

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 1236

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## AN ACT

To reduce the trafficking of drugs and to prevent human smuggling across the Southwest Border by deterring the construction and use of border tunnels.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Border Tunnel Preven-  
3 tion Act of 2011”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) As the international border between the  
7 United States and Mexico becomes more secure,  
8 trafficking and smuggling organizations intensify  
9 their efforts to enter the United States by increasing  
10 the number of tunnels and other subterranean pas-  
11 sages between Mexico and the United States.

12 (2) Border tunnels are most often used to  
13 transport narcotics from Mexico to the United  
14 States, but can also be used to transport people and  
15 other contraband.

16 (3) Between May 1990 and May 2011, law en-  
17 forcement authorities discovered 137 tunnels, 125 of  
18 which have been discovered since September 2001.  
19 While law enforcement authorities discovered only 2  
20 tunnels in California between 1990 and 2001, there  
21 has been a dramatic increase in the number of bor-  
22 der tunnels discovered in California since 2001.

23 (4) Section 551 of the Department of Home-  
24 land Security Appropriations Act, 2007 (Public Law  
25 109–295) added a new section to title 18, United  
26 States Code (18 U.S.C. 555), which—

1 (A) criminalizes the construction or financ-  
2 ing of an unauthorized tunnel or subterranean  
3 passage across an international border into the  
4 United States; and

5 (B) prohibits any person from recklessly  
6 permitting others to construct or use an unau-  
7 thorized tunnel or subterranean passage on the  
8 person's land.

9 (5) Any person convicted of using a tunnel or  
10 subterranean passage to smuggle aliens, weapons,  
11 drugs, terrorists, or illegal goods is subject to an en-  
12 hanced sentence for the underlying offense. Addi-  
13 tional sentence enhancements would further deter  
14 tunnel activities and increase prosecutorial options.

15 **SEC. 3. DEFINITIONS.**

16 In this Act:

17 (1) NATIONAL SECURITY ZONE.—The term  
18 “national security zone” means any Southwest Bor-  
19 der land designated by the Secretary as being at a  
20 high risk for border tunnel activity, as authorized  
21 under section 8(b).

22 (2) SECRETARY.—The term “Secretary” means  
23 the Secretary of Homeland Security.

1           (3) SOUTHWEST BORDER LAND.—The term  
2           “Southwest Border land” means all parcels of real  
3           property in the United States that—

4                   (A) are located within 1 mile of the inter-  
5           national border between the United States and  
6           Mexico; and

7                   (B) are not owned by a Federal, State,  
8           tribal, or local government entity.

9   **SEC. 4. ATTEMPT OR CONSPIRACY TO USE, CONSTRUCT, OR**  
10                   **FINANCE A BORDER TUNNEL.**

11           Section 555 of title 18, United States Code, is  
12           amended by adding at the end the following:

13           “(d) Any person who attempts or conspires to commit  
14           any offense under this section shall be subject to the same  
15           penalties as those prescribed for the offense, the commis-  
16           sion of which was the object of the attempt or con-  
17           spiracy.”.

18   **SEC. 5. AUTHORIZATION FOR INTERCEPTION OF WIRE,**  
19                   **ORAL, OR ELECTRONIC COMMUNICATIONS.**

20           Section 2516(1)(c) of title 18, United States Code,  
21           is amended by inserting “, section 555 (relating to con-  
22           struction or use of international border tunnels)” before  
23           the semicolon at the end.

1 **SEC. 6. FORFEITURE.**

2 (a) CRIMINAL FORFEITURE.—Section 982(a)(2)(B)  
3 of title 18, United States Code, is amended by inserting  
4 “555,” after “545,”.

5 (b) CIVIL ASSET FORFEITURE.—Any merchandise  
6 introduced into the United States through a tunnel or pas-  
7 sage described in section 555(a) of title 18, United States  
8 Code, shall be subject to seizure and forfeiture in accord-  
9 ance with section 596(c) of the Tariff Act of 1930 (19  
10 U.S.C. 1595a(c)).

11 **SEC. 7. MONEY LAUNDERING DESIGNATION.**

12 Section 1956(c)(7)(D) of title 18, United States  
13 Code, is amended by inserting “section 555 (relating to  
14 border tunnels),” after “section 554 (relating to smug-  
15 gling goods from the United States),”.

16 **SEC. 8. NOTIFICATION REQUIREMENTS.**

17 (a) NOTIFICATION TO LAND OWNERS.—The Sec-  
18 retary is encouraged to annually provide each known non-  
19 governmental owner and tenant of land located in a na-  
20 tional security zone with a written notification that de-  
21 scribes—

22 (1) Federal laws related to the construction of  
23 illegal border tunnels; and

24 (2) the procedures for reporting violations of  
25 such laws to U.S. Immigration and Customs En-  
26 forcement.

1 (b) DESIGNATION OF BORDER TUNNEL HIGH RISK  
2 AREAS.—

3 (1) IN GENERAL.—The Secretary may des-  
4 ignate any Southwest Border land that the Sec-  
5 retary has a substantial reason to believe is at a  
6 high risk for border tunnel activity as a national se-  
7 curity zone.

8 (2) PUBLICATION.—The Secretary shall—

9 (A) publish any designations made under  
10 paragraph (1) in the Federal Register; and

11 (B) allow appropriate notice and comment  
12 in accordance with the chapter 5 of title 5,  
13 United States Code (commonly referred to as  
14 the “Administrative Procedures Act”).

15 (c) RULEMAKING.—Not later than 18 months after  
16 the date of the enactment of this Act, the Secretary shall  
17 promulgate regulations to carry out this section.

18 **SEC. 9. REPORT.**

19 (a) IN GENERAL.—The Secretary shall submit an an-  
20 nual report to the congressional committees set forth in  
21 subsection (b) that includes a description of—

22 (1) the cross border tunnels in Southwest Bor-  
23 der land discovered during the reporting period; and

24 (2) the needs of the Department of Homeland  
25 Security to effectively prevent, investigate and pros-

1       ecute border tunnel construction on Southwest Bor-  
2       der land.

3       (b) CONGRESSIONAL COMMITTEES.—The congres-  
4       sional committees set forth in this subsection are—

5               (1) the Committee on Homeland Security and  
6       Governmental Affairs of the Senate;

7               (2) the Committee on the Judiciary of the Sen-  
8       ate;

9               (3) the Committee on Appropriations of the  
10      Senate;

11              (4) the Committee on Homeland Security of the  
12      House of Representatives;

13              (5) the Committee on the Judiciary of the  
14      House of Representatives; and

15              (6) the Committee on Appropriations of the  
16      House of Representatives.

Passed the Senate January 30, 2012.

Attest:

*Secretary.*

112<sup>TH</sup> CONGRESS  
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