

DHS ILLICIT CROSS-BORDER TUNNEL DEFENSE ACT

AUGUST 7, 2020.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. THOMPSON of Mississippi, from the Committee on Homeland Security, submitted the following

R E P O R T

[To accompany H.R. 5828]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 5828) to support remediation of illicit cross-border tunnels, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary	2
Background and Need for Legislation	2
Hearings	3
Committee Consideration	3
Committee Votes	4
Committee Oversight Findings	4
C.B.O. Estimate, New Budget Authority, Entitlement Authority, and Tax Expenditures	4
Federal Mandates Statement	5
Duplicative Federal Programs	5
Statement of General Performance Goals and Objectives	5
Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits ...	
Advisory Committee Statement	
Applicability to Legislative Branch	
Section-by-Section Analysis of the Legislation	6

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “DHS Illicit Cross-Border Tunnel Defense Act”.

SEC. 2. COUNTER ILLICIT CROSS-BORDER TUNNEL OPERATIONS.

(a) REPORT ON OPERATIONS.—

(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act and annually thereafter, the Commissioner of U.S. Customs and Border Protection shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on operations carried out to identify, breach, assess, and remediate illicit cross-border tunnels, including performance measures.

(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Commissioner of U.S. Customs and Border Protection \$1,000,000 for each of fiscal years 2021 and 2022 to carry out remediation operations of illicit cross-border tunnels.

(b) COUNTER ILLICIT CROSS-BORDER TUNNEL OPERATIONS STRATEGIC PLAN.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Commissioner of U.S. Customs and Border Protection shall develop a strategic plan to address the following:

(A) Risk-based criteria to be used to prioritize the identification, breach, assessment, and remediation of illicit cross-border tunnels.

(B) Promote the use of innovative technologies to identify, breach, assess, and remediate illicit cross-border tunnels in a manner that, among other considerations, reduces the impact of such activities on surrounding communities.

(C) Processes to share relevant illicit cross-border tunnel location, operations, and technical information.

(D) Indicators of specific types of illicit cross-border tunnels found in each U.S. Border Patrol sector identified through operations to be periodically disseminated to U.S. Border Patrol sector chiefs to educate field personnel.

(E) A counter illicit cross-border tunnel operations resource needs assessment that includes consideration of the following:

(i) Technology needs.

(ii) Staffing needs, including the following:

(I) A position description for counter illicit cross-border tunnel operations personnel.

(II) Any specialized skills required of such personnel.

(III) The number of such full time personnel, disaggregated by U.S. Border Patrol sector.

(2) REPORT TO CONGRESS ON STRATEGIC PLAN.—Not later than one year after the issuance of the strategic plan required under paragraph (1), the Commissioner of U.S. Customs and Border Protection shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the implementation of paragraph (1).

PURPOSE AND SUMMARY

H.R. 5828, the “DHS Illicit Cross-Border Tunnel Defense Act” addresses the illicit cross-border tunnel threat along the southwest border of the United States. The bill requires U.S. Customs and Border Protection (CBP) to develop a strategic plan to: establish risk-based criteria for tunnel operations; incorporate innovative technologies to limit the impact of tunnel remediation activities on local communities; establish processes for sharing information on tunnel locations; identify tunnel indicators to dispense to the field, and detail a resource assessment of technology, personnel, and training needed for tunnel operations. CBP must report to Congress on the implementation of the strategic plan. The bill also authorizes \$1,000,000 for fiscal years 2021 and 2022 to remediate illicit cross border tunnels.

BACKGROUND AND NEED FOR LEGISLATION

Since 1990, law enforcement agencies have discovered more than 200 illicit cross-border tunnels and transnational criminal organizations continue to construct these tunnels in order to circumvent

U.S. border security.¹ These cross-border tunnels are mainly used to smuggle narcotics—including opioids such as fentanyl—but have also been used to facilitate the illicit movement of contraband, currency, weapons, and people across the border.

In 2019, CBP discovered the longest illicit cross-border tunnel on record. The tunnel originated in Tijuana, Mexico and had an exit point in San Diego, California. The tunnel extended 4,068 feet into the U.S. from the southwest border and contained a rail cart system, forced air ventilation, electrical cables, and an elevator. CBP officials conveyed to the Committee that increased investment in tunnel detection technology in prior years has helped enhance its capability to identify illicit cross-border tunnels on the southwest border.

CBP has told the Committee that though it has adequate resources to detect illicit cross-border tunnels, it lacks the sustained ability, strategy, and personnel to ensure that upon detection, tunnels are properly mapped, assessed, and remediated. By developing a strategic plan that includes risk-based criteria, information sharing processes, innovative technology considerations, tunnel indicators, and a staffing and resource needs assessment, CBP should be able to better execute counter illicit cross-border tunnel operations.

HEARINGS

For the purposes of section 103(i) of H. Res 6. of the 116th Congress, the following hearing was used to develop H.R. 5828:

- On July 25, 2019, the Committee held a hearing entitled “Homeland Security Implications of the Opioid Crisis The Committee received testimony from Ms. Sondra McCauley, Assistant Inspector General for Audits, Office of Inspector General, Department of Homeland Security; Mr. James Hinson, Jr., Deputy Chief, Greensboro Police Department, Investigative Bureau Commander; Dr. Bryce Pardo, Associate Policy Researcher, RAND Corporation; and Ms. Bridget Brennan, Special Narcotics Prosecutor, Office of the Special Narcotics Prosecutor.

COMMITTEE CONSIDERATION

The Committee met on February 12, 2020, with a quorum being present, to consider H.R. 5828 and ordered the measure to be reported to the House with a favorable recommendation, with an amendment, by unanimous consent.

The following amendment was offered and agreed to by unanimous consent:

An amendment offered by Mrs. Lesko.

In section 2, amend subsection (a) to read as follows:

- (a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Commissioner of U.S. Customs and Border Protection \$1,000,000 for each of fiscal years 2021 and 2022 to carry out remediation operations of illicit cross-border tunnels.

¹ National Drug Control Strategy, Southwest Border Counter Narcotics Strategy 2020, OFFICE OF NATIONAL DRUG CONTROL POLICY, February 2020, <https://www.whitehouse.gov/wp-content/uploads/2020/02/2020-Southwest-Border-Counter-narcotics-Strategy.pdf>.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

No recorded votes were requested during consideration of H.R. 5828.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

CONGRESSIONAL BUDGET OFFICE ESTIMATE NEW BUDGET AUTHORITY,
ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee adopts as its own the estimate of the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 9, 2020.

Hon. BENNIE G. THOMPSON,
*Chairman, Committee on Homeland Security,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5828, the DHS Illicit Cross-Border Tunnel Defense Act.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 5828, DHS Illicit Cross-Border Tunnel Defense Act			
As ordered reported by the House Committee on Homeland Security on February 12, 2020			
By Fiscal Year, Millions of Dollars	2020	2020-2025	2020-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	2	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

H.R. 5828 would authorize the appropriation of \$1 million in 2021 and in 2022 for Customs and Border Patrol (CBP) to remediate illicit tunnels that cross the nation's border. The bill also would require CBP to produce a strategic plan for identifying and remediating such tunnels, including an assessment of technology, personnel, and resource needs for future remediation operations, and to report to the Congress on the implementation of the plan within one year.

Based on the cost of similar activities, CBO estimates that preparing the strategic plan and the report would cost less than \$500,000 in 2021. In total, CBO estimates that implementing the bill would cost \$2 million over the 2020–2025 period, assuming appropriation of the authorized amounts.

The CBO staff contact for this estimate is Jon Sperl. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 5828 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the objective of H.R. 5828 is to improve border security by requiring CBP to develop and submit to Congress a strategic plan to enhance illicit cross-border tunnel operations, and by authorizing additional resources for tunnel remediation purposes.

ADVISORY ON EARMARKS

In compliance with rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of the rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section states that the Act may be cited as the “DHS Illicit Cross-Border Tunnel Defense Act.”

Sec. 2. Counter illicit cross-border tunnel operations

Subsection 2(a) authorizes \$1,000,000 for fiscal years 2021 and 2022 for tunnel remediation operations.

Subsection 2(b)(1) requires that not later than 180 days after the enactment of this Act, the CBP Commissioner develop a strategic plan. Specifically, the strategic plan is to include the following:

(1) Risk-based criteria to be used to prioritize the identification, breach, assessment, and remediation of illicit cross-border tunnels.

(2) Innovative technologies to identify, breach, assess, and remediate illicit cross-border tunnels in a manner that, among other considerations, reduces the impact of such activities on surrounding communities.

(3) Processes to share relevant illicit cross-border tunnel location, operations, and technical information.

(4) Indicators of specific types of illicit cross-border tunnels found in each U.S. Border Patrol sector identified through operations to be periodically disseminated to U.S. Border Patrol sector chiefs to educate field personnel.

(5) A counter illicit cross-border tunnel operations resource needs assessment that includes consideration of technology needs, staffing needs, including a position description for counter illicit cross-border tunnel operations personnel, any specialized skills required of such personnel, and the number of such full time personnel, disaggregated by U.S. Border Patrol sector.

Subsection 2(b)(2) requires that not later than one year after the issuance of the strategic plan, the CBP Commissioner submit a report to Congress on the implementation of the strategic plan.