

Calendar No. 497

112TH CONGRESS }
2d Session }

SENATE

{ REPORT
112-206 }

**JAIME ZAPATA BORDER ENFORCEMENT
SECURITY TASK FORCE ACT**

R E P O R T

OF THE

**COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE**

TO ACCOMPANY

H.R. 915

TO ESTABLISH A BORDER ENFORCEMENT SECURITY TASK FORCE PROGRAM TO ENHANCE BORDER SECURITY BY FOSTERING COORDINATED EFFORTS AMONG FEDERAL, STATE, AND LOCAL BORDER AND LAW ENFORCEMENT OFFICIALS TO PROTECT UNITED STATES BORDER CITIES AND COMMUNITIES FROM TRANS-NATIONAL CRIME, INCLUDING VIOLENCE ASSOCIATED WITH DRUG TRAFFICKING, ARMS SMUGGLING, ILLEGAL ALIEN TRAFFICKING AND SMUGGLING, VIOLENCE, AND KIDNAPPING ALONG AND ACROSS THE INTERNATIONAL BORDERS OF THE UNITED STATES, AND FOR OTHER PURPOSES



AUGUST 28, 2012.—Ordered to be printed

Filed, under authority of the order of the Senate of August 2, 2012

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Mr. LIEBERMAN, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany H.R. 915]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (H.R. 915) to establish a Border Enforcement Security Task Force program to enhance border security by fostering coordinated efforts among Federal, State, and local border and law enforcement officials to protect United States border cities and communities from trans-national crime, including violence associated with drug trafficking, arms smuggling, illegal alien trafficking and smuggling, violence, and kidnapping along and across the international borders of the United States, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

CONTENTS

	Page
I. Purpose and Summary	1
II. Background and Need for the Legislation	2
III. Legislative History	4
IV. Section-by-Section Analysis	4
V. Estimated Cost of Legislation	5
VI. Evaluation of Regulatory Impact	6
VII. Changes in Existing Law Made by the Bill, as Reported	6

I. PURPOSE AND SUMMARY

In order to more effectively target cross-border criminal networks, H.R. 915 codifies an existing effort by the Department of

Homeland Security (DHS) to establish Border Enforcement Security Task Force (BEST) units. These units are comprised of DHS and other federal, state, and local law enforcement personnel, and they coordinate efforts to stop illicit networks in areas that are impacted by cross-border threats. The bill authorizes the Secretary to establish BEST units in jurisdictions that are adversely impacted by cross-border crime, to direct the assignment of federal personnel to the BEST as appropriate, and to provide financial assistance to state, local, and tribal law enforcement in order to encourage increased participation. It also requires that the Secretary submit an annual report to Congress about the effectiveness of the BEST program.

II. BACKGROUND AND NEED FOR LEGISLATION

The BEST program grew from U.S. Immigration and Customs Enforcement's (ICE) recognition that the increasing violence in Mexico and the growing sophistication of the criminal networks operating along the southwest border required an interagency response. In 2005, ICE started Operation Black Jack in Laredo, Texas, bringing together federal, state, and local law enforcement officials in order to pool their legal authorities and create more comprehensive investigations into criminal activity along the border. According to Marcy Forman, the former Director of Investigations at ICE, "[i]n its first six months, its target-driven focus led to the dismantling of a murder/kidnapping cell operating on both sides of the border, including the seizure of high-powered fully automatic weapons and live grenades; the components to make over 100 improvised explosive devices (IEDs), such as pipe bombs and grenades; and over \$1 million in U.S. currency."¹ Operation Black Jack's success led ICE to expand the program to other Special Agent in Charge (SAC) offices and to rename it the Border Enforcement and Security Taskforce (BEST).²

According to ICE, "[e]ach BEST concentrates on the prevalent threat in its geographic area, including: cross-border violence; weapons smuggling and trafficking; contraband smuggling; money laundering and bulk cash smuggling; human smuggling and trafficking; transnational criminal gangs; and tunnel detection"³ The BEST program incorporates personnel from ICE, Customs and Border Protection (CBP), the Bureau of Alcohol, Tobacco, Firearms, and Explosives, the Federal Bureau of Investigation, the Drug Enforcement Administration, the U.S. Marshals Service, the U.S. Attorney's Office, the U.S. Coast Guard (USCG), and key state and local law enforcement agencies.⁴ In practice, the makeup of each particular BEST depends on the prevalent threat in a given jurisdiction. As a result, not all of the agencies listed participate in each BEST.

¹ Testimony of Marcy Forman, Director, Office of Investigations, U.S. Immigration and Customs Enforcement, before the House Appropriations Committee, Subcommittee on Homeland Security, March 10, 2009.

² Testimony of Marcy Forman, Director, Office of Investigations, U.S. Immigration and Customs Enforcement, before the House Appropriations Committee, Subcommittee on Homeland Security, March 10, 2009.

³ Testimony of Marcy Forman, Director, Office of Investigations, U.S. Immigration and Customs Enforcement, before the House Appropriations Committee, Subcommittee on Homeland Security, March 10, 2009.

⁴ <http://www.ice.gov/best/>

Today, ICE deploys 489 of its personnel to 31 BESTs, including twelve on the Southwest border with Mexico, four on the Northern border with Canada, fourteen at major seaports, and one in Mexico City. During Fiscal Year 2011, BEST offices initiated 1,575 cases, made 1,784 criminal arrests, produced 1,204 indictments, and obtained 918 convictions. During that same year, BESTs seized over \$25 million in illicit currency, 37,000 pounds of cocaine, 262,000 pounds of marijuana, 1,400 pounds of heroin and methamphetamines, and almost 2,000 illegal guns.⁵

The BEST program is a crucial tool in our government's arsenal against the growing threat posed by the Mexican drug cartels and other transnational criminal networks. In January 2010, the White House completed a comprehensive review of transnational organized crime (TOC) that concluded that "organized crime has expanded dramatically in size, scope, and influence and that it poses a significant threat to national and international security."⁶ As part of this review, the White House released a Strategy to Combat Transnational Organized Crime that voiced concern over the growing links between transnational criminal groups and terrorist entities, and the proliferation of facilitators, or "semi-legitimate players such as accountants, attorneys, notaries, bankers, and real estate brokers, who cross both the licit and illicit worlds and provide services to legitimate customers, criminals, and terrorists alike."⁷ In order to meet this rapidly evolving and dangerous threat, the Strategy highlighted the importance of marshalling a collaborative, interagency effort against transnational organized crime: "Criminal investigations will use an integrated approach that incorporates financial, weapons, and TOC-related corruption investigations into a comprehensive attack on the entire criminal organization . . . The use of multi-agency task forces such as the ICE-led Border Enforcement Security Task Forces will remain essential to our efforts to investigate and interdict TOC threats at our borders."⁸

The Committee recognizes the important role that the BEST program plays in investigating and dismantling criminal networks operating along our nation's borders, and believes that legislatively authorizing the program will enhance its capabilities. The Committee also honors the ultimate sacrifice made by ICE Agent Jaime Zapata, who was brutally murdered in the line of duty by Mexican drug cartel members in Mexico on February 15, 2011 and after whom H.R. 915 is named.

As passed by the House, H.R. 915 establishes Border Enforcement Security Taskforce (BEST) units within ICE. These units are to be comprised of agents from ICE, CBP, the Coast Guard, and other federal, state, local, and foreign law enforcement personnel, in order to coordinate efforts to stop illicit networks in areas that are impacted by cross-border threats. The House-passed bill authorizes the Secretary to establish BEST units in jurisdictions that are adversely impacted by cross-border crime, to direct the assignment of federal personnel to the BEST as appropriate, and to pro-

⁵ Information provided by Immigration and Customs Enforcement, Office of Congressional Affairs, July 24, 2012.

⁶ Strategy to Combat Transnational Organized Crime, p. 3, July 19, 2011. Available at [http://www.whitehouse.gov/sites/default/files/Strategy_to_Combat_Transnational_Organized_Crime_July_2011.pdf]

⁷ Strategy to Combat Transnational Organized Crime, p. 8 July 19, 2011.

⁸ Strategy to Combat Transnational Organized Crime, p. 22, July 19, 2011.

vide financial assistance to state, local, tribal, and foreign law enforcement in order to encourage increased participation. It also requires that the Secretary submit an annual report to Congress about the effectiveness of the BEST program. Lastly, it authorizes appropriations of \$10 million each year from fiscal year 2012 through 2016.

During consideration of the bill by this Committee, Member concerns led the Committee to adopt a substitute that made three key changes to House-passed H.R. 915. The Committee substitute:

1. Removed the authorization for appropriations in the bill. The Committee expects that, because this bill authorizes an existing program that is currently being funded, no new funds will be needed to implement the bill;
2. Inserted a provision requiring the Secretary to ensure that BEST units established under the bill do not duplicate the efforts of other interagency taskforces and centers in a given jurisdiction; and
3. Removed the authority to provide funding to foreign law enforcement entities.

The substitute amendment also made a series of minor or technical changes to the underlying bill, including placing the authorization of the program within the Homeland Security Act, charging the Secretary with administering the program, limiting the annual reporting requirement to five years, and allowing BEST units to include DHS personnel outside of ICE, CBP, and the Coast Guard.

III. LEGISLATIVE HISTORY

H.R. 915 was introduced on March 3, 2011, in the House of Representatives by Representative Cuellar, with Representative McCaul as an original cosponsor. The bill was reported by the House Committee on Homeland Security on November 4, 2011, and passed the House on a motion to suspend the rules by a vote of 391–2 on May 30, 2012.

On June 4, 2012, H.R. 915 was received in the Senate and referred to the Committee on Homeland Security and Governmental Affairs. During a business meeting that began on June 27, 2012 and concluded on June 29, 2012, H.R. 915 was amended by a Lieberman-Collins Substitute Amendment, which was adopted by voice vote with Senators Lieberman, Akaka, Carper, Collins, Johnson, and Portman present. H.R. 915, as so amended, was then ordered reported favorably by voice vote, *en bloc* with other measures, with the following Senators present: Lieberman, Levin, Akaka, Carper, Pryor, Landrieu, Tester, Begich Collins, Brown, McCain, Johnson, Portman, and Moran.

IV. SECTION-BY-SECTION ANALYSIS, AS AMENDED

Section 1: Short title

This section provides that bill may be cited as the “Jaime Zapata Border Enforcement Security Task Force Act.”

Section 2: Findings and declaration of purposes

(a) FINDINGS.—This section lays out a series of findings, including that Mexico’s northern border with the United States has experienced a dramatic surge in border crime and violence in recent

years and that the BEST initiative has been formed by DHS to address cross-border threats.

Section 3: Border Enforcement Security Task Force

This section amends the Homeland Security Act of 2002, establishing the Border Enforcement Security Task Force (BEST) within the Department of Homeland Security.

(b) PURPOSE.—The purpose of the BEST program is to establish interagency units to address and reduce border security threats and violence by facilitating collaboration among federal, state, local, and tribal law enforcement agencies and enhancing information sharing.

(c) COMPOSITION.—BEST units may be comprised of personnel from the United States Immigration and Customs Enforcement; United States Customs and Border Protection; the United States Coast Guard, other DHS agencies, other Federal agencies, State, local and tribal law enforcement agencies; and, where appropriate, foreign law enforcement partners.

The Secretary of Homeland Security is authorized to establish BEST units in jurisdictions where such units can contribute to the program's missions, considering a number of factors including whether the jurisdiction is impacted by cross border threats and the availability of law enforcement resources to participate in the BEST. The Secretary is directed to ensure that the creation of a new BEST or the expansion of an existing BEST does not duplicate the efforts of other existing interagency centers or taskforces.

(d) OPERATION.—After determining the jurisdictions in which to establish BEST units, the Secretary is authorized to direct the assignment of federal personnel, and to take other actions to assist federal, state, local, and tribal entities to participate in BEST including providing financial assistance for operational, administrative, and technological costs.

(e) REPORT.—Within 180 days after enactment, and annually for five years thereafter, the Secretary of Homeland Security is required to submit a report to Congress on the effectiveness of the BEST program in enhancing border security and reducing all forms of smuggling in the border region.

V. ESTIMATED COST OF LEGISLATION

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 26, 2012.

Hon. JOSEPH I. LIEBERMAN,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 915, the Jaime Zapata Border Enforcement Security Task Force Act.

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. 915—Jaime Zapata Border Enforcement Security Task Force Act

CBO estimates that implementing H.R. 915 would cost about \$1 million annually, assuming the availability of appropriated funds. Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 915 would authorize a program known as the Border Enforcement Security Task Force (BEST) within the Department of Homeland Security (DHS). Under the BEST program (which is currently administered by DHS), personnel from federal, state, local, tribal, and foreign law-enforcement agencies share information and carry out law-enforcement operations to combat criminal activity near the United States borders. DHS expects to spend about \$1 million in fiscal year 2012 from appropriated funds to oversee the program, and CBO estimates that DHS's continued oversight of the program would require appropriations of about that much each year.

H.R. 915 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.

On September 29, 2011, CBO transmitted a cost estimate for H.R. 915 as ordered reported by the House Committee on Homeland Security on September 21, 2011. The act would authorize the appropriation of \$10 million annually over the 2012–2016 period for the BEST program, and CBO estimated that implementing H.R. 915 would cost \$48 million over the 2012–2016 period, assuming appropriation of the authorized amounts. The Senate committee version of the legislation contains no specified authorization level.

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

VI. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the Rule. The Congressional Budget Office states that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by H.R. 915 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in *italic*, and existing law in which no change is proposed is shown in *roman*):

HOMELAND SECURITY ACT OF 2002

* * * * *

TITLE IV—DIRECTORATE OF BORDER AND
TRANSPORTATION SECURITY

* * * * *

Subtitle C—Miscellaneous Provisions

* * * * *

SEC. 431. OFFICE OF CARGO SECURITY POLICY

* * * * *

SEC. 432. BORDER ENFORCEMENT SECURITY TASK FORCE

(a) *ESTABLISHMENT.*—*There is established within the Department a program to be known as the Border Enforcement Security Task Force (referred to in this section as ‘BEST’).*

(b) *PURPOSE.*—*The purpose of BEST is to establish units to enhance border security by addressing and reducing border security threats and violence by—*

(1) *facilitating collaboration among Federal, State, local, tribal, and foreign law enforcement agencies to execute coordinated activities in furtherance of border security, and homeland security; and*

(2) *enhancing information-sharing, including the dissemination of homeland security information among such agencies.*

(c) *COMPOSITION AND ESTABLISHMENT OF UNITS.*—

(1) *COMPOSITION.*—*BEST units may be comprised of personnel from—*

(A) *U.S. Immigration and Customs Enforcement;*

(B) *U.S. Customs and Border Protection;*

(C) *the United States Coast Guard;*

(D) *other Department personnel, as appropriate;*

(E) *other Federal agencies, as appropriate;*

(F) *appropriate State law enforcement agencies;*

(G) *foreign law enforcement agencies, as appropriate;*

(H) *local law enforcement agencies from affected border cities and communities; and*

(I) *appropriate tribal law enforcement agencies.*

(2) *ESTABLISHMENT OF UNITS.*—*The Secretary is authorized to establish BEST units in jurisdictions in which such units can contribute to BEST missions, as appropriate. Before establishing a BEST unit, the Secretary shall consider—*

(A) *whether the area in which the BEST unit would be established is significantly impacted by cross-border threats;*

(B) *the availability of Federal, State, local, tribal, and foreign law enforcement resources to participate in the BEST unit;*

(C) *the extent to which border security threats are having a significant harmful impact in the jurisdiction in which the BEST unit is to be established, and other jurisdictions in the country; and*

(D) *whether or not an Integrated Border Enforcement Team already exists in the area in which the BEST unit would be established.*

(3) *DUPLICATION OF EFFORTS.*—*In determining whether to establish a new BEST unit or to expand an existing BEST unit*

in a given jurisdiction, the Secretary shall ensure that the BEST unit under consideration does not duplicate the efforts of other existing interagency task forces or centers within that jurisdiction.

(d) OPERATION.—After determining the jurisdictions in which to establish BEST units under subsection (c)(2), and in order to provide Federal assistance to such jurisdictions, the Secretary may—

(1) direct the assignment of Federal personnel to BEST, subject to the approval of the head of the department or agency that employs such personnel; and

(2) take other actions to assist Federal, State, local, and tribal entities to participate in BEST, including providing financial assistance, as appropriate, for operational, administrative, and technological costs associated with the participation of Federal, State, local, and tribal law enforcement agencies in BEST.

(e) REPORT.—Not later than 180 days after the date on which BEST is established under this section, and annually thereafter for the following 5 years, the Secretary shall submit a report to Congress that describes the effectiveness of BEST in enhancing border security and reducing the drug trafficking, arms smuggling, illegal alien trafficking and smuggling, violence, and kidnapping along and across the international borders of the United States, as measured by crime statistics, including violent deaths, incidents of violence, and drug-related arrests.”