

Calendar No. 269

114TH CONGRESS }
1st Session }

SENATE

{ REPORT
114-155 }

NORTHERN BORDER SECURITY REVIEW ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1808

TO REQUIRE THE SECRETARY OF HOMELAND SECURITY TO
CONDUCT A NORTHERN BORDER THREAT ANALYSIS, AND FOR
OTHER PURPOSES



OCTOBER 19, 2015.—Ordered to be printed

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

R E P O R T

[To accompany S. 1808]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1808) to require the Secretary of Homeland Security to conduct a Northern Border threat analysis, 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, as amended, do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 1808, the Northern Border Security Review Act, is to improve the security of the northern border by requiring the Secretary of Homeland Security (“the Secretary”) to submit a northern border threat analysis to Congress. This threat analysis will focus on the threats posed to the northern border by current and potential terrorist and criminal organizations; improvements needed at and between the ports of entry on the northern border, including the maritime border; and vulnerabilities in law, policy, and cooperation among law enforcement entities that threaten effective and efficient border security along the northern border.

II. BACKGROUND AND THE NEED FOR LEGISLATION

The U.S. and Canada share the longest common border in the world.¹ This border, which is over 5,500 miles long, spans a diverse range of terrains and climates and includes metropolitan areas as well as large swaths of unpopulated areas.²

There are currently 2,093 Border Patrol agents and 3,600 Office of Field Operations officers stationed on the northern border.³ Due to the large size of the border and the relatively small number of agents patrolling it, drug smugglers and other traffickers have been able to move illicit goods across the northern border in both directions. For instance, cocaine from South America travels north across the United States to the U.S.-Canada border while ecstasy and marijuana flow south to U.S. markets from Canada. Sometimes the two are traded directly, in integrated “double exchanges.”⁴ Other unlawful traffic crossing the northern border includes guns, cigarettes and other goods, as well as unlawful immigration.

Some experts also believe that terrorists could exploit vulnerabilities along our northern border to carry out an attack on the U.S.⁵ In 2011, Alan Bersin, former U.S. Customs and Border Protection (CBP) Commissioner, told the Senate Judiciary Committee that, in regards to terrorism, “it’s commonly accepted that the more significant threat comes from the U.S.-Canada border” rather than the U.S.-Mexico border.⁶

That sentiment was echoed by recent testimony in front of the Senate Homeland Security and Governmental Affairs Committee.⁷ In describing how transnational criminal organizations often take the path of least resistance, John Torres, the former Acting Director at U.S. Immigration and Customs Enforcement (ICE) stated, “Some of these organizations will take a look at Canada and see that it is easier to get to Canada, and from there they can make their way to the United States.”⁸ General Barry McCaffrey, USA (ret.) stated that while getting into Canada would not be easy in and of itself, once you are in Canada, “clearly you can get into the United States much more easily from that direction.”⁹

In 2012, the Department of Homeland Security (DHS) released its Northern Border Strategy. The Strategy identifies three key

¹ U.S. DEP’T OF HOMELAND SEC., NORTHERN BORDER STRATEGY 4 (2012) [hereinafter Northern Border Strategy], available at <http://www.dhs.gov/xlibrary/assets/policy/dhs-northern-border-strategy.pdf>.

² *Id.* at 1.

³ U.S. BORDER PATROL, BORDER PATROL AGENT STAFFING BY FISCAL YEAR (2014), available at http://www.cbp.gov/sites/default/files/documents/BP%20Staffing%20FY1992-FY2014_0.pdf.

⁴ DAVID RODRIGUEZ, NW. HIGH INTENSITY DRUG TRAFFICKING AREA, WASHINGTON STATE 2015: NORTHERN BORDER REPORT 6 (2015) in *Securing the Border: Understanding Threats and Strategies for the Northern Border: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2015) (statement of David Rodriguez, Director, Nw. High Intensity Drug Trafficking Area, Office of Nat’l Drug Control Policy).

⁵ Garrett M. Graff, *Fear Canada: The Real Terrorist Threat Next Door*, POLITICO MAGAZINE, Oct. 16, 2014, <http://www.politico.com/magazine/story/2014/10/fear-canada-not-mexico-111919.html>.

⁶ *Improving Security and Facilitating Commerce at America’s Northern Border and Ports of Entry: Hearing Before the Subcomm. on Immigration, Refugees and Border Security of the S. Comm. on Judiciary*, 112th Cong. (2011) (statement of Alan Bersin, Commissioner, U.S. Customs and Border Prot.).

⁷ See *Securing the Border: Assessing the Impact of Transnational Crime: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2015).

⁸ *Id.* (statement of John P. Torres, Former Acting Director, U.S. Immigration and Customs Enf’t).

⁹ *Id.* (statement of General Barry R. McCaffrey, USA (Ret.), Former Director, Office of Nat’l Drug Control Policy).

goals: (1) deterring and preventing terrorism, smuggling, trafficking, and illegal immigration; (2) safeguarding and encouraging the efficient flow of lawful trade, travel, and immigration; and (3) ensuring community resiliency before, during, and after terrorist attacks and other disasters.¹⁰ CBP also completed a joint threat assessment of the northern border with Canada in 2010, “highlight[ing] the commitment of the two countries to identify and mitigate potential threats along our shared border, where there is potential for terrorism and transnational organized crime.”¹¹

A recent Committee hearing uncovered that the threat along our northern border has increased significantly since 2012.¹² The last two years have seen the rise of the Islamic State of Iraq and the Levant (ISIL) and the ability of ISIL to recruit foreign fighters who are not necessarily on terrorist watch lists. Canada has already experienced the dangers associated with homegrown terrorism, when in October, 2014, a Canadian from Quebec killed a soldier at the National War Monument in Ottawa before attempting to attack the Canadian parliament building.¹³ Incidents like this one underscore the importance of securing the northern border against a multitude of threats.

Given the consistent testimony in front of this Committee regarding the ever-changing threat environment the U.S. finds itself in, it is clear that there is a need for additional analysis of the threats to the northern border. This threat analysis will help Congress and DHS better understand the problems we are facing along the northern border, enabling more informed solutions.

III. LEGISLATIVE HISTORY

Senators Heidi Heitkamp, Kelly Ayotte, Gary Peters, and Ron Johnson introduced S. 1808 on July 21, 2015, which was referred to the Committee on Homeland Security and Governmental Affairs. The Committee considered S. 1808 at a business meeting on July 29, 2015. Senator Heitkamp offered one amendment in the nature of a substitute, including “human smuggling” as part of the northern border security review. The Committee adopted the amendment and ordered the bill, as amended, reported favorably, both by voice vote. Senators present for the vote on the amendment and the bill were: Johnson, Portman, Lankford, Ernst, Sasse, Carper, Baldwin, Heitkamp, and Peters.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section provides the bill’s short title, the “Northern Border Security Review Act.”

¹⁰ NORTHERN BORDER STRATEGY, *supra* note, at 1.

¹¹ See *Securing the Border: Understanding Threats and Strategies for the Northern Border: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2015) (statement of Michael Fisher, Chief, U.S. Border Patrol, U.S. Customs and Border Protection & John Wagner, Deputy Assistant Commissioner, Office of Field Operations, U.S. Customs and Border Protection).

¹² See *id.*

¹³ Philip Sherwell, *Canadian Killer was Recent Convert to Islam Identified as Terror Risk*, THE TELEGRAPH, Oct. 23, 2014, available at <http://www.telegraph.co.uk/news/worldnews/north-america/canada/11181394/Soldier-killed-as-gunman-brings-terror-to-Canadian-Parliament.html>.

Section 2. Definitions

This section defines several terms, including “appropriate congressional committees” and “Northern Border.”

Section 3. Northern border threat analysis

Subsection (a) requires the Secretary of Homeland Security to submit a northern border threat analysis to Congress not later than 180 days after the date of enactment of this Act. The threat analysis shall include current and potential terrorism and criminal threats posed by individuals and groups; improvements needed at and between ports of entry along the northern border; and an analysis of the vulnerabilities in law, policy, and interagency cooperation that hinder effective and efficient border security.

Subsection (b) provides that for the threat analysis the Secretary shall consider technology needs and challenges; personnel needs and challenges; the role of State, tribal, and local law enforcement in border security activities; the need for cooperation among Federal, State, tribal, local, and Canadian law enforcement entities relating to border security; and the geographic challenges of the northern border.

Subsection (c) requires the Secretary to submit the threat analysis in unclassified form but authorizes the Secretary to supplement the analysis in a classified annex, if appropriate.

V. 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 rules. The Committee agrees with the Congressional Budget Office’s statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

AUGUST 11, 2015.

Hon. RON JOHNSON, *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 S. 1808, the Northern Border Security Review Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

KEITH HALL.

Enclosure.

S. 1808—Northern Border Security Review Act

S. 1808 would require the Department of Homeland Security (DHS) to conduct an analysis of potential threats and security gaps along the northern border of the United States. Based on information from DHS, CBO estimates that implementing S. 1808 would

cost about \$1 million in 2016, assuming appropriation of the necessary amounts. Because enacting the legislation would not affect direct spending or revenues, pay-as-you-go procedures do not apply.

S. 1808 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.

On July 8, 2015, CBO transmitted a cost estimate for H.R. 455, the Northern Border Security Review Act, as ordered reported by the House Committee on Homeland Security on June 25, 2015. The two bills are similar and CBO's estimates of the budgetary effects are the same.

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

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

Because S. 1808 would not repeal or amend any provision of current law, it would make no changes in existing law within the meaning of clauses (a) and (b) of paragraph 12 of rule XXVI of the Standing Rules of the Senate.