

112TH CONGRESS
2D SESSION

H. R. 4119

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 2012

Mr. REYES (for himself, Mr. QUAYLE, Mr. DREIER, and Mr. THOMPSON of Mississippi) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Ways and Means and Homeland Security, 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 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Border Tunnel Preven-
5 tion Act of 2012”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Trafficking and smuggling organizations are
2 intensifying their efforts to enter the United States
3 through tunnels and other subterranean passages
4 between Mexico and the United States.

5 (2) Border tunnels are most often used to
6 transport narcotics from Mexico to the United
7 States, but can also be used to transport people and
8 other contraband.

9 (3) From Fiscal Year 1990 to Fiscal Year
10 2011, law enforcement authorities discovered 149
11 cross-border tunnels along the border between Mex-
12 ico and the United States, 139 of which have been
13 discovered since Fiscal Year 2001. There has been
14 a dramatic increase in the number of cross-border
15 tunnels discovered in Arizona and California since
16 Fiscal Year 2006, with 40 tunnels discovered in
17 California and 74 tunnels discovered in Arizona.

18 (4) Section 551 of the Department of Home-
19 land Security Appropriations Act, 2007 (Public Law
20 109–295) added a new section to title 18, United
21 States Code (18 U.S.C. 555), which—

22 (A) criminalizes the construction or financ-
23 ing of an unauthorized tunnel or subterranean
24 passage across an international border into the
25 United States; and

1 (B) prohibits any person from recklessly
2 permitting others to construct or use an unau-
3 thorized tunnel or subterranean passage on the
4 person's land.

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

11 **SEC. 3. ATTEMPT OR CONSPIRACY TO USE, CONSTRUCT, OR**
12 **FINANCE A BORDER TUNNEL.**

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

15 “(d) Any person who attempts or conspires to commit
16 any offense under subsection (a) or subsection (c) of this
17 section shall be subject to the same penalties as those pre-
18 scribed for the offense, the commission of which was the
19 object of the attempt or conspiracy.”.

20 **SEC. 4. AUTHORIZATION FOR INTERCEPTION OF WIRE,**
21 **ORAL, OR ELECTRONIC COMMUNICATIONS.**

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

1 **SEC. 5. 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. 6. 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. 7. SENSE OF CONGRESS.**

17 It is the sense of Congress that—

18 (1) success in combating the construction and
19 use of cross-border tunnels requires cooperation be-
20 tween Federal, State, local, and tribal officials and
21 assistance from private land owners and tenants
22 across the border between Mexico and the United
23 States;

24 (2) the Department of Homeland Security is
25 currently engaging in outreach efforts in California
26 to certain landowners and tenants along the border

1 to educate them about cross-border tunnels and seek
2 their assistance in combating their construction; and

3 (3) the Department should continue its out-
4 reach efforts to both private and governmental land-
5 owners and tenants in areas along the border be-
6 tween Mexico and the United States with a high rate
7 of cross-border tunnels.

8 **SEC. 8. REPORT.**

9 (a) IN GENERAL.—The Secretary of Homeland Secu-
10 rity shall submit an annual report to the congressional
11 committees set forth in subsection (b) that includes a de-
12 scription of—

13 (1) the cross-border tunnels along the border
14 between Mexico and the United States discovered
15 during the preceding fiscal year; and

16 (2) the needs of the Department of Homeland
17 Security to effectively prevent, investigate and pros-
18 ecute border tunnel construction along the border
19 between Mexico and the United States.

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

22 (1) the Committee on Homeland Security and
23 Governmental Affairs of the Senate;

24 (2) the Committee on the Judiciary of the Sen-
25 ate;

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

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

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

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

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