

115TH CONGRESS
1ST SESSION

H. R. 22

To provide for operational control of the international border of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 2017

Mr. POE of Texas (for himself, Mr. SMITH of Texas, and Mrs. BLACK) introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committees on Armed Services, Rules, Energy and Commerce, and Agriculture, 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 provide for operational control of the international border of the United States, and for other purposes.

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 “Support More Assets,
5 Resources, and Technology on the Border Act of 2017”
6 or the “SMART Border Act of 2017”.

1 **SEC. 2. OPERATIONAL CONTROL.**

2 (a) IN GENERAL.—Not later than one year after the
3 date of the enactment of this Act, the Secretary of Home-
4 land Security shall take all actions the Secretary deter-
5 mines necessary and appropriate to achieve and maintain
6 operational control of the international border between the
7 United States and Mexico, and shall submit to the Comp-
8 troller General of the United States a report on such ac-
9 tions, achievement, and maintenance.

10 (b) GAO CONSULTATION AND REPORT.—Not later
11 than 90 days after the submission of the report by the
12 Secretary of Homeland Security under subsection (a), the
13 Comptroller General of the United States shall—

14 (1) consult with State and local officials along
15 the international border between the United States
16 and Mexico, including border sheriffs, mayors of bor-
17 der towns and cities, chambers of commerce in bor-
18 der areas, farmers and ranchers and associated
19 farming and ranching organizations in border areas,
20 community organizations in border areas, State law
21 enforcement agencies, and border State governors
22 regarding the state of operational control of such
23 border; and

24 (2) submit to the Committee on Homeland Se-
25 curity of the House of Representatives and the Com-
26 mittee on Homeland Security and Governmental Af-

1 fairs of the Senate a report on such state of oper-
2 ational control.

3 (c) JOINT RESOLUTION OF DISAPPROVAL ON OPER-
4 ATIONAL CONTROL.—Not later than 90 days after receiv-
5 ing the report of the Comptroller General under subsection
6 (b)(2) regarding the state of operational control, both the
7 House of Representatives and the Senate shall vote on a
8 joint resolution on the question as to whether such report
9 should be disapproved. Such joint resolution shall be
10 deemed to pass only if—

11 (1) a majority of each House approves such
12 joint resolution; or

13 (2) such joint resolution is not voted on by each
14 House by such date.

15 (d) ANNUAL REPORTS.—The Comptroller General of
16 the United States shall submit to the Committee on
17 Homeland Security of the House of Representatives and
18 the Committee on Homeland Security and Governmental
19 Affairs of the Senate an annual report on the state of
20 operational control of the international border between the
21 United States and Mexico. The first of such annual re-
22 ports shall be submitted not later than one year after the
23 report required under subsection (b)(2) is submitted.

1 **SEC. 3. USE OF NATIONAL GUARD TO SUPPORT DEPART-**
2 **MENT OF HOMELAND SECURITY BORDER**
3 **CONTROL ACTIVITIES.**

4 (a) EXPANDED DEPLOYMENT OF NATIONAL GUARD;
5 DURATION.—

6 (1) DEPLOYMENT REQUIREMENT.—At the re-
7 quest of a Governor of a State that shares a portion
8 of the international border between the United
9 States and Mexico the Secretary of Defense shall
10 provide for the deployment of additional members of
11 the National Guard along such border in excess of
12 the number of members of the National Guard so
13 deployed along such border as of the date of the en-
14 actment of this Act.

15 (2) NUMBER OF ADDITIONAL GUARDSMEN DE-
16 PLOYED.—The total number of additional members
17 of the National Guard deployed under paragraph (1)
18 along the international border between the United
19 States and Mexico may not exceed 10,000, except
20 that the Secretary of Defense may exceed such num-
21 ber at the request of a Governor of a State that
22 shares a portion of such border if, despite the de-
23 ployment of the additional 10,000 members of the
24 National Guard, operational control of such border
25 has not been achieved.

1 (3) DURATION.—The deployment of additional
2 members of the National Guard under paragraph
3 (1) in a State that shares a portion of the inter-
4 national border between the United States and Mex-
5 ico shall continue until the earlier of the following:

6 (A) The date on which the Governor of the
7 State revokes the request made under para-
8 graph (1).

9 (B) The date on which a vote on the joint
10 resolution of disapproval on operational control
11 described in section 2(c) occurs if such joint
12 resolution does not pass.

13 (4) DEPLOYMENT AUTHORITIES.—Members of
14 the National Guard deployed under paragraph (1)
15 may be deployed under section 502(f) of title 32,
16 United States Code, pursuant to a State border con-
17 trol activities plan approved under section 112a of
18 such title, as added by subsection (b) of this section,
19 or pursuant to the order of the Secretary of Defense
20 under any other provision of law.

21 (5) EXEMPTION FROM END STRENGTHS AND
22 OTHER LIMITATIONS.—Members of the National
23 Guard deployed under paragraph (1) shall not be in-
24 cluded in the calculation to determine compliance
25 with—

1 (A) limits on end strength; or

2 (B) limits on the number of National
3 Guard personnel that may be placed on active
4 duty for operational support.

5 (b) FEDERAL ASSISTANCE FOR STATE BORDER CON-
6 TROL ACTIVITIES PLANS.—Chapter 1 of title 32, United
7 States Code, is amended by inserting after section 112 the
8 following:

9 **“SEC. 112a. BORDER CONTROL ACTIVITIES.**

10 “(a) FUNDING ASSISTANCE.—The Secretary of De-
11 fense shall provide funds to the Governor of a State who
12 submits to the Secretary a State border control activities
13 plan satisfying the requirements of subsection (c). Such
14 funds shall be used for the following:

15 “(1) The pay, allowances, clothing, subsistence,
16 gratuities, travel, and related expenses, as author-
17 ized by State law, of personnel of the National
18 Guard of that State used, while not in Federal serv-
19 ice, for the purpose of border control activities.

20 “(2) The operation and maintenance of the
21 equipment and facilities of the National Guard of
22 that State used for the purpose of border control ac-
23 tivities.

24 “(3) The procurement of services and equip-
25 ment, and the leasing of equipment, for the National

1 Guard of that State used for the purpose of border
2 control activities. However, the use of such funds for
3 the procurement of equipment may not exceed
4 \$5,000 per item, unless approval for procurement of
5 equipment in excess of that amount is granted in ad-
6 vance by the Secretary of Defense.

7 “(b) USE OF PERSONNEL PERFORMING FULL-TIME
8 NATIONAL GUARD DUTY.—

9 “(1) IN GENERAL.—Under regulations pre-
10 scribed by the Secretary of Defense, personnel of the
11 National Guard of a State may, in accordance with
12 the State border control activities plan referred to in
13 subsection (c), be ordered to perform full-time Na-
14 tional Guard duty under section 502(f) of this title
15 for the purpose of carrying out border control activi-
16 ties.

17 “(2) REQUIREMENTS.—

18 “(A) TRAINING.—A member of the Na-
19 tional Guard serving on full-time National
20 Guard duty under orders authorized under
21 paragraph (1) shall participate in the training
22 required under section 502(a) of this title in ad-
23 dition to the duty performed for the purpose
24 authorized under that paragraph. The pay, al-
25 lowances, and other benefits of the member

1 while participating in the training shall be the
2 same as those to which the member is entitled
3 while performing duty for the purpose of car-
4 rying out border control activities. The member
5 is not entitled to additional pay, allowances, or
6 other benefits for participation in training re-
7 quired under section 502(a)(1) of this title.

8 “(B) FUNDING.—Appropriations available
9 for the Department of Defense for homeland
10 defense may be used for paying costs associated
11 with a member’s participation in training de-
12 scribed in subparagraph (A). The appropriation
13 shall be reimbursed in full, out of appropria-
14 tions available for paying those costs, for the
15 amounts paid. Appropriations available for pay-
16 ing those costs shall be available for making the
17 reimbursements.

18 “(C) RESTRICTIONS.—To ensure that the
19 use of units and personnel of the National
20 Guard of a State pursuant to a State border
21 control activities plan does not degrade the
22 training and readiness of such units and per-
23 sonnel, the following requirements shall apply in
24 determining the border control activities that

1 units and personnel of the National Guard of a
2 State may perform:

3 “(i) The performance of the activities
4 may not adversely affect the quality of that
5 training or otherwise interfere with the
6 ability of a member or unit of the National
7 Guard to perform the military functions of
8 the member or unit.

9 “(ii) National Guard personnel will
10 not degrade their military skills as a result
11 of performing the activities.

12 “(iii) The performance of the activi-
13 ties will not result in a significant increase
14 in the cost of training.

15 “(iv) In the case of border control ac-
16 tivities performed by a unit organized to
17 serve as a unit, the activities will support
18 valid unit training requirements.

19 “(c) PLAN REQUIREMENTS.—A State border control
20 activities plan shall—

21 “(1) specify how personnel of the National
22 Guard of that State are to be used in border control
23 activities in support of the mission of United States
24 Customs and Border Protection of the Department
25 of Homeland Security;

1 “(2) certify that those operations are to be con-
2 ducted at a time when the personnel involved are not
3 in Federal service;

4 “(3) certify that participation by National
5 Guard personnel in those operations is service in ad-
6 dition to training required under section 502 of this
7 title;

8 “(4) certify that any engineer-type activities (as
9 defined by the Secretary of Defense) under the plan
10 will be performed only by units and members of the
11 National Guard;

12 “(5) include a certification by the Attorney
13 General of the State (or, in the case of a State with
14 no position of Attorney General, a civilian official of
15 the State equivalent to a State attorney general)
16 that the use of the National Guard of the State for
17 the activities proposed under the plan is authorized
18 by, and is consistent with, State law; and

19 “(6) certify that the Governor of the State or
20 a civilian law enforcement official of the State des-
21 ignated by the Governor has determined that any ac-
22 tivities included in the plan that are carried out in
23 conjunction with Federal law enforcement agencies
24 serve a State law enforcement purpose.

1 “(d) EXAMINATION OF PLAN.—Before funds are pro-
2 vided to the Governor of a State under this section and
3 before members of the National Guard of that State are
4 ordered to full-time National Guard duty as authorized in
5 subsection (b), the Secretary of Defense shall, in consulta-
6 tion with the Secretary of Homeland Security, examine the
7 adequacy of the plan submitted by the Governor under
8 subsection (c). The plan as approved by the Secretary of
9 Defense may provide for the use of personnel and equip-
10 ment of the National Guard of that State to assist United
11 States Customs and Border Protection in the transpor-
12 tation of aliens who have violated a Federal immigration
13 law.

14 “(e) END STRENGTH LIMITATION.—

15 “(1) IN GENERAL.—Except as provided in para-
16 graphs (2) and (3), at the end of a fiscal year there
17 may not be more than 10,000 members of the Na-
18 tional Guard—

19 “(A) on full-time National Guard duty
20 under section 502(f) of this title to perform
21 border control activities pursuant to an order to
22 duty; or

23 “(B) on duty under State authority to per-
24 form border control activities pursuant to an
25 order to duty with State pay and allowances

1 being reimbursed with funds provided under
2 subsection (a)(1).

3 “(2) EXCEPTION.—The Secretary of Defense
4 may increase the end strength authorized under
5 paragraph (1) if the Secretary determines that such
6 an increase is necessary in the national security in-
7 terests of the United States.

8 “(3) CERTAIN EXCLUSION.—National Guard
9 personnel deployed pursuant to paragraph (1) shall
10 not be included in the calculation to determine com-
11 pliance with—

12 “(A) limits on end strength; or

13 “(B) limits on the number of National
14 Guard personnel that may be placed on active
15 duty for operational support.

16 “(f) ANNUAL REPORT.—The Secretary of Defense
17 shall submit to Congress an annual report regarding as-
18 sistance provided and activities carried out under this sec-
19 tion during the preceding fiscal year. The report shall in-
20 clude the following:

21 “(1) The number of members of the National
22 Guard excluded under subsection (e)(3) from the
23 computation of end strengths.

24 “(2) A description of the border control activi-
25 ties conducted under State border control activities

1 plans referred to in subsection (c) with funds pro-
2 vided under this section.

3 “(3) An accounting of the amount of funds pro-
4 vided to each State.

5 “(4) A description of the effect on military
6 training and readiness of using units and personnel
7 of the National Guard to perform activities under
8 the State border control activities plans.

9 “(g) STATUTORY CONSTRUCTION.—Nothing in this
10 section shall be construed as a limitation on the authority
11 of any unit of the National Guard of a State, when such
12 unit is not in Federal service, to perform law enforcement
13 functions authorized to be performed by the National
14 Guard by the laws of the State concerned.

15 “(h) DEFINITIONS.—In this section:

16 “(1) BORDER CONTROL ACTIVITIES.—The term
17 ‘border control activities’, with respect to the Na-
18 tional Guard of a State, means the use of National
19 Guard personnel in border control activities author-
20 ized by the law of the State and requested by the
21 Governor of the State in support of the mission of
22 United States Customs and Border Protection of the
23 Department of Homeland Security, including activi-
24 ties as follows:

1 “(A) Armed vehicle and foot patrols along
2 the international border between the United
3 States and Mexico.

4 “(B) Interdiction of a vehicle, vessel, air-
5 craft or other similar activity.

6 “(C) Search, seizure, and detention of sus-
7 pects.

8 “(D) Construction of roads, fences, and ve-
9 hicle barriers.

10 “(E) Search and rescue operations.

11 “(F) Intelligence gathering, surveillance,
12 and reconnaissance.

13 “(G) Aviation support.

14 “(2) GOVERNOR OF A STATE.—The term ‘Gov-
15 ernor of a State’ means, in the case of the District
16 of Columbia, the Commanding General of the Na-
17 tional Guard of the District of Columbia.

18 “(3) STATE.—The term ‘State’ means each of
19 the several States, the District of Columbia, the
20 Commonwealth of Puerto Rico, or a territory or pos-
21 session of the United States.”.

22 (c) CLERICAL AMENDMENT.—The table of sections
23 at the beginning of chapter 1 of such title is amended by
24 inserting after the item relating to section 112 the fol-
25 lowing new item:

“112a. Border control activities.”.

1 **SEC. 4. SMART BORDER TECHNOLOGY.**

2 If the Secretary of Homeland Security determines
3 that there are areas along the international border be-
4 tween the United States and Mexico with respect to which
5 operational control has not been achieved and maintained,
6 the Secretary is authorized to deploy smart border tech-
7 nologies, such as seismic detectors and unmanned aerial
8 vehicles to such areas to achieve and maintain operational
9 control over such areas.

10 **SEC. 5. TRANSFER OF USED MILITARY EQUIPMENT TO FED-**
11 **ERAL, STATE, AND LOCAL AGENCIES.**

12 (a) IN GENERAL.—Not later than one year after eli-
13 gible equipment returns to the United States, and in ac-
14 cordance with subsections (b) and (c) of section 2576a of
15 title 10, United States Code, the Secretary of Defense may
16 transfer such eligible equipment to Federal, State, and
17 local agencies.

18 (b) PREFERENCE.—

19 (1) TRANSFERS UNDER THIS SECTION.—In
20 considering applications for the transfer of eligible
21 equipment under subsection (a), the Secretary of
22 Defense may give preference to Federal, State, and
23 local agencies that will use such eligible equipment
24 primarily for the purpose of strengthening border se-
25 curity along the international border between the
26 United States and Mexico.

1 (2) TRANSFERS GENERALLY.—Section
2 2576a(d) of title 10, United States Code, is amend-
3 ed—

4 (A) by striking “In considering” and in-
5 serting “(1) In considering”; and

6 (B) by adding at the end the following new
7 paragraph:

8 “(2)(A) In considering applications for the transfer
9 of equipment described in subparagraph (B) under this
10 section, the Secretary may give a preference to those appli-
11 cations indicating that the transferred property will be
12 used primarily for the purpose of strengthening border se-
13 curity along the international border between the United
14 States and Mexico.

15 “(B) Equipment described in this subparagraph is
16 equipment of the Department of Defense that—

17 “(i) was used in Operation Enduring Freedom,
18 Operation Iraqi Freedom, or Operation New Dawn;
19 and

20 “(ii) the Secretary determines would be suitable
21 for use by Federal and State agencies in law en-
22 forcement activities, including—

23 “(I) surveillance unmanned aerial vehicles,
24 including the MQ-9 Reaper (also known as the
25 ‘Predator B’);

1 “(II) night-vision goggles; and

2 “(III) high mobility multi-purpose wheel
3 vehicles (commonly known as ‘humvees’).”.

4 (c) ELIGIBLE EQUIPMENT DEFINED.—In this sec-
5 tion, the term “eligible equipment” means equipment of
6 the Department of Defense that—

7 (1) was used in Operation Enduring Freedom,
8 Operation Iraqi Freedom, or Operation New Dawn;
9 and

10 (2) the Secretary of Defense determines would
11 be suitable for use by Federal and State agencies in
12 law enforcement activities, including—

13 (A) surveillance unmanned aerial vehicles,
14 including the MQ-9 Reaper (also known as the
15 “Predator B”);

16 (B) night-vision goggles; and

17 (C) high mobility multi-purpose wheel vehi-
18 cles (commonly known as “humvees”).

19 **SEC. 6. CBP VETERAN HIRING.**

20 (a) ADDITIONAL HIRES.—Not later than the date of
21 a vote on the joint resolution of disapproval on operational
22 control described in section 2(c) if such joint resolution
23 passes (or the date by which such vote is required to have
24 occurred pursuant to such section), the Secretary of
25 Homeland Security shall appoint 1,500 Border Patrol

1 agents over the number of such agents who were employed
2 by the Department of Homeland Security as of the date
3 of the enactment of this Act.

4 (b) PREFERENCE.—In carrying out the additional
5 appointments required under subsection (a), the Secretary
6 of Homeland Security shall give preference to veterans re-
7 turning from overseas deployments. To the maximum ex-
8 tent practicable and subject to otherwise applicable provi-
9 sions of law, the Secretary—

10 (1) shall implement policies and procedures that
11 will allow veterans so appointed to start employment
12 within 90 days after the date on which they make
13 application for appointment; and

14 (2) shall streamline the background check and
15 security clearance procedures that apply to veterans
16 so appointed.

17 **SEC. 7. SOUTHERN BORDERLANDS PUBLIC SAFETY COM-**
18 **MUNICATIONS GRANT PROGRAM.**

19 (a) IN GENERAL.—The Secretary of Homeland Secu-
20 rity may make competitive grants for public-private part-
21 nerships that finance equipment and infrastructure to im-
22 prove the public safety of persons who are residents of
23 rural areas of the United States near the international
24 border with Mexico, by enhancing access to mobile com-

1 munications for such persons who do not currently have
2 access to reliable mobile communications networks.

3 (b) FOCUS AREAS.—In making grants under this sec-
4 tion, the Secretary of Homeland Security shall focus on
5 projects that improve mobile communications in areas im-
6 pacted by the illegal smuggling and trafficking of people
7 and drugs from Mexico into the United States.

8 (c) ELIGIBLE APPLICANTS.—Persons eligible for
9 grants under this section include States, counties, munici-
10 palities, organizations representing agricultural producers
11 and other rural Americans, and telecommunications pro-
12 viders.

13 (d) AUTHORIZATION OF APPROPRIATIONS.—For
14 grants under this section there is authorized to be appro-
15 priated to the Secretary \$10,000,000 for the three-fiscal-
16 year period following the date of the enactment of this
17 Act.

18 (e) FUNDING OFFSET.—To offset amounts appro-
19 priated pursuant to the authorization of appropriations in
20 subsection (d), the International Forestry Cooperation Act
21 of 1990 (16 U.S.C. 4501 et seq.) is repealed.

22 **SEC. 8. COMMUNITY IMPACT AID GRANTS.**

23 (a) IN GENERAL.—The Secretary of Homeland Secu-
24 rity shall make grants to sheriffs' departments along
25 international border between the United States and Mex-

1 ico for the purpose of hiring additional deputies, including
2 for salaries, benefits, training, uniforms, patrol vehicles,
3 and arms.

4 (b) GRANT CALCULATION FORMULA.—Except as
5 provided in subsection (c), a grant made pursuant to sub-
6 section (a) shall be in an amount equal to 30 percent of
7 an eligible sheriff's department's fiscal year 2010 budget
8 for patrol deputies.

9 (c) MINIMUM BENEFIT.—Notwithstanding the cal-
10 culation provided for in subsection (b), a grant made pur-
11 suant to subsection (a) to an eligible sheriff's department
12 shall be in an amount that allows for the hiring of at least
13 one additional deputy.

14 (d) AVAILABILITY.—Grants made pursuant to sub-
15 section (a) are authorized to remain available until ex-
16 pended.

17 (e) ELIGIBILITY AND FUNDING.—To be eligible to re-
18 ceive a grant under this section, a sheriff's department
19 shall submit to the Secretary of Homeland Security an ap-
20 plication at such time, in such manner, and containing
21 such information as the Secretary may require.

22 (f) ELIGIBLE SHERIFFS' DEPARTMENTS.—Sheriffs'
23 departments in the following counties are eligible to re-
24 ceive grants under this section:

(3) In New Mexico, the following counties:
Dona Ana, Luna, Grant, Otero, and Hidalgo Coun-
ties.

(g) FUNDING OFFSET.—To carry out this section, the Secretary of Homeland Security shall reprogram funds that would otherwise be obligated and expended under the account heading “Departmental Management and Operations”.

(a) IN GENERAL.—The Commissioner of U.S. Customs and Border Protection shall ensure that an individual who is apprehended unlawfully crossing or attempting to unlawfully cross the border into the United States is counted only once for purposes of counting border apprehensions.

1 (b) PROHIBITION ON DUPLICATE COUNTING.—Any
2 subsequent transfer or booking of an individual described
3 in subsection (a) may not be counted again for purposes
4 of counting border apprehensions.

5 **SEC. 10. BIOMETRIC ENTRY AND EXIT DATA SYSTEM.**

6 (a) IN GENERAL.—Not later than two years after the
7 date of enactment of this Act, the Secretary of Homeland
8 Security shall establish the biometric entry and exit data
9 system required by section 7208 of the Intelligence Re-
10 form and Terrorism Prevention Act of 2004 (8 U.S.C.
11 1365b).

12 (b) REQUIREMENTS.—In addition to the features re-
13 quired by such section 7208, the Secretary shall ensure
14 that the biometric entry and exit data system is estab-
15 lished and in operation at each port of entry to the United
16 States.

17 **SEC. 11. DEFINITION.**

18 In this Act, the term “operational control” means a
19 condition in which all illegal border crossers are appre-
20 hended and narcotics and other contraband are seized.

○