

Calendar No. 742

118TH CONGRESS }
2d Session }

SENATE

{ REPORT
118-322 }

CROSS-BORDER TUNNEL REPORT ACT

—
R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 5102

TO REQUIRE ANNUAL REPORTS ON COUNTER ILLICIT
CROSS-BORDER TUNNEL OPERATIONS, AND FOR
OTHER PURPOSES



DECEMBER 19 (legislative day, DECEMBER 16), 2024.—Ordered to be
printed

—
U.S. GOVERNMENT PUBLISHING OFFICE

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DECEMBER 19 (legislative day, DECEMBER 16), 2024.—Ordered to be printed

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

R E P O R T

[To accompany S. 5102]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 5102), to require annual reports on counter illicit cross-border tunnel operations, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

S. 5102, the *Cross-Border Tunnel Report Act*, amends a previous congressional reporting requirement on Custom and Border Protection (CBP)’s implementation of the Counter Illicit Cross-Border Tunnel Operations Strategic Plan to make it an annual report. The bill would also create a new annual congressional reporting requirement for CBP to explain the “special interest alien” screening process, including definition of special interest, methodology and rationale for this screening tool as well as related processes, policies, procedures, and statistics.

II. BACKGROUND AND NEED FOR THE LEGISLATION

Cross-border tunnels are man-made sub-surface passageways used to conceal the movement of people or contraband and cir-

cumvent U.S. border controls. They pose a threat to U.S. border security.¹ To address this threat, Congress included Section 7134(a)(2) of the *James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year 2023*, which required that the Commissioner of CBP, in coordination with the Under Secretary of Science and Technology and other DHS officials, as appropriate, develop a counter illicit cross-border tunnel operations strategic plan. It also required CBP to report to Congress on the implementation of that plan.² The provision that was enacted in the NDAA was substantially similar to H.R. 4209, *DHS Illicit Cross-Border Tunnel Defense Act*, which was reported out of this Committee in 2022.³ The strategic plan was required to include, among other things, risk-based criteria to prioritize tunnel identification and remediation and identification of innovative technologies that limit impacts on local communities.⁴ S. 5102, the *Cross-Border Tunnel Report Act*, enhances congressional oversight by requiring CBP to report annually on its implementation of the plan.

Historically, the United States has encountered predominantly nationals from Mexico, El Salvador, Honduras, and Guatemala at the southern border. In recent years, patterns have shifted with an increase of arrivals to the United States from throughout the Western Hemisphere.⁵ This has led to additional questions from members of Congress about the government’s processes, procedures, and statistics related to screening “special interest” migrants.⁶ S. 5102 enhances congressional oversight by requiring DHS to provide information to Congress on this matter.

III. LEGISLATIVE HISTORY

S. 5102, the *Cross-Border Tunnel Report Act*, was introduced by Senators Gary Peters (D–MI) and John Cornyn (R–TX) on September 18, 2024. Senator Kyrsten Sinema (I–AZ) joined as a cosponsor on September 19, 2024, and Senator Jon Ossoff (D–GA) on November 20, 2024. The bill was referred to the Senate Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 5102 at a business meeting on November 20, 2024. At the business meeting, Senator Lankford offered Lankford Amendment 1, as modified, that required DHS to submit a report to Congress on the special interest screening mechanism, policies, procedures, and related statistics. Lankford Amendment 1 also required DHS to submit a plan to Congress on how it will publish public statistics on its website on the number of individuals deemed to be special interest and DHS will implement this plan 60 days after the plan is submitted to Congress. The Committee adopted Lankford amendment 1, as well as the modification to Lankford Amendment 1, by unanimous consent

¹Government Accountability Office, *Border Security: Additional Actions Could Strengthen DHS Efforts to Address Subterranean, Aerial, and Maritime Smuggling* (GAO–17–474) (May 2017).

²National Defense Authorization Act of 2023, Pub. L. 117–263, Sec. 4134(a)(2).

³Senate Committee on Homeland Security and Governmental Affairs, *DHS Illicit Cross-Border Tunnel Defense Act* (Nov. 28, 2022) (S. Rept. 117–215).

⁴*Id.*

⁵Migration Policy Institute, *Shifting Patterns and Policies Reshape Migration to U.S.-Mexico Border in Major Ways in 2023* (Oct. 2023) (www.migrationpolicy.org/news/border-numbers-fy2023).

⁶U.S. Senate Select Committee on Intelligence, *Worldwide Threats*, 118th Cong. (Mar. 11, 2024) (S. Hrg. 118–307).

with Senators Peters, Hassan, Rosen, Ossoff, Blumenthal, Butler, Lankford, and Hawley present.

The bill, as amended, was ordered reported favorably by a roll call vote of 8 yeas and 0 nays, with Senators Peters, Hassan, Rosen, Ossoff, Blumenthal, Butler, Lankford and Hawley voting in the affirmative. Senators Carper, Sinema, Paul, Johnson, Romney, Scott and Marshall voted yea by proxy, for the record only.

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

Section 1. Short title

This section designates the name of the bill as the “Cross-Border Tunnel Report Act.”

Section 2. Annual reports on counter illicit cross-border tunnel operations

This section amends Section 7134(a)(2) of the FY 23 National Defense Authorization Act, by inserting “and annually thereafter” to amend the strategic report reporting requirement making it an annual report.

Section 3. Annual report and plan on special interest alien encounters

Subsection (a) requires the Secretary of DHS to submit within 60 days, and then annually for three years, a report to Congress further explaining the special interest screening process, including definition of special interest, methodology and rationale for this screening tool as well as related processes, policies, procedures, and statistics.

Subsection (b) requires the Secretary of DHS to submit within 60 days a plan to Congress for public reporting on a publicly accessible website of the Department of Homeland Security regarding the number of individuals screened in special encounters by U.S. Customs and Border Protection.

Subsection (c) requires the Department implement the plan within 60 days.

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

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**JAMES M. INHOFE NATIONAL DEFENSE
AUTHORIZATION ACT FOR FISCAL
YEAR 2023**

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DIVISION G—HOMELAND SECURITY

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**TITLE LXXI—HOMELAND SECURITY
MATTERS**

* * * * *

**Subtitle B—Strengthening DHS Manage-
ment, Policy Making, and Operations**

* * * * *

SEC. 7134. DHS ILLICIT CROSS BORDER TUNNEL DEFENSE.

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

(1) * * *

(2) REPORT TO CONGRESS ON STRATEGIC PLAN.—Not later than one year after the development of the strategic plan, *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 the implementation of the strategic plan.

* * * * *