

112TH CONGRESS
1ST SESSION

S. 803

To implement a comprehensive border security plan to combat illegal immigration, drug and alien smuggling, and violent activity in the southwest border of the United States.

IN THE SENATE OF THE UNITED STATES

APRIL 13, 2011

Mr. MCCAIN (for himself and Mr. KYL) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To implement a comprehensive border security plan to combat illegal immigration, drug and alien smuggling, and violent activity in the southwest border of the United States.

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 “Border Security En-
5 forcement Act of 2011”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) RURAL, HIGH-TRAFFICKED AREAS.—The
2 term “rural, high-trafficked areas” means rural
3 areas through which drugs and undocumented aliens
4 are routinely smuggled, as designated by the Com-
5 missioner of U.S. Customs and Border Protection.

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

8 (3) SOUTHWEST BORDER REGION.—The term
9 “Southwest Border region” means the area in the
10 United States that is within 150 miles of the inter-
11 national border between the United States and Mex-
12 ico.

13 **SEC. 3. NATIONAL GUARD SUPPORT TO SECURE THE**
14 **SOUTHERN LAND BORDER OF THE UNITED**
15 **STATES.**

16 (a) IN GENERAL.—The Secretary of Defense shall
17 deploy not fewer than 6,000 National Guard personnel to
18 perform operations and missions under section 502(f) of
19 title 32, United States Code, in the Southwest Border re-
20 gion for the purposes of assisting U.S. Customs and Bor-
21 der Protection in securing the international border be-
22 tween the United States and Mexico.

23 (b) ASSIGNMENT OF OPERATIONS AND MISSIONS.—

24 (1) IN GENERAL.—National Guard units and
25 personnel deployed under subsection (a) may be as-

1 signed such operations and missions as are nec-
2 essary to secure the international border between the
3 United States and Mexico.

4 (2) NATURE OF DUTY.—Duty by National
5 Guard personnel performing such operations and
6 missions shall be full-time National Guard duty
7 under title 32, United States Code.

8 (c) RANGE OF OPERATIONS AND MISSIONS.—The op-
9 erations and missions assigned under subsection (b) shall
10 include the temporary authority to—

11 (1) construct fencing, including double-layer
12 and triple-layer fencing;

13 (2) increase ground-based mobile surveillance
14 systems;

15 (3) deploy additional unmanned aerial systems
16 and manned aircraft sufficient to maintain contin-
17 uous surveillance of the international border between
18 the United States and Mexico;

19 (4) deploy and provide capability for radio com-
20 munications interoperability between U.S. Customs
21 and Border Protection and State, local, and tribal
22 law enforcement agencies;

23 (5) construct checkpoints along the border to
24 bridge the gap to long-term permanent checkpoints;
25 and

1 (6) conduct mobile patrols and provide assist-
2 ance to U.S. Customs and Border Protection, par-
3 ticularly in rural, high-trafficked areas, as des-
4 ignated by the Commissioner, U.S. Customs and
5 Border Protection.

6 (d) MATERIEL AND LOGISTICAL SUPPORT.—The
7 Secretary of Defense shall deploy such materiel and equip-
8 ment and logistics support as is necessary to ensure suc-
9 cess of the operations and missions conducted by the Na-
10 tional Guard under subsection (a).

11 (e) EXCLUSION FROM NATIONAL GUARD PER-
12 SONNEL STRENGTH LIMITATIONS.—National Guard per-
13 sonnel deployed under subsection (a) shall not be included
14 in the calculation to determine compliance with limits on
15 end strength for National Guard personnel or on limits
16 on the number of National Guard personal that may be
17 placed on active duty for operational support under section
18 115 of title 10, United States Code.

19 (f) AUTHORIZATION OF APPROPRIATIONS.—There is
20 authorized to be appropriated \$600,000,000 to carry out
21 this section during the 5-year period ending on September
22 30, 2016.

23 **SEC. 4. PERSONNEL ENHANCEMENTS.**

24 (a) U.S. CUSTOMS AND BORDER PROTECTION.—Not
25 later than September 30, 2016, the Secretary shall in-

1 crease the number of trained Border Patrol agents sta-
2 tioned in the Southwest Border region by 5,000, compared
3 to the number of agents at such locations as of the date
4 of the enactment of this Act. The Secretary shall make
5 progress in increasing such number of trained Border Pa-
6 trol agents during each of the fiscal years 2012 through
7 2016.

8 (b) HARDSHIP DUTY PAY.—In addition to compensa-
9 tion to which Border Patrol agents are otherwise entitled,
10 Border Patrol agents who are assigned to rural, high-traf-
11 ficked areas shall be entitled to receive hardship duty pay,
12 in an amount determined by the Commissioner, U.S. Cus-
13 toms and Border Protection, which may not exceed the
14 rate of special pay to which members of a uniformed serv-
15 ice are entitled under section 310 of title 37, United
16 States Code.

17 (c) DANGER PAY FOR UNITED STATES MARSHALS
18 SERVICE AND BUREAU OF ALCOHOL, TOBACCO, FIRE-
19 ARMS AND EXPLOSIVES PERSONNEL.—Section 151 of the
20 Foreign Relations Authorization Act, Fiscal Years 1990
21 and 1991 (Public Law 101–246; 5 U.S.C. 5928 note) is
22 amended by striking “or Federal Bureau of Investigation”
23 and inserting “the Federal Bureau of Investigation, the
24 United States Marshals Service, or the Bureau of Alcohol,
25 Tobacco, Firearms and Explosives”.

1 (d) AUTHORIZATION OF APPROPRIATIONS.—

2 (1) BORDER PATROL PERSONNEL.—There are
3 authorized to be appropriated \$300,000,000 for each
4 of the fiscal years 2012 through 2016 to carry out
5 subsection (a).

6 (2) U.S. MARSHALS SERVICE.—In addition to
7 amounts otherwise authorized to be appropriated,
8 there are authorized to be appropriated \$15,000,000
9 for each of the fiscal years 2012 through 2016, for
10 salaries and benefits of United States Marshals
11 Service personnel.

12 (3) OTHER PERSONNEL.—There are authorized
13 to be appropriated, during the 5-year period ending
14 on September 30, 2016—

15 (A) \$110,000,000 for salaries and benefits
16 for 500 new U.S. Customs and Border Protec-
17 tion officers; and

18 (B) \$17,000,000 for 144 new Office of Air
19 and Marine pilots, vessel commanders, and sup-
20 port personnel.

21 **SEC. 5. ENHANCING EXISTING BORDER SECURITY OPER-**
22 **ATIONS.**

23 (a) OPERATION STREAMLINE.—

1 (1) IMPLEMENTATION.—The Attorney General,
2 the Secretary, and the Director of the Administra-
3 tive Office of the United States Courts shall—

4 (A) fully implement Operation Streamline
5 in the Southwest Border region; and

6 (B) reimburse State, local, and tribal law
7 enforcement for any detention costs related to
8 such implementation.

9 (2) ADDITIONAL MAGISTRATE JUDGES TO AS-
10 SIST WITH INCREASED CASELOAD ALONG SOUTH-
11 WEST BORDER.—The chief judge of each Federal ju-
12 dicial district in the Southwest Border region is au-
13 thorized to appoint additional full-time magistrate
14 judges, who shall have the authority to hear all cases
15 and controversies in the district in which the respec-
16 tive judges are appointed.

17 (b) OPERATION STONEGARDEN.—

18 (1) IN GENERAL.—The Federal Emergency
19 Management Agency shall enhance law enforcement
20 preparedness and operational readiness in the bor-
21 ders of the United States through Operation
22 Stonegarden.

23 (2) ALLOCATION.—Of the amounts appro-
24 priated pursuant to subsection (e), not less than 90
25 percent shall be allocated for grants and reimburse-

1 ment to law enforcement agencies in the States in
2 the Southwest Border region for personnel, overtime,
3 travel, and other costs related to illegal immigration
4 and drug smuggling in the Southwest Border region.

5 (c) INFRASTRUCTURE IMPROVEMENTS.—

6 (1) BORDER PATROL STATIONS.—The Secretary
7 shall—

8 (A) construct additional Border Patrol sta-
9 tions in the Southwest Border region, as need-
10 ed, to provide full operational support in rural,
11 high-trafficked areas; and

12 (B) analyze the feasibility of creating addi-
13 tional Border Patrol sectors along the inter-
14 national border between the United States and
15 Mexico to interrupt drug trafficking operations.

16 (2) FORWARD OPERATING BASES.—The Sec-
17 retary shall enhance the security of the Southwest
18 Border region by—

19 (A) establishing additional permanent for-
20 ward operating bases for the Border Patrol, as
21 needed;

22 (B) upgrading the existing forward oper-
23 ating bases to include modular buildings, elec-
24 tricity, and potable water; and

1 (C) ensuring that forward operating bases
2 surveil and interdict individuals entering the
3 United States unlawfully immediately after
4 such an individual crosses the international bor-
5 der between the United States and Mexico.

6 (3) CHECKPOINTS.—The Secretary shall—

7 (A) complete the construction of a perma-
8 nent checkpoint near Tubac, Arizona; and

9 (B) deploy additional temporary roving
10 checkpoints in the Southwest Border region.

11 (4) BORDER FENCE.—Section 102(b)(1)(A) of
12 the Illegal Immigration Reform and Immigrant Re-
13 sponsibility Act of 1996 (8 U.S.C. 1103 note) is
14 amended—

15 (A) by inserting “, not later than Decem-
16 ber 31, 2011,” after “shall”; and

17 (B) by adding at the end the following:
18 “The Secretary shall replace landing mat fenc-
19 ing and construct double- and triple-layer fenc-
20 ing in the Southwest Border region (as defined
21 in section 2 of the Border Security Enforce-
22 ment Act of 2011), at locations determined by
23 the Secretary, after consultation with the gov-
24 ernors of the States in the Southwest Border

1 region and representatives of State, tribal, and
2 local law enforcement agencies.”.

3 (d) BORDER SECURITY ON CERTAIN FEDERAL
4 LAND.—

5 (1) DEFINITIONS.—In this subsection:

6 (A) SECRETARY CONCERNED.—The term
7 “Secretary concerned” means—

8 (i) with respect to land under the ju-
9 risdiction of the Secretary of Agriculture,
10 the Secretary of Agriculture; and

11 (ii) with respect to land under the ju-
12 risdiction of the Secretary of the Interior,
13 the Secretary of the Interior.

14 (B) FEDERAL LANDS.—The term “Federal
15 lands” includes all land, including a component
16 of the National Wilderness Preservation Sys-
17 tem, under the control of the Secretary con-
18 cerned that is located within 150 miles of the
19 Southwest border region.

20 (2) SUPPORT FOR BORDER SECURITY NEEDS.—

21 (A) IN GENERAL.—To achieve operational
22 control of Federal lands—

23 (i) the Secretary concerned shall au-
24 thorize and provide U.S. Customs and
25 Border Protection personnel with imme-

1 diate access to Federal lands for security
2 activities, including—

3 (I) routine motorized patrols; and

4 (II) the deployment of temporary
5 tactical infrastructure; and

6 (ii) the security activities described in
7 clause (i) shall be conducted, to the max-
8 imum extent practicable, in a manner that
9 the Secretary of Homeland Security deter-
10 mines will best protect the natural and cul-
11 tural resources on Federal lands.

12 (3) INVENTORY OF COSTS AND ACTIVITIES.—

13 The Secretary shall—

14 (A) coordinate with the Secretary con-
15 cerned to develop an inventory of costs incurred
16 by the agencies relating to illegal border activity
17 on Federal lands; and

18 (B) annually submit the inventory devel-
19 oped under subparagraph (A) to—

20 (i) the Committee on Homeland Secu-
21 rity and Governmental Affairs of the Sen-
22 ate;

23 (ii) the Committee on the Judiciary of
24 the Senate;

1 (iii) the Committee on Appropriations
2 of the Senate;

3 (iv) the Committee on Homeland Se-
4 curity of the House of Representatives;

5 (v) the Committee on the Judiciary of
6 the House of Representatives; and

7 (vi) the Committee on Appropriations
8 of the House of Representatives.

9 (4) INTERMINGLED PRIVATE AND STATE
10 LAND.—This subsection shall not apply to any pri-
11 vate or State-owned land within the boundaries of
12 Federal lands.

13 (e) AUTHORIZATION OF APPROPRIATIONS.—

14 (1) ANNUAL APPROPRIATIONS.—There are au-
15 thorized to be appropriated, for each of the fiscal
16 years 2012 through 2016—

17 (A) \$50,000,000 to carry out subsection

18 (a);

19 (B) \$100,000,000 to carry out subsection

20 (b);

21 (C) \$20,000,000 to carry out subsection

22 (c)(2); and

23 (D) \$50,000,000 to carry out section

24 102(b)(1)(A) of the Illegal Immigration Reform

25 and Immigrant Responsibility Act of 1996 (8

1 U.S.C. 1103 note), as amended by subsection
2 (c)(4).

3 (2) PERMANENT CHECKPOINT CONSTRU-
4 TION.—There is authorized to be appropriated
5 \$30,000,000 to carry out subsection (c)(3)(A).

6 (3) DETENTION UPGRADES AT COURT-
7 HOUSES.—There is authorized to be appropriated,
8 for each of the fiscal years 2012 through 2016,
9 \$4,000,000, which shall be used to construct deten-
10 tion upgrades at Federal courthouses located in the
11 Southwest border region.

12 **SEC. 6. EQUIPMENT AND TECHNOLOGY.**

13 (a) ENHANCEMENTS.—The Commissioner, U.S. Cus-
14 toms and Border Protection, shall—

15 (1) deploy additional mobile, video, and agent-
16 portable surveillance systems, and unmanned aerial
17 vehicles in the Southwest Border region as necessary
18 to provide 24-hour operation and surveillance;

19 (2) operate unmanned aerial vehicles along such
20 borders for 24 hours per day and for 7 days per
21 week;

22 (3) deploy additional fixed-wing aircraft and
23 helicopters along such borders;

24 (4) acquire new, rotocraft and make upgrades
25 to the existing helicopter fleet; and

1 (5) increase horse patrols in the Southwest
2 Border region.

3 (b) AUTHORIZATION OF APPROPRIATIONS.—In addi-
4 tion to amounts otherwise authorized to be appropriated,
5 there is authorized to be appropriated \$335,000,000 to
6 U.S. Customs and Border Protection to carry out sub-
7 section (a) during fiscal year 2012.

8 **SEC. 7. ACCESS TO EMERGENCY PERSONNEL.**

9 (a) SOUTHWEST BORDER EMERGENCY COMMUNICA-
10 TIONS GRANTS.—

11 (1) IN GENERAL.—The Secretary, in consulta-
12 tion with the governors of the States in the South-
13 west Border region, shall establish a 2-year grant
14 program, to be administered by the Secretary, to im-
15 prove emergency communications in the Southwest
16 Border region.

17 (2) ELIGIBILITY FOR GRANTS.—An individual
18 is eligible to receive a grant under this subsection if
19 the individual demonstrates that he or she—

20 (A) regularly resides or works in the
21 Southwest Border region;

22 (B) is at greater risk of border violence
23 due to the lack of cellular service at his or her
24 residence or business and his or her proximity
25 to such border.

1 (3) USE OF GRANTS.—Grants awarded under
2 this subsection may be used to purchase satellite
3 telephone communications systems and service
4 that—

5 (A) can provide access to 9–1–1 service;
6 and

7 (B) are equipped with global positioning
8 systems.

9 (4) AUTHORIZATION OF APPROPRIATIONS.—
10 There is authorized to be appropriated \$3,000,000
11 to carry out the grant program established under
12 this subsection.

13 (b) INTEROPERABLE COMMUNICATIONS FOR LAW
14 ENFORCEMENT.—

15 (1) FEDERAL LAW ENFORCEMENT.—There are
16 authorized to be appropriated, to the Department of
17 Homeland Security, the Department of Justice, and
18 the Department of the Interior, during the 5-year
19 period ending on September 30, 2016, \$35,000,000,
20 which may be used—

21 (A) to purchase, through a competitive
22 procurement process, P25-compliant radios,
23 which may include a multi-band option, for
24 Federal law enforcement agents working in the
25 Southwest border region in support of the ac-

1 activities of U.S. Customs and Border Protection
2 and U.S. Immigration and Customs Enforce-
3 ment, including law enforcement agents of the
4 Drug Enforcement Administration, the Bureau
5 of Alcohol, Tobacco, Firearms and Explosives,
6 the Department of the Interior, and the Forest
7 Service; and

8 (B) to upgrade, through a competitive pro-
9 curement process, the communications network
10 of the Department of Justice to ensure coverage
11 and capacity, particularly when immediate ac-
12 cess is needed in times of crisis, in the South-
13 west Border region for appropriate law enforce-
14 ment personnel of the Department of Justice
15 (including the Drug Enforcement Administra-
16 tion and the Bureau of Alcohol, Tobacco, Fire-
17 arms and Explosives), the Department of
18 Homeland Security (including U.S. Immigra-
19 tion and Customs Enforcement and U.S. Cus-
20 toms and Border Protection), the United States
21 Marshals Service, other Federal agencies, the
22 State of Arizona, tribes, and local governments.

23 (2) STATE AND LOCAL LAW ENFORCEMENT.—

24 (A) AUTHORIZATION OF APPROPRIA-
25 TIONS.—There is authorized to be appropriated

1 to the Department of Justice, during the 5-year
2 period ending on September 30, 2016,
3 \$35,000,000 to purchase, through a competitive
4 procurement process, P25-compliant radios,
5 which may include a multi-band option, for
6 State and local law enforcement agents working
7 in the Southwest Border region.

8 (B) ACCESS TO FEDERAL SPECTRUM.—If
9 a State, tribal, or local law enforcement agency
10 in the Southwest Border region experiences an
11 emergency situation that necessitates immediate
12 communication with the Department of Justice,
13 the Department of Homeland Security, the De-
14 partment of the Interior, or any of their respec-
15 tive subagencies, such law enforcement agency
16 shall have access to the spectrum assigned to
17 such Federal agency for the duration of such
18 emergency situation.

19 **SEC. 8. SOUTHWEST BORDER PROSECUTION INITIATIVE.**

20 (a) REIMBURSEMENT TO STATE AND LOCAL PROS-
21 ECUTORS FOR FEDERALLY INITIATED CRIMINAL
22 CASES.—The Attorney General shall reimburse State,
23 county, tribal, and municipal governments for costs associ-
24 ated with the prosecution and pre-trial detention of feder-

1 ally initiated criminal cases declined by local offices of the
2 United States Attorneys.

3 (b) AUTHORIZATION OF APPROPRIATIONS.—There is
4 authorized to be appropriated \$50,000,000 for each of the
5 fiscal years 2012 through 2016 to carry out subsection
6 (a).

7 **SEC. 9. DEFINITION OF AIRCRAFT UNDER AVIATION SMUG-**
8 **GLING PROVISIONS OF THE TARIFF ACT OF**
9 **1930.**

10 (a) IN GENERAL.—Section 590 of the Tariff Act of
11 1930 (19 U.S.C. 1590) is amended—

12 (1) by redesignating subsection (g) as sub-
13 section (h); and

14 (2) by inserting after subsection (f) the fol-
15 lowing:

16 “(g) DEFINITION OF AIRCRAFT.—As used in this sec-
17 tion, the term ‘aircraft’ includes an ultralight vehicle, as
18 defined by the Administrator of the Federal Aviation Ad-
19 ministration.”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 subsection (a) apply with respect to violations of any pro-
22 vision of section 590 of the Tariff Act of 1930 on or after
23 the 30th day after the date of the enactment of this Act.

1 **SEC. 10. INTERAGENCY COLLABORATION.**

2 The Assistant Secretary of Defense for Research and
3 Engineering shall collaborate with the Under Secretary for
4 Science and Technology of the Department of Homeland
5 Security in identifying equipment and technology used by
6 the Department of Defense that could be used by U.S.
7 Customs and Border Protection to improve the security
8 of the international border between the United States and
9 Mexico by—

- 10 (1) detecting border tunnels;
- 11 (2) detecting the use of ultralight aircraft;
- 12 (3) enhancing wide aerial surveillance; and
- 13 (4) otherwise improving the enforcement of
14 such border.

15 **SEC. 11. REPORTS.**

16 (a) **GOVERNMENT ACCOUNTABILITY OFFICE.**—Not
17 later than 180 days after the date of the enactment of
18 this Act, the Comptroller General of the United States
19 shall submit a report to the Committee on Homeland Se-
20 curity and Governmental Affairs of the Senate and the
21 Committee on Homeland Security of the House of Rep-
22 resentatives that includes—

- 23 (1) an analysis of the number of additional for-
24 ward operating bases and checkpoints that are nec-
25 essary along the international border between the

1 United States and Mexico to assist in improving bor-
2 der security; and

3 (2) the number of additional personnel, infra-
4 structure, and technology needed at land ports of
5 entry along the Southwest border to address current
6 levels of northbound and southbound cross-border
7 inspections.

8 (b) DEPARTMENT OF HOMELAND SECURITY.—Not
9 later than 180 days after the date of the enactment of
10 this Act, the Secretary shall submit a report to the Com-
11 mittee on Homeland Security and Governmental Affairs
12 of the Senate and the Committee on Homeland Security
13 of the House of Representatives that includes—

14 (1) an audit of the equipment and technology
15 that was procured to be used through the SBI-net
16 program; and

17 (2) an analysis of whether the procured equip-
18 ment and technology can continue to be used by
19 U.S. Customs and Border Protection.

20 (c) JOINT EQUIPMENT AND TECHNOLOGY RE-
21 PORT.—The Under Secretary of Defense for Acquisition,
22 Technology, and Logistics and the Under Secretary for
23 Science and Technology of the Department of Homeland
24 Security shall submit a joint report on the results of the
25 collaboration under section 10 to—

1 (1) the Committee on Armed Services of the
2 Senate;

3 (2) the Committee on Homeland Security and
4 Governmental Affairs of the Senate;

5 (3) the Committee on Armed Services of the
6 House of Representatives; and

7 (4) the Committee on Homeland Security of the
8 House of Representatives.

9 **SEC. 12. RESCISSION OF UNSPENT FEDERAL FUNDS TO**
10 **OFFSET LOSS IN REVENUES.**

11 (a) IN GENERAL.—Notwithstanding any other provi-
12 sion of law, of all available unobligated funds,
13 \$4,030,000,000 in appropriated discretionary funds are
14 rescinded.

15 (b) IMPLEMENTATION.—The Director of the Office of
16 Management and Budget shall determine and identify—

17 (1) the appropriation accounts from which the
18 rescission under subsection (a) shall apply; and

19 (2) the amount of such rescission that shall be
20 applied to each such account.

21 (c) REPORT.—Not later than 60 days after the date
22 of the enactment of this Act, the Director of the Office
23 of Management and Budget shall submit a report to Con-
24 gress and the Secretary of the Treasury that describes the

1 accounts and amounts determined and identified for re-
2 scission under subsection (b).

3 (d) EXCEPTION.—This section shall not apply to the
4 unobligated funds of—

5 (1) the Department of Defense;

6 (2) the Department of Veterans Affairs; or

7 (3) the National Nuclear Security Administra-
8 tion Weapons Activities and Naval Reactors Ac-
9 counts.

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