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H. R. 85

To establish a separate account in the Treasury to hold deposits to be used to secure the southern border of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 2019

Mr. BIGGS (for himself, Mr. BROOKS of Alabama, Mr. GOHMERT, Mr. DESJARLAIS, Mr. BUCK, Mr. DUNCAN, Mr. KING of Iowa, and Mr. GAETZ) introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committees on Ways and Means, the Judiciary, Foreign Affairs, Financial Services, Education and Labor, and Appropriations, 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 establish a separate account in the Treasury to hold deposits to be used to secure the southern 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 “Fund and Complete
5 the Border Wall Act”.

1 **SEC. 2. BORDER WALL TRUST FUND.**

2 (a) ESTABLISHMENT OF FUND.—At the end of sub-
3 chapter III of chapter 33 of title 31, United States Code,
4 insert the following:

5 **“§ 3344. Secure the Southern Border Fund.**

6 “(a) IN GENERAL.—Not later than 60 days after the
7 date of enactment of this section, the Secretary of the
8 Treasury shall establish an account in the Treasury of the
9 United States, to be known as the ‘Secure the Southern
10 Border Fund’, into which funds shall be deposited in ac-
11 cordance with the Fund and Complete the Border Wall
12 Act and the amendments made by that Act.

13 “(b) APPROPRIATION.—Funds deposited in the Se-
14 cure the Southern Border Fund shall be available until
15 expended. Such funds are authorized to be appropriated,
16 and are appropriated, to the Secretary of Homeland Secu-
17 rity only—

18 “(1) to plan, design, construct, or maintain a
19 barrier along the international border between the
20 United States and Mexico; and

21 “(2) to purchase and maintain necessary vehi-
22 cles and equipment for U.S. Border Patrol agents.

23 “(c) LIMITATION.—Not more than 5 percent of the
24 funds deposited in the Secure the Southern Border Fund
25 may be used for the purpose described in subsection
26 (b)(2).”.

(b) CLERICAL AMENDMENT.—The table of contents for chapter 33 of title 31, United States Code, is amended by inserting at the end the following:

“3344. Secure the Southern Border Fund.”.

SEC. 3. BORDER CROSSING ACCOUNTABILITY AND SECURITY.

(a) ESTIMATION OF ANNUAL ILLEGAL BORDER CROSSINGS.—Beginning with the first fiscal year that begins after the date of the enactment of this Act, not later than 30 days after the end of each fiscal year, the Secretary of Homeland Security shall determine and report to the Secretary of State and the Committees on the Judiciary of the House of Representatives and of the Senate—

(1) the number of apprehensions that occurred during such fiscal year of aliens who entered the United States by illegally crossing the international land border between the United States and Mexico; and

(2) the nationality of aliens described in paragraph (1).

(b) REDUCTION OF FOREIGN ASSISTANCE.—

(1) IN GENERAL.—Except as provided under paragraph (2), the Secretary of State shall proportionately reduce the amount of Federal financial assistance provided to a foreign state for the fiscal year in which a report under subsection (a) is made

1 by a total of \$2,000 for each alien described in such
2 report who is a citizen or national of that country.

3 (2) EXCEPTION.—Notwithstanding paragraph
4 (1), the Secretary of State may opt not to reduce
5 the amounts appropriated for the Government of
6 Mexico from the International Military Education
7 and Training Fund, the International Narcotics
8 Control and Law Enforcement Fund, and the fund
9 to carry out nonproliferation, anti-terrorism, de-
10 mining, and related programs and activities.

11 (c) TRANSFER OF FUNDS TO SECURE THE SOUTH-
12 ERN BORDER FUND.—The Secretary of State, in con-
13 sultation with the Secretary of Homeland Security and the
14 Secretary of the Treasury, shall transfer funds described
15 in subsection (b) into the Secure the Southern Border
16 Fund established by the amendment made by section 2
17 of this Act.

18 **SEC. 4. FEES FOR CERTAIN REMITTANCE TRANSFERS.**

19 Section 920 of the Electronic Fund Transfer Act (re-
20 lating to remittance transfers) (15 U.S.C. 1693o–1) is
21 amended—

22 (1) by redesignating subsection (g) as sub-
23 section (h); and

24 (2) by inserting after subsection (f) the fol-
25 lowing:

1 “(g) SECURE THE SOUTHERN BORDER FUND
2 FEE.—

3 “(1) IN GENERAL.—If the designated recipient
4 of a remittance transfer is located outside of the
5 United States, a remittance transfer provider shall
6 collect from the sender of such remittance transfer
7 a remittance fee equal to 5 percent of the United
8 States dollar amount to be transferred.

9 “(2) TRANSFER OF FUNDS.—Not later than 90
10 days after the date of enactment of this subsection,
11 the Secretary of the Treasury, in consultation with
12 the Bureau and remittance transfer providers, shall
13 develop and make available a system for remittance
14 transfer providers to submit the remittance fees col-
15 lected in accordance with paragraph (1) to the Se-
16 cure the Southern Border Fund established under
17 section 3344 of title 31, United States Code.

18 “(3) PENALTIES.—

19 “(A) Whoever, with the intent to evade a
20 remittance fee to be collected in accordance
21 with this subsection, and who has knowledge
22 that, at the time of a remittance transfer, the
23 value of the funds involved in the transfer will
24 be further transferred to a recipient located
25 outside of the United States, requests or facili-

1 tates such remittance transfer to a recipient lo-
2 cated outside of the United States shall be sub-
3 ject to a penalty of not more than \$500,000 or
4 twice the value of the funds involved in the re-
5 mittance transfer, whichever is greater, or im-
6 prisonment for not more than 20 years, or both.

7 “(B) Any foreign country that, in the joint
8 determination of the Secretary of Homeland Se-
9 curity, the Secretary of the Treasury, and the
10 Secretary of State, aids or harbors an indi-
11 vidual conspiring to avoid the fee collected in
12 accordance with this subsection shall be ineli-
13 gible to receive foreign assistance and to par-
14 ticipate in the visa waiver program or any other
15 programs, at the discretion of the Secretaries
16 described in this subparagraph.”.

17 **SEC. 5. FEES FOR FORM I-94.**

18 (a) FEE INCREASE.—The Secretary of Homeland Se-
19 curity shall increase the fee collected for services per-
20 formed in processing U.S. Customs and Border Protection
21 Form I-94, Arrival/Departure Record, from \$6 to \$25.

22 (b) DISPOSITION OF FEES COLLECTED.—Notwith-
23 standing any other provision of law, including section
24 286(q) of the Immigration and Nationality Act (8 U.S.C.
25 1356(q)), all fees collected for services performed in proc-

1 essing U.S. Customs and Border Protection Form I–94
2 shall be allocated as follows:

3 (1) \$6 shall be deposited in the Land Border
4 Inspection Fee Account and used in accordance with
5 such section 286(q).

6 (2) To the extent provided in advance in appro-
7 priations Acts, \$10 shall be used for salaries for
8 U.S. Border Patrol agents.

9 (3) \$9 shall be deposited in the Secure the
10 Southern Border Fund established by the amend-
11 ment made by section 2 of this Act.

12 **SEC. 6. CONSTRUCTION OF BORDER WALL.**

13 (a) IMPROVEMENT OF BARRIERS AT BORDER.—Sec-
14 tion 102 of the Illegal Immigration Reform and Immi-
15 grant Responsibility Act of 1996 (Division C of Public
16 Law 104–208; 8 U.S.C. 1103 note) is amended—

17 (1) by amending subsection (a) to read as fol-
18 lows:

19 “(a) IN GENERAL.—Not later than December 31,
20 2019, the Secretary of Homeland Security shall take such
21 actions as may be necessary (including the removal of ob-
22 stacles to detection of illegal entrants) to design, test, con-
23 struct, and install physical barriers, roads, and technology
24 along the international land border between the United

1 States and Mexico to prevent illegal crossings in all
2 areas.”;

3 (2) in subsection (b)—

4 (A) in paragraph (1)—

5 (i) in the paragraph heading, by strik-
6 ing “ADDITIONAL FENCING” and inserting
7 “FENCING”;

8 (ii) by striking subparagraph (A) and
9 inserting the following:

10 “(A) PHYSICAL BARRIERS.—In carrying
11 out subsection (a), the Secretary of Homeland
12 Security shall construct physical barriers, in-
13 cluding secondary barriers in locations where
14 there is already a fence, along the international
15 land border between the United States and
16 Mexico that will prevent illegal entry and will
17 assist in gaining operational control of the bor-
18 der (as defined in section 2(b) of the Secure
19 Fence Act of 2006 (8 U.S.C. 1701 note; Public
20 Law 109–367)).”;

21 (iii) by striking subparagraph (B) and
22 redesignating subparagraphs (C) and (D)
23 as subparagraphs (B) and (C), respec-
24 tively;

(iv) in subparagraph (B), as so redesignated—

(I) by striking clause (i) and inserting the following:

“(i) IN GENERAL.—In carrying out this section, the Secretary of Homeland Security shall, before constructing physical barriers in a specific area or region, consult with the Secretary of the Interior, the Secretary of Agriculture, appropriate Federal, State, local, and tribal governments, and appropriate private property owners in the United States to minimize the impact on the environment, culture, commerce, and quality of life for the communities and residents located near the sites at which such physical barriers are to be constructed. Nothing in this paragraph should be construed to limit the Secretary of Homeland Security’s authority to move forward with construction after consultation.”;

(II) by redesignating clause (ii) as clause (iii); and

1 (III) by inserting after clause (i),
2 as amended, the following new clause:

3 “(ii) NOTIFICATION.—Not later than
4 60 days after the consultation required
5 under clause (i), the Secretary of Home-
6 land Security shall notify the Committees
7 on the Judiciary of the House of Rep-
8 resentatives and of the Senate, the Com-
9 mittee on Homeland Security of the House
10 of Representatives, and the Committee on
11 Homeland Security and Governmental Af-
12 fairs of the Senate of the type of physical
13 barriers, tactical infrastructure, or tech-
14 nology the Secretary has determined is
15 most practical and effective to achieve situ-
16 ational awareness and operational control
17 in a specific area or region and the other
18 alternatives the Secretary considered be-
19 fore making such a determination.”; and

20 (v) by striking subparagraph (C), as
21 so redesignated, and inserting the fol-
22 lowing:

23 “(C) LIMITATION ON REQUIREMENTS.—
24 Notwithstanding subparagraph (A), nothing in
25 this paragraph shall require the Secretary of

1 Homeland Security to install fencing, physical
2 barriers, or roads, in a particular location along
3 the international border between the United
4 States and Mexico, if the Secretary determines
5 that there is a pre-existing geographical barrier
6 or pre-constructed, impenetrable wall. The Sec-
7 retary must notify the House and Senate Com-
8 mittees on the Judiciary, the House Committee
9 on Homeland Security, and the Senate Com-
10 mittee on Homeland Security and Govern-
11 mental Affairs of any decision not to install
12 fencing in accordance with this provision within
13 30 days of a determination being made.”;

14 (B) in paragraph (2)—

15 (i) by striking “Attorney General”
16 and inserting “Secretary of Homeland Se-
17 curity”; and

18 (ii) by striking “fences” and inserting
19 “physical barriers and roads”; and

20 (C) in paragraph (3)—

21 (i) by striking “Attorney General”
22 and inserting “Secretary of Homeland Se-
23 curity”; and

1 (ii) by striking “additional fencing”
2 and inserting “physical barriers and
3 roads”; and

4 (3) in subsection (c), by amending paragraph
5 (1) to read as follows:

6 “(1) IN GENERAL.—Notwithstanding any other
7 provision of law, the Secretary of Homeland Security
8 shall have the authority to waive all legal require-
9 ments the Secretary, in the Secretary’s sole discre-
10 tion, determines necessary to ensure the expeditious
11 design, testing, construction, installation, deploy-
12 ment, operation, and maintenance of physical bar-
13 riers, roads, and technology under this section. Any
14 such decision by the Secretary shall be effective
15 upon publication in the Federal Register.”.

16 (b) ACHIEVING OPERATIONAL CONTROL ON THE
17 BORDER.—Subsection (a) of section 2 of the Secure Fence
18 Act of 2006 (8 U.S.C. 1701 note) is amended, in the mat-
19 ter preceding paragraph (1), by striking “18 months after
20 the date of the enactment of this Act” and inserting “De-
21 cember 31, 2019”.

1 **SEC. 7. FAIR LABOR STANDARDS ACT FOR U.S. BORDER PA-**
2 **TROL.**

3 (a) IN GENERAL.—Section 7 of the Fair Labor
4 Standards Act of 1938 (29 U.S.C. 207) is amended by
5 adding at the end the following:

6 “(s) EMPLOYMENT AS A BORDER PATROL AGENT.—
7 No public agency shall be deemed to have violated sub-
8 section (a) with respect to the employment of any border
9 patrol agent (as defined in section 5550(1) of title 5,
10 United States Code) if, during a work period of 14 con-
11 secutive days, the border patrol agent receives compensa-
12 tion at a rate that is not less than 150 percent of the
13 regular rate at which the agent is employed for all hours
14 of work from 80 hours to 100 hours. Payments required
15 under this section shall be in addition to any payments
16 made under section 5550 of title 5, United States Code,
17 and shall be made notwithstanding any pay limitations set
18 forth in that title.”.

19 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
20 Section 13(a) of the Fair Labor Standards Act of 1938
21 (29 U.S.C. 213(a)) is amended by striking paragraph (18)
22 and redesignating paragraph (19) as paragraph (18).

23 **SEC. 8. SEVERABILITY.**

24 If any provision of this Act, or an amendment made
25 by this Act, or the application of such provision or amend-
26 ment to any person or circumstance, is held to be invalid,

- 1 the remainder of this Act, or an amendment made by this
- 2 Act, or the application of such provision to other persons
- 3 or circumstances, shall not be affected.

