

116TH CONGRESS
1ST SESSION

S. 293

To enhance border security to reduce drug trafficking and related money laundering.

IN THE SENATE OF THE UNITED STATES

JANUARY 31, 2019

Mr. CASSIDY introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To enhance border security to reduce drug trafficking and related money laundering.

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 “Securing the Border
5 and Making Drug Cartels Pay for it Act”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to authorize the use of
8 illicit drug trafficking proceeds to pay for physical bar-
9 riers, tactical infrastructure, and technology in the vicinity
10 of the United States border, which will—

1 (1) achieve situational awareness and oper-
2 ational control of the border;

3 (2) increase the interdiction of illicit drugs en-
4 tering the United States; and

5 (3) reduce bulk cash smuggling and trade-based
6 money laundering along the border.

7 **SEC. 3. SECURE AMERICA FINANCING CORPORATION.**

8 (a) ESTABLISHMENT.—There is established, as a spe-
9 cial purpose, public corporate entity, the Secure America
10 Financing Corporation (referred to in this section as the
11 “Corporation”), which shall operate as an independent in-
12 strumentality of the Federal Government.

13 (b) BOARD.—

14 (1) COMPOSITION.—The Corporation shall be
15 overseen by a Board, consisting of the Secretary of
16 Homeland Security and the Secretary of the Treas-
17 ury, or their respective designees, as appointed by
18 the President.

19 (2) TERMS.—Members of the Board shall serve,
20 at the pleasure of the President, for 4-year terms,
21 or until a successor is appointed by the President.
22 Members of the Board may be appointed to 1 addi-
23 tional 4-year term.

24 (3) COMPENSATION.—Members of the Board
25 shall serve without additional compensation.

1 (4) CHAIRPERSON.—The Board shall annually
2 elect a Chairperson from among its members.

3 (5) MEETINGS.—The Board shall meet not less
4 frequently than annually.

5 (c) PURPOSES.—The purposes of the Corporation
6 shall be—

7 (1) to issue Secure America Bonds, in accord-
8 ance with subsection (d);

9 (2) to make the proceeds of such bonds avail-
10 able to Homeland Security Investigations of U.S.
11 Immigration and Customs Enforcement and to U.S.
12 Border Patrol to enhance technological capacity; and

13 (3) to use unobligated balances available under
14 the Department of Treasury Forfeiture Fund to re-
15 deem such bonds.

16 (d) BONDS.—

17 (1) ISSUANCE AUTHORIZED.—The Corporation
18 may issue bonds (referred to in this Act as “Secure
19 America Bonds”) in such amounts and for such
20 terms as the Board shall authorize to provide the
21 necessary funding for the technological capacity and
22 security enhancements that the Homeland Security
23 Investigations directorate determines appropriate.

1 (2) REDEMPTION.—Secure America Bonds may
2 only be paid from funds managed by the Corpora-
3 tion, including—

4 (A) unobligated balances available under
5 the Department of Treasury Forfeiture Fund;

6 (B) proceeds of the sales of any such
7 bonds;

8 (C) earnings on funds invested by the Cor-
9 poration or the indenture trustee;

10 (D) income generated by the activities of
11 the Corporation; and

12 (E) such other funds as may become avail-
13 able.

14 (3) BANKRUPTCY PROHIBITED.—The Corpora-
15 tion may not file for bankruptcy protection while any
16 Secure America Bonds remain outstanding.

17 (4) LIMITATION.—Secure America Bonds—

18 (A) are not a debt or obligation of the
19 Federal Government; and

20 (B) are not backed by the full faith and
21 credit of the Federal Government.

22 (e) STAFFING.—

23 (1) IN GENERAL.—Employees of the Depart-
24 ment of Homeland Security and employees of the

1 Department of the Treasury may provide adminis-
2 trative support to the Corporation.

3 (2) PROFESSIONAL SERVICES.—The Attorney
4 General, or his or her designee, may serve as counsel
5 to the Corporation and may employ or retain such
6 other attorneys as necessary. The Corporation may
7 employ or retain any other professionals, consult-
8 ants, agents, financial advisors, and accountants as
9 may be necessary to carry out the purposes set forth
10 in subsection (c). The Board may determine the du-
11 ties and compensation of those employed or retained
12 under this paragraph.

13 (f) FINANCIAL MANAGEMENT.—

14 (1) AUTHORITY.—The Corporation is author-
15 ized to sell and convey any of the assets of the Cor-
16 poration, subject to the approval of the Board.

17 (2) EXEMPTION FROM TAXATION.—The Cor-
18 poration shall be exempt from any taxation, fees, as-
19 sessments, or similar charges based on the real
20 property or assets of the Corporation.

21 (g) EFFECT OF DISSOLUTION.—Upon the dissolution
22 of the Corporation, title to all assets and properties of the
23 Corporation shall vest in and become the property of the
24 United States Treasury and shall be deposited into and
25 credited to the Department of Treasury Forfeiture Fund.

1 **SEC. 4. USE OF CERTAIN FORFEITED CRIMINAL PROCEEDS**
2 **FOR BORDER SECURITY MEASURES.**

3 Notwithstanding any other provision of law, any
4 funds that are criminally forfeited to the United States
5 pursuant to an order relating to a sentence of a felony
6 conviction by a district court of the United States of an
7 individual engaging in a continuing criminal enterprise in-
8 volving knowingly and intentionally distributing a con-
9 trolled substance, intending and knowing that such sub-
10 stance would be unlawfully imported into the United
11 States from a place outside of the United States shall be
12 used for security measures along the international border
13 between the United States and Mexico, including the con-
14 struction, installation, deployment, operation, and mainte-
15 nance of physical barriers, tactical infrastructure, and
16 technology in the vicinity of such border, for the purpose
17 of stemming the flow of illegal narcotics into the United
18 States and furthering the security of the United States.

19 **SEC. 5. RESERVATION OF PORTION OF FORFEITS IN THE**
20 **DEPARTMENT OF TREASURY FORFEITURE**
21 **FUND FOR BUILDING A PHYSICAL BARRIER**
22 **OR ADVANCED TECHNOLOGY TO PREVENT IL-**
23 **LEGAL ENTRY ACROSS THE SOUTHERN BOR-**
24 **DER.**

25 Section 9705 of title 31, United States Code, is
26 amended—

1 (1) in subsection (a)(1), by adding at the end
2 the following:

3 “(K) Payments for border security enhance-
4 ments.”;

5 (2) in subsection (f)—

6 (A) in the matter preceding paragraph (1),
7 by striking “, not later than February 1 of each
8 year”;

9 (B) in paragraph (1)—

10 (i) in the matter preceding subpara-
11 graph (A), by inserting “not later than
12 February 1 of each year,” before “a re-
13 port”; and

14 (ii) in subparagraph (B), by striking
15 “and” at the end;

16 (C) in paragraph (2)—

17 (i) in the matter preceding subpara-
18 graph (A), by inserting “not later than
19 February 1 of each year,” before “a re-
20 port”; and

21 (ii) in subparagraph (I)(ii), by strik-
22 ing the period at the end and inserting a
23 semicolon; and

24 (D) by inserting before the undesignated
25 matter at the end the following:

1 “(3) not later than December 1 of each year, a
2 report that identifies, as of October 1 of such year,
3 the total of amount in the Fund that was derived
4 from Mexican cartels; and

5 “(4) not later than 180 days after the date of
6 enactment of the Securing the Border and Making
7 Drug Cartels Pay for it Act, and occasionally there-
8 after, a report that identifies the amount in the
9 Fund that has historically been derived from Mexi-
10 can cartels.”; and

11 (3) in subsection (g)—

12 (A) in paragraph (4)(B), by inserting “,
13 including the construction, installation, deploy-
14 ment, operation, and maintenance of physical
15 barriers, tactical infrastructure, and technology
16 in the vicinity of such border,” after “law en-
17 forcement activities” after “law enforcement ac-
18 tivities”; and

19 (B) by adding at the end the following:

20 “(5) Of the amount identified pursuant to sub-
21 section (f)(3), 50 percent shall be made available
22 without fiscal year limitation to install additional
23 physical barriers and roads (including the removal of
24 obstacles to detection of illegal entrants) in the vi-
25 cinity of the United States border to deter illegal

1 crossings in areas of high illegal entry into the
2 United States.”.

3 **SEC. 6. USE OF BOND PROCEEDS.**

4 (a) IMPROVING DATA ANALYTICS.—The Secretary of
5 Homeland Security, in consultation with the Executive As-
6 sociate Director for Homeland Security Investigations and
7 the Chief, U.S. Border Patrol, may use proceeds from Se-
8 cure America Bonds—

9 (1) to improve the use of data and advanced
10 analytics to target drugs entering the United States,
11 bulk cash smugglers, and trade-based money laun-
12 dering;

13 (2) to prioritize the use of “big data” to en-
14 hance the analysis of information that may lead to
15 an increase in drug seizures near the border, the
16 interdiction of smuggled bulk cash, and the identi-
17 fication of invoice misrepresentation that leads to
18 trade-based money laundering;

19 (3) to increase the technological capacity to
20 gather and develop information about persons,
21 events, and cargo of interest;

22 (4) to integrate data with analytical tools capa-
23 ble of—

24 (A) detecting trends, patterns, and emerg-
25 ing threats; and

1 (B) identifying non-obvious relationships
2 between persons, events, and cargo to generate
3 the necessary tools to increase seizures; and

4 (5) to procure technology for advanced analytics
5 to target drugs coming into the United States, bulk
6 cash smuggling, and trade-based money laundering.

7 (b) PHYSICAL BARRIERS.—The Secretary of Home-
8 land Security, in consultation with the Chief, U.S. Border
9 Patrol, may use proceeds from Secure America Bonds—

10 (1) to achieve situational awareness and oper-
11 ational control of the southwest border by using ter-
12 rain, barriers, and technological and human re-
13 sources to force smugglers to use certain routes and
14 border crossings; and

15 (2) to construct, install, deploy, operate, and
16 permanently maintain physical barriers, tactical in-
17 frastructure, and technology in the vicinity of the
18 southwest border.

19 (c) STAFFING.—The Secretary of Homeland Secu-
20 rity, in consultation with the Executive Associate Director
21 for Homeland Security Investigations, may use proceeds
22 from Secure America Bonds to employ the necessary ana-
23 lysts to carry out the data analytics described in sub-
24 section (a).

1 **SEC. 7. RULES OF CIVIL FORFEITURE.**

2 (a) CIVIL FORFEITURE.—Section 983(a) of title 18,
3 United States Code, is amended by adding at the end the
4 following:

5 “(5) In any law enforcement action in which assets
6 may be seized under this subsection, the law enforcement
7 officer may not barter with or otherwise pressure the
8 owner of the assets to be seized to waive any rights relat-
9 ing to the recovery of such assets.”.

10 (b) BURDEN OF PROOF IN CIVIL FORFEITURE PRO-
11 CEEDINGS.—Section 983(c) of title 18, United States
12 Code, is amended—

13 (1) in paragraph (1), by striking “a preponder-
14 ance of the evidence” and inserting “clear and con-
15 vincing evidence”;

16 (2) in paragraph (2), by striking “a preponder-
17 ance of the evidence” and inserting “clear and con-
18 vincing evidence”; and

19 (3) in paragraph (3), by inserting “, by clear
20 and convincing evidence,” after “establish”.

21 (c) LIMITATION ON RELEASE OF PROPERTY.—Sec-
22 tion 983(f)(8) of title 18, United States Code, is amend-
23 ed—

24 (1) in subparagraph (C), by striking “or” at
25 the end;

1 (2) in subparagraph (D), by striking the period
2 at the end and inserting “; or”; and

3 (3) by adding at the end the following:

4 “(E) is currency or contraband likely to
5 belong to or used in support of a foreign, illegal
6 trafficking organization.”.

7 (d) REPORTING REQUIREMENT.—The Attorney Gen-
8 eral shall submit an annual report to the Committee on
9 Homeland Security and Governmental Affairs of the Sen-
10 ate, the Committee on the Judiciary of the Senate, the
11 Committee on Homeland Security of the House of Rep-
12 resentatives, and the Committee on the Judiciary of the
13 House of Representatives that includes a detailed record,
14 for the reporting period, of all civil and criminal asset sei-
15 zures and forfeitures authorized under chapter 46 of title
16 18, United States Code, including—

17 (1) the specific assets seized, including the
18 quantity and value of such assets;

19 (2) the alleged criminal conduct giving rise to
20 the seizure or forfeiture;

21 (3) whether anyone was arrested or convicted of
22 the alleged criminal conduct;

23 (4) whether the forfeiture action was challenged
24 by the owner of the assets;

25 (5) the final disposition of the assets; and

- 1 (6) if the assets were sold, how the proceeds of
- 2 the assets were used.

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