPELLATE RE-

VIEW.—An interlocutory or final judgment, decree, or order of the district court may be re-

viewed only upon petition for a writ of certiorari to the Supreme Court of the United States.

“(4) PREVIOUSLY WAIVED LEGAL REQUIREMENTS.—

“(A) IN GENERAL.—Any project relating to the construction of physical barriers, tactical infrastructure, and technology along the international border between the United States and Mexico shall be exempt from any law or regulation referred to in subparagraph (B).

“(B) ELEMENTS.—The laws and regulations referred to in this subparagraph are—

“(i) an Act to facilitate the work of the Forest Service (Public Law 87–869);

“(ii) subchapter II of chapter 5 and chapter 7 of title 5, United States Code (commonly known as the ‘Administrative Procedure Act’);

“(iii) the Arizona Desert Wilderness Act (6 U.S.C. 460ddd et seq.);

“(iv) the Arizona-Idaho Conservation Act of 1988 (Public Law 100–696);

“(v) the Act of June 8, 1940 (16 U.S.C. 668 et seq.) (commonly known as

1 the ‘Bald and Golden Eagle Protection
2 Act’);

3 “(vi) the Clean Air Act (42 U.S.C.
4 7401 et seq.);

5 “(vii) the Federal Water Pollution
6 Control Act (33 U.S.C. 1151 et seq.) (com-
7 monly known as the ‘Clean Water Act’);

8 “(viii) the Coastal Zone Management
9 Act (16 U.S.C. 1451 et seq.);

10 “(ix) the Comprehensive Environ-
11 mental Response, Compensation, and Li-
12 ability Act of 1980 (42 U.S.C. 9601 et
13 seq.);

14 “(x) the Endangered Species Act of
15 1973 (16 U.S.C. 1531 et seq.);

16 “(xi) the Farmland Protection Policy
17 Act (7 U.S.C. 4201 et seq.);

18 “(xii) the Federal Cave Resources
19 Protection Act of 1988 (16 U.S.C. 4301 et
20 seq.);

21 “(xiii) chapter 63 of title 31, United
22 States Code (originally enacted as the
23 ‘Federal Grants and Cooperative Agree-
24 ments Act of 1977’);

1 “(xiv) the Federal Land Policy and
2 Management Act of 1976 (43 U.S.C. 1701
3 et seq.);

4 “(xv) the Fish and Wildlife Coordina-
5 tion Act (16 U.S.C. 662 et seq.);

6 “(xvi) the Migratory Bird Conserva-
7 tion Act of 1929 (16 U.S.C. 715 et seq.);

8 “(xvii) the Migratory Bird Treaty Act
9 (16 U.S.C. 703 et seq.);

10 “(xviii) the Military Lands With-
11 drawal Act of 1999 (title XXX of Public
12 Law 106–65);

13 “(xix) the Act of June 12, 1960 (Pub-
14 lic Law 86–517; 16 U.S.C. 528 et seq.)
15 (commonly known as the ‘Multiple-Use and
16 Sustained-Yield Act of 1960’);

17 “(xx) the National Environmental
18 Policy Act of 1969 (42 U.S.C. 4321 et
19 seq.);

20 “(xxi) the National Fish and Wildlife
21 Act of 1956 (16 U.S.C. 742a et seq.);

22 “(xxii) the National Forest Manage-
23 ment Act of 1976 (16 U.S.C. 472a et
24 seq.);

1 “(xxiii) the National Historic Preser-
2 vation Act (16 U.S.C. 470 et seq.);

3 “(xxiv) the National Parks and Recre-
4 ation Act of 1978 (Public Law 95–625);

5 “(xxv) the National Trails System Act
6 (16 U.S.C. 1241 et seq.);

7 “(xxvi) the National Wildlife Refuge
8 System Administration Act of 1966 (16
9 U.S.C. 668dd et seq.);

10 “(xxvii) the Native American Graves
11 Protection and Repatriation Act (25
12 U.S.C. 3001 et seq.);

13 “(xxviii) the Noise Control Act of
14 1972 (42 U.S.C. 4901 et seq.);

15 “(xxix) the Otay Mountain Wilderness
16 Act of 1999 (Public Law 106–145);

17 “(xxx) subtitle D of title VI of the
18 Omnibus Public Land Management Act of
19 2009 (16 U.S.C. 470aaa et seq.) (com-
20 monly known as the ‘Paleontological Re-
21 sources Preservation Act’);

22 “(xxxi) section 10 of the Act of Au-
23 gust 4, 1939 (43 U.S.C. 387) (commonly
24 known as the ‘Reclamation Project Act of
25 1939’);

1 “(xxxii) the Act of March 3, 1899 (30
2 Stat. 1121, chapter 425; (33 U.S.C. 403 et
3 seq.) (commonly known as the ‘Rivers and
4 Harbors Act of 1899’);

5 “(xxxiii) the Safe Drinking Water Act
6 (42 U.S.C. 300f et seq.);

7 “(xxxiv) the Sikes Act (16 U.S.C. 670
8 et seq.);

9 “(xxxv) the Small Business Act (15
10 U.S.C. 631 et seq.);

11 “(xxxvi) the Solid Waste Disposal Act
12 (42 U.S.C. 6901 et seq.) (commonly known
13 as the ‘Resource Conservation and Recov-
14 ery Act of 1976’);

15 “(xxxvii) the Wild and Scenic Rivers
16 Act (16 U.S.C. 1271 et seq.);

17 “(xxxviii) the Act of December 15,
18 1971 (16 U.S.C. 1331 et seq.) (commonly
19 known as the ‘Wild Free-Roaming Horses
20 and Burros Act of 1971’);

21 “(xxxix) the Wilderness Act (16
22 U.S.C. 1131 et seq.);

23 “(xl) sections 2304, 2304c, 2305,
24 2505a, and 2306a of title 10, United
25 States Code;

1 “(xli) section 550 of title 40, United
2 States Code;

3 “(xlii) title 41, United States Code;

4 “(xliii) sections 100101(a),
5 100751(a), and 102101 of title 54, United
6 States Code;

7 “(xliv) chapters 1003, 1005, 1007,
8 1009, 1021, 3125, 3201, and 3203 of title
9 54, United States Code;

10 “(xlv) division A of subtitle III of title
11 54, United States Code;

12 “(xlvi) part 125 of title 13, Code of
13 Federal Regulations; and

14 “(xlvii) sections 16.504, 16.505,
15 17.205, 17.207, 22.404, 22.404–5, and
16 28.102–1 of title 48, Code of Federal Reg-
17 ulations.

18 “(5) DEFINITIONS.—In this subsection, the
19 terms ‘physical barriers’, ‘tactical infrastructure’,
20 and ‘technology’ have the meanings given such terms
21 in section 102(e) of the Illegal Immigration Reform
22 and Immigrant Responsibility Act of 1996 (division
23 C of Public Law 104–208; 8 U.S.C. 1103 note).”.

24 (b) CLERICAL AMENDMENT.—The table of contents
25 of the Immigration and Nationality Act (8 U.S.C. 1101

1 et seq.) is amended by striking the item relating to section
2 103 and inserting the following:

“Sec. 103. Powers and duties of the Secretary, the Under Secretary, and the
Attorney General.”.

3 **SEC. 5. PROHIBITION AGAINST USE OF FUNDS TO IMPLE-**
4 **MENT OR ENFORCE PRESIDENTIAL PROCLA-**
5 **MATION 10142.**

6 No funds, resources, or fees made available to the
7 Secretary of Homeland Security, or to any other official
8 of any Federal agency by any Act of Congress for any
9 fiscal year, may be used to implement or enforce Presi-
10 dential Proclamation 10142 of January 20, 2021 (86 Fed.
11 Reg. 7225).

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