

Madam Speaker, for the vast majority of States, this bill carries a minimal or no revenue impact. In fact, this bill will greatly increase compliance rates. This bill will end up saving States the administrative costs of processing and remitting thousands of small returns from nonresidents.

While nothing is perfect, and the Federation of Tax Administrators may still have some concerns, this bill is truly the product of years of working with the States on an approach that balances their concerns with administrative ease and efficiency for employers and employees. This is truly a bipartisan effort that seeks to simplify State tax compliance, not reduce State taxes.

I yield back the balance of my time.

Mr. COBLE. Madam Speaker, I urge my colleagues to cast a "yes" vote on this matter, and I yield back the balance of my time.

Mr. SMITH of Texas. Madam Speaker, the American workforce is increasingly mobile. Fifty years ago, most people worked in the communities in which they lived. Today, many more Americans travel to other states for work.

The complexity and variation among state income tax laws is a burden on interstate commerce. In some states, for example, a non-resident employee must pay income tax if they work there for only one day. But in other states, income tax liability is not triggered until the 60th day.

Under this current patchwork system, employees who travel out of state for work must file tax returns in other jurisdictions even if their ultimate tax liability to a state is a few dollars.

In addition to burdening our interstate employees, different state income tax laws require employers to comply with a wide variety of tax withholding laws. Many of those employers are small businesses who can least afford these administrative costs.

This bipartisan bill, the Mobile Workforce State Income Tax Simplification Act, is sponsored by the Chairman of the Judiciary Committee's Subcommittee on Courts, Commercial and Administrative Law, HOWARD COBLE. I also appreciate Congressman HANK JOHNSON's cosponsorship of this legislation.

This bill simplifies state income tax policies without infringing on the rights of states to set their own tax rates. The bill provides that a state may not impose its income tax on non-resident employees unless they earn wages in the state for more than 30 days. The employee would still owe an income tax to their state of residence for wages earned during the first 30 days they work in a non-resident state.

This bill eases the burden that the current patchwork of state income tax laws places on traveling employees and small businesses. So rather than increasing the expense of navigating the maze of tax rules, businesses can use their resources to invest in creating jobs for American workers.

Finally, the bill we consider today reflects a few changes that were made at the request of state taxing authorities. I am pleased that the sponsors of the legislation were able to work cooperatively with all interested parties to bring a compromise version to the floor.

I encourage my colleagues to vote "yes" on the bill.

Ms. JACKSON LEE of Texas. Madam Speaker, I rise in strong support of H.R. 1864, The Mobile Workforce State Income Tax Simplification Act of 2011. This is a common-sense, bipartisan piece of legislation.

Every day millions of American workers travel outside their home state for business purposes. Each state into which they travel has its own set of unique requirements for filing a non-resident personal income tax return. As a result, in addition to filing a federal and any applicable home state income tax returns, these workers may be legally required to file an income tax return and pay non-resident state taxes in virtually every other state into which they have travelled.

H.R. 1864, the "Mobile Workforce State Income Tax Simplification Act of 2011," would simplify the onerous burdens placed on employees who travel outside their resident states for temporary periods and on employers who have corresponding withholding requirements. The bill would establish fair, administrable and uniform rules to ensure that the appropriate amount of tax is paid to state and local jurisdictions without placing excessive burdens on employees and their employers.

This bill was reported out of the Judiciary Committee, by a bipartisan voice vote, which speaks volumes. I hope you will join me in supporting this important legislation impacting millions of American employees who travel for work to support their families.

Forty-one states currently impose a personal income tax on income earned within their borders regardless of whether an individual is a resident of the state—thereby requiring non-resident employees who must travel to other states for work purposes to pay tax after performing work there for even a limited amount of time. Employers are required to withhold that state's income tax on behalf of the employee and remit it to the state at the end of the year.

The committee notes that while some states require an employer to withhold income tax on the first day of the employee's travel, others use a hybrid system of time spent and dollars earned to trigger withholding, requiring individuals who travel for work to track and comply with the income tax laws of up to 41 different states. For instance, a nonresident's income tax liability is triggered in New York the moment he or she earns wages in the state, but the employer's withholding requirement is not triggered until the 14th day of wage-earning. In Idaho, meanwhile, a non-resident's income tax liability is not triggered until after he or she makes \$1,000 in wages in the state.

I note that some committee Democrats oppose the bill because they fear it will lead to severe state revenue losses but believe that this is a solid bi-partisan piece of legislation.

This bill limits the authority of states to tax the income of nonresident employees who work for a limited amount of time in the state, allowing such individuals to be taxed only if they work in the state for 31 days or more.

Those limits would become effective on January 1 of the second year that begins after the bill's date of enactment, and it would not apply to any tax obligation that accrues before that time.

The bill prohibits states from taxing the wages or other earnings of non-residents unless they work in the state for 31 days or more during the calendar year. Similarly, states could not subject such income to state income

tax withholding and reporting requirements, unless more than 30 days of work was performed.

Under the measure, an individual is considered to be present and performing employment duties within a state for a day if that individual performs more of his or her work within that state than in any other state during the day. If an individual works during one day both in his or her resident state and in just one non-resident state, the individual would be considered to have performed more of his or her employment duties in the non-resident state. Portions of the day during which an individual is in transit would not be considered in determining the location of where work was performed.

The bill provides that for purposes of determining state income tax withholding and reporting requirements, an employer could rely on an employee's determination of the time expected to be spent working for the employer in other non-resident states (absent the employer's actual knowledge of fraud by the employee in making the determination, or collusion between the employer and the employee to evade tax).

Employers could rely on an employee's determination even if the employer regularly maintains records of the location of employees, but if the employer maintains a time and attendance system that tracks where an employee works on a daily basis the data from the time and attendance system must be used instead of the employee's determination.

The bill stipulates that the term "employee" has the same meaning given to it by the state in which employment duties are performed—except the term would not include professional athletes, professional entertainers or certain public figures. States could, therefore, continue to tax those non-residents as they do now.

I urge my colleagues to join me in supporting this bill.

The SPEAKER pro tempore (Ms. FOXX). The question is on the motion offered by the gentleman from North Carolina (Mr. COBLE) that the House suspend the rules and pass the bill, H.R. 1864, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

#### BORDER TUNNEL PREVENTION ACT OF 2012

Mr. SMITH of Texas. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 4119) to reduce the trafficking of drugs and to prevent human smuggling across the Southwest Border by deterring the construction and use of border tunnels, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 4119

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Border Tunnel Prevention Act of 2012".

**SEC. 2. FINDINGS.**

Congress finds the following:

(1) Trafficking and smuggling organizations are intensifying their efforts to enter the United States through tunnels and other subterranean passages between Mexico and the United States.

(2) Border tunnels are most often used to transport narcotics from Mexico to the United States, but can also be used to transport people and other contraband.

(3) From Fiscal Year 1990 to Fiscal Year 2011, law enforcement authorities discovered 149 cross-border tunnels along the border between Mexico and the United States, 139 of which have been discovered since Fiscal Year 2001. There has been a dramatic increase in the number of cross-border tunnels discovered in Arizona and California since Fiscal Year 2006, with 40 tunnels discovered in California and 74 tunnels discovered in Arizona.

(4) Section 551 of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109-295) added a new section to title 18, United States Code (18 U.S.C. 555), which—

(A) criminalizes the construction or financing of an unauthorized tunnel or subterranean passage across an international border into the United States; and

(B) prohibits any person from recklessly permitting others to construct or use an unauthorized tunnel or subterranean passage on the person's land.

(5) Any person convicted of using a tunnel or subterranean passage to smuggle aliens, weapons, drugs, terrorists, or illegal goods is subject to an enhanced sentence for the underlying offense. Additional sentence enhancements would further deter tunnel activities and increase prosecutorial options.

**SEC. 3. ATTEMPT OR CONSPIRACY TO USE, CONSTRUCT, OR FINANCE A BORDER TUNNEL.**

Section 555 of title 18, United States Code, is amended by adding at the end the following:

“(d) Any person who attempts or conspires to commit any offense under subsection (a) or subsection (c) of this section shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.”.

**SEC. 4. AUTHORIZATION FOR INTERCEPTION OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS.**

Section 2516(1)(c) of title 18, United States Code, is amended by inserting “, section 555 (relating to construction or use of international border tunnels)” before the semicolon at the end.

**SEC. 5. FORFEITURE.**

Section 982(a)(2)(B) of title 18, United States Code, is amended by inserting “555,” after “545.”.

**SEC. 6. MONEY LAUNDERING DESIGNATION.**

Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting “section 555 (relating to border tunnels),” after “section 554 (relating to smuggling goods from the United States).”.

**SEC. 7. SENSE OF CONGRESS.**

It is the sense of Congress that—

(1) success in combating the construction and use of cross-border tunnels requires cooperation between Federal, State, local, and tribal officials and assistance from private land owners and tenants across the border between Mexico and the United States;

(2) the Department of Homeland Security is currently engaging in outreach efforts in California to certain landowners and tenants along the border to educate them about cross-border tunnels and seek their assistance in combating their construction; and

(3) the Department should continue its outreach efforts to both private and govern-

mental landowners and tenants in areas along the border between Mexico and the United States with a high rate of cross-border tunnels.

**SEC. 8. REPORT.**

(a) IN GENERAL.—The Secretary of Homeland Security shall submit an annual report to the congressional committees set forth in subsection (b) that includes a description of—

(1) the cross-border tunnels along the border between Mexico and the United States discovered during the preceding fiscal year; and

(2) the needs of the Department of Homeland Security to effectively prevent, investigate and prosecute border tunnel construction along the border between Mexico and the United States.

(b) CONGRESSIONAL COMMITTEES.—The congressional committees set forth in this subsection are—

(1) the Committee on Homeland Security and Governmental Affairs of the Senate;

(2) the Committee on the Judiciary of the Senate;

(3) the Committee on Appropriations of the Senate;

(4) the Committee on Homeland Security of the House of Representatives;

(5) the Committee on the Judiciary of the House of Representatives; and

(6) the Committee on Appropriations of the House of Representatives.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas (Mr. SMITH) and the gentleman from Puerto Rico (Mr. PIERLUISI) each will control 20 minutes.

The Chair recognizes the gentleman from Texas.

**GENERAL LEAVE**

Mr. SMITH of Texas. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 4119, as amended, currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. SMITH of Texas. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, H.R. 4119, the Border Tunnel Prevention Act of 2012, strengthens current law and prohibits the construction, use, and financing of unauthorized tunnels across the U.S. border.

I thank the sponsors of this legislation, Mr. REYES of Texas and Mr. QUAYLE of Arizona, for their work on this bipartisan, bicameral bill.

□ 1620

Similar legislation passed the Senate by unanimous consent in January.

This legislation establishes the penalty for conspiracy or attempt to use, construct, or finance a cross-border tunnel. It also identifies the construction, financing, or use of a cross-border tunnel as a predicate offense for a charge of money laundering and for an application for judicial authorization to intercept wire, oral, or electronic communications. H.R. 4119 also allows the criminal forfeiture of property that

enters the United States through a cross-border tunnel.

Reports of drug-smuggling tunnels have increased, particularly in the past 10 years. Drug traffickers have ramped up their use of underground smuggling in light of increased border security, either real or perceived. Mexican drug-trafficking organizations have used tunnels as a smuggling method since at least 1990.

A majority of cross-border tunnels continue to be found in California and Arizona. These tunnels range in sophistication from a simple 16-inch pipe to well-engineered tunnels equipped with electricity, ventilation, and rails. Ownership of the tunnels is often attributed to the Mexican drug cartels.

To find cross-border tunnels, U.S. agents use devices that range from ground-penetrating radar to seismic sensors. Despite these efforts, drug smugglers continue to build the tunnels.

In November 2011, Federal law enforcement agents shut down two sophisticated tunnels that led from an area near Tijuana's airport to an industrial park in the U.S. About 49 tons of marijuana were seized.

Drug traffickers are also skilled at setting up front companies to rent space in busy warehouse districts in the United States. Mining engineers and architects are employed to construct the tunnel and bore directly into the foundation of the front company's rented warehouse.

The Drug Enforcement Administration describes marijuana as “the top revenue generator for Mexican drug trafficking organizations—a cash crop that finances corruption and the carnage of violence year after year.” The profits from marijuana trafficking finance the drug cartels' other drug enterprises, which include the construction and use of cross-border tunnels.

Border tunnels are an unfortunate testament to the ingenuity and determination of the Mexican drug cartels. It is time for Congress to enhance law enforcement's ability to fight transnational organized crime and the drug cartels' construction of cross-border tunnels. This bill reaffirms our determination to bring an end to cross-border tunnels.

When Congress enacted the border-tunnel statute in 2007, it omitted the changes contained in this bill. H.R. 4119 simply corrects this to ensure that investigators are equipped with the ability to locate and shut down these tunnels and hold these dangerous criminals accountable.

I urge my colleagues to support this bipartisan legislation, and I reserve the balance of my time.

Mr. PIERLUISI. Madam Speaker, I yield myself such time as I may consume.

I rise in support of H.R. 4119, the Border Tunnel Prevention Act of 2012. This bill would strengthen the laws that criminalize the use, construction, and financing of border tunnels.

Increasingly, cross-border tunnels are being used to smuggle people, drugs, and contraband into the United States. They can even be used to smuggle terrorists or weapons of mass destruction into the country. Cross-border tunnels present a serious problem for law enforcement, and I support this bill's efforts to stop the growing use of these tunnels.

This legislation is urgently needed because the number of tunnels has substantially increased in recent years. Whereas the first documented tunnel was discovered in 1990, the Department of Homeland Security reported last year that 154 attempted tunnels have been found since 1990, all but one of which were located along the Southwest border. In addition, the sophistication of some of these tunnels is also increasing in recent years. Cross-border tunnels range from small, hand-dug tunnels barely wide enough for a person to crawl through to professionally engineered tunnels built by Mexican drug cartels.

In November 2010, an Immigration and Customs Enforcement task force discovered a tunnel with two separate entrances in warehouses in Otay Mesa, California. One of the tunnel's walls were fortified with wood and cinder block supports, and the tunnel was equipped with rail, electrical, and ventilation systems. The tunnel was being used to import large amounts of marijuana into the U.S.

Current law already criminalizes the construction of a cross-border tunnel, allowing such a tunnel to be constructed on your property, or the use of such a tunnel. H.R. 4119 would strengthen existing law by making it a crime to attempt to engage in any of these activities, as well as to participate in any conspiracy involving any of these activities.

The bill also makes the construction or use of a tunnel a predicate offense for authorization of wiretaps, provides for criminal asset forfeiture of merchandise involved in tunneling, and includes a money-laundering provision. Border tunnels present a real and serious threat as a burgeoning tool for criminal activities.

I urge my colleagues to join me in supporting this measure which will help enhance the safety of our Nation's borders.

Madam Speaker, I reserve the balance of my time.

Mr. SMITH of Texas. Madam Speaker, I reserve the balance of my time, and we are prepared to close.

Mr. PIERLUISI. Madam Speaker, I yield to the gentleman from Texas (Mr. REYES) as much time as he may consume to address the merits of this bill, which he co-sponsored.

Mr. REYES. Madam Speaker, I rise today to ask my colleagues for their support of H.R. 4119, the Border Tunnel Prevention Act of 2012.

I also would like to express my appreciation and thank my cosponsors, Congressman QUAYLE, who I under-

stand is on his way here and we anticipate that he will be speaking on this, Congressman Chairman DREIER, and Congressman THOMPSON. I would, in particular, like to thank my good friend and colleague from Texas, Chairman SMITH, for his support in bringing this legislation to the floor. I also would like to thank Senator FEINSTEIN and Senator KYL for their work on a bipartisan, bicameral piece of legislation on the Senate side, which is S. 1236, the companion to the Border Tunnel Prevention Act of 2012.

The Border Tunnel Prevention Act of 2012 strengthens the 2006 Border Tunnel Prevention Act, which made it a crime to construct or finance an unauthorized tunnel or subterranean passage across an international border.

This bill seeks to provide law enforcement officials with enhanced investigative tools and additional options for prosecuting crimes related to the construction and financing of cross-border tunnels.

The Border Tunnel Prevention Act of 2012 would criminalize the attempt or conspiracy to use, construct, or finance a cross-border tunnel and also permits the forfeiture of bulk cash and merchandise smuggled into the United States through these illicit passageways.

Thanks to the collaborative efforts of the Obama administration, Congress, Federal, State, local, and tribal law enforcement organizations, as well as ordinary Americans, the Southwest border is more secure than at any point in our Nation's history. Over the past several years, the Federal Government has dedicated unprecedented levels of personnel, technology, and resources towards border security. As a result, apprehensions today are down, and seizures of drugs, guns, and cash are up. Border cities are among the safest in the country, including El Paso, which for the second year is the safest city in America with a population of over half a million people.

While the strengthening of security along the Southwest border has produced impressive results, it has also led those who want to harm our country to seek new ways to undermine our efforts. Enhancing the security of our borders on land, air, and sea has literally pushed drug cartels and transnational criminal organizations underground as they try to smuggle illicit drugs and people and other types of contraband, as my good friend and colleague from Puerto Rico mentioned, to include the potential for terrorists and weapons of mass destruction being smuggled into the United States.

Over the last decade, drug cartels and transnational criminal organizations have been increasing both the use and complexity of cross-border tunnels. As was said earlier, approximately 154 tunnels have been discovered between Mexico and the United States since the 1990s, and more than 90 percent of those tunnels have been detected in this past decade. These cross-border tunnels are becoming more and more complex.

□ 1630

I've got a picture to show, and I know that the chairman was mentioning the complexity of the construction. One such tunnel is the one that was discovered in November of 2011. It was over 600 yards long, and you can see, it's got a rail system built in. It's got sophisticated lighting, and even a system to introduce fresh air into the tunnel.

No longer are these crude, handmade tunnels. These are sophisticated, well-engineered, and well-financed projects. So that is why it is imperative that this legislation be passed. We must give law enforcement officials the tools that they need to combat this growing threat to our national security and stop the flow of illicit drugs and other contraband into the United States.

Accordingly, I am proud to be the author of this, along with Congressman QUAYLE, and I urge all my colleagues in Congress to pass this vital piece of bipartisan legislation so that we can move forward with helping to defeat the drug cartels and the transnational criminal organizations and, further, continue the path towards really securing our borders and protecting our communities.

So with that, let me end by thanking, again, Chairman SMITH and my good friend and colleague from Puerto Rico and urging my colleagues to support this critical and vital piece of legislation.

Mr. PIERLUISI. Madam Speaker, I am prepared to close. We have no further speakers, so I urge my colleagues to vote in favor of H.R. 4119, the Border Tunnel Protection Act of 2012.

I yield back the balance of my time.

Mr. SMITH of Texas. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I just wanted to say, we were hoping that the other author, the other cosponsor of this bill, the gentleman from Arizona (Mr. QUAYLE), would be here. Unfortunately, he was detained. His flight was delayed from Arizona to Washington, D.C.

But in his absence, I just want to thank him for his work on this bill and for all of his efforts to reduce the amount of cross-border drug smuggling and thereby protect the lives of individuals in Arizona and all Americans. He has done great work on this particular piece of legislation. We all appreciate those efforts.

I yield back the balance of my time.

Mr. SMITH of Texas. Madam Speaker, I submit the following exchange of letters regarding H.R. 4119.

MAY 15, 2012.

HON. LAMAR SMITH,  
Chairman, Committee on the Judiciary, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN SMITH,  
On March 21, 2012, the Committee on the Judiciary reported H.R. 4119, the Border Tunnel Prevention Act of 2012, as amended, favorably to the House. The Committee on Ways and Means received an additional referral on the bill as a result of section 5(b) dealing with civil asset forfeiture, which

falls within the jurisdiction of the Committee on Ways and Means. As a result of your Committee's agreement to remove section 5(b) of the bill, I agree to discharge the Committee on Ways and Means from further consideration of the bill so that a suspension version, incorporating the amendments to which we have agreed, may proceed expeditiously to the House Floor.

The Committee on Ways and Means takes this action with our mutual understanding that, by foregoing consideration of H.R. 4119 at this time, we do not waive any jurisdiction over the subject matter contained in section 5(b) in this or similar legislation, and that our Committee will be appropriately consulted and involved if that provision moves forward in any legislation so that we may address any issues that arise and fall within our Rule X jurisdiction. Our Committee also reserves the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this provision, and requests your support for any such request.

Finally, I would appreciate your response to this letter confirming this understanding, and would ask that a copy of our exchange of letters on this matter be included in the Congressional Record during floor consideration thereof.

Sincerely,

DAVE CAMP,  
Chairman.

CONGRESS OF THE  
UNITED STATES  
Washington, DC, May 15, 2012.

Hon. DAVE CAMP,  
Chairman, Committee on Ways and Means, 1102  
Longworth House Office Building Wash-  
ington, DC.

DEAR CHAIRMAN CAMP, thank you for your letter regarding H.R. 4119, the "Border Tunnel Prevention Act of 2012," which the Judiciary Committee reported favorably, as amended, to the House on March 21, 2012.

As introduced, H.R. 4119 contained a provision (section 5(b)) that formed the basis of an additional referral of the bill to your committee. Today, on a motion to suspend the rules, the House will consider a version of H.R. 4119 that does not include section 5(b) of the introduced bill. I am most appreciative of your decision to discharge the Committee on Ways and Means from further consideration of H.R. 4119, as amended, so that it may proceed to the House floor. I acknowledge that although you are waiving formal consideration of the bill, the Committee on Ways and Means is in no way waiving its jurisdiction over the subject matter contained in those provisions of the bill, including section 5(b) of the bill as reported by the Judiciary Committee, which fall within your Rule X jurisdiction. In addition, if a conference is necessary on this legislation, I will support any request that your committee be represented therein.

Finally, I shall be pleased to include this letter and your letter of even date herewith in the Congressional Record during floor consideration of H.R. 4119.

Sincerely,

LAMAR SMITH,  
Chairman

MARCH 14, 2012.

Hon. LAMAR SMITH,  
Chairman, Committee on the Judiciary, Ray-  
burn House Office Building, Washington,  
DC.

DEAR CHAIRMAN SMITH: I am writing in regards to the jurisdictional interest of the Committee on Homeland Security over provisions in H.R. 4119, the "Border Tunnel Prevention Act of 2012," which the Committee on the Judiciary ordered to be reported out, without amendment, on March 6, 2012.

I understand the importance of advancing this legislation to the House floor in an expeditious manner. Therefore, the Committee on Homeland Security will discharge H.R. 4119 from further consideration. This action is conditional on our mutual understanding and agreement that doing so will in no way diminish or alter the jurisdiction of the Committee on Homeland Security over the subject matter included in this or similar legislation. I request that you urge the Speaker to appoint members of this Committee to any conference committee for consideration of any provisions that fall within the jurisdiction of the Committee on Homeland Security in the House-Senate conference on this or similar legislation.

I also request that this response and your letter be included in the Committee on the Judiciary report to H.R. 4119 and in the Congressional Record during consideration of this measure on the House floor. Thank you for your consideration of this matter.

Sincerely,

PETER T. KING,  
Chairman.

MARCH 15, 2012.

Hon. PETER T. KING,  
Chairman, Committee on Homeland Security,  
Ford House Office Building, Washington,  
DC.

DEAR CHAIRMAN KING, thank you for your letter regarding H.R. 4119, the "Border Tunnel Prevention Act of 2012," which is likely to be scheduled for consideration by the House in the near future.

I am most appreciative of your decision to forego consideration of H.R. 4119 so that it may move expeditiously to the House floor. I acknowledge that although you are waiving formal consideration of the bill, the Committee on Homeland Security is in no way waiving its jurisdiction over the subject matter contained in the bill. In addition, if a conference is necessary on this legislation, I will support any request that Homeland Security be represented therein.

Finally, I shall be pleased to include this letter and your letter of March 14, 2012, in the Congressional Record during floor consideration of H.R. 4119.

Sincerely,

LAMAR SMITH,  
Chairman.

Mr. SCOTT of Virginia. Madam Speaker, the possibility of terrorists or weapons of mass destruction being transported through border tunnels is frightening. The possibility of narcotics or trafficking victims being transported through tunnels is disturbing. And I have real concerns about tunnels being used for run-of-the-mill illegal immigration and to smuggle goods or merchandise.

But these things are already illegal. And the penalty for doing any of these things through a tunnel is already double what it would be if the unlawful activity had not made use of a tunnel.

When this bill, H.R. 4119, was in the Judiciary Committee, I commented on what I saw as the redundancies in the bill. We already have laws against constructing or financing a tunnel between the United States and another country. The penalty for violating the law is a fine and up to 20 years in prison. And we have laws against knowing, or recklessly disregarding, that land you own or lease is being used by someone else who is building a tunnel. The penalty for that is a fine and up to 10 years in prison.

H.R. adds attempts to the crimes already available to address border tunnels. Yet, I wonder how many cases there have been

where a prosecutor was unable to prosecute someone for attempting to construct a tunnel under the current border tunnel law but would be able to under H.R. 4119? For U.S. prosecutorial jurisdiction, the tunnel would have to be started on the U.S. side and not yet have crossed the border into Mexico to be an attempted border tunnel, because if it has already crossed the border, it IS a border tunnel, so you don't need an attempt law. But even before such an attempt is started, and certainly after it is started, it is already a conspiracy to build a border tunnel, which is already covered by current law.

We have had no hearings in the House on these issues, so it is not clear what information we are operating on in developing this bill. The Department of Homeland Security reports that 154 border tunnels or attempted border tunnels have been found since 1990. Laura Duffy, U.S. Attorney for the Southern District of California, stated in testimony before the Senate Caucus on International Narcotics Control on June 15, 2011, that all of the tunnels discovered thus far were started in Mexico. So if it takes crossing the border to be a border tunnel, and all of them are started in Mexico, the "attempt" provision of H.R. 4119 does not seem like a very useful tool in addressing border tunnels. Conspiracy laws, which already exist, would seem to be of better use. And if existing conspiracy charges are not enough of a prosecutorial incentive, it would seem you would want to wait until the tunnel is actually being used so you can really rack up the penalties for drugs, goods or people smuggling which allows a doubling of penalties.

Duffy also stated in her testimony that in prosecuting tunnel-related crimes, the Department of Justice uses the range of drug charges under Title 21 because the drug charges carry "stiff mandatory minimum sentences and sometimes enable prosecutors to use 'career offender' sentencing enhancements." When you start doubling such drug penalties under the provisions of the current border tunnel law, you can easily get into sentences of many decades.

In addition to adding attempt and increasing the penalty for conspiracy, H.R. 4119 adds provisions for wire tap, forfeiture, and money laundering, which should always be done carefully, in my view. These are extraordinary government powers that were created and authorized to be used in extraordinary cases and circumstances, not to address ordinary crime. We have come to routinely add these authorities to deal with the crime du jour, further cluttering up an already bloated federal code with multiple, superfluous ways to charge every crime. There are no U.S. restrictions on the use of wiretaps outside the U.S. Since the tunnels are seemingly always started in Mexico, it is not clear what wiretap authorizations add to the investigative process.

We should not be decorating the criminal code with more and more pages. We ought to be simplifying the code. While I do think border tunnels are a serious problem, I believe we already have adequate laws with very harsh penalties to deal with the problem.

Mr. DREIER. Madam Speaker, illegal border tunnels pose a risk to our national security and undermine our efforts to protect the border. The threat lies not only in the illegal trafficking of drugs and humans, but also in the potential exploitation by terrorists. That is why

I rise in support of H.R. 4119, the Border Tunnel Prevention Act of 2012. In 2006, I authored the House version of the original Border Tunnel Prevention Act, which criminalized the construction of illegal border tunnels into the United States with fines and imprisonment of up to 20 years. The law also carries a prison sentence of up to 10 years for those who recklessly allow others to build these tunnels on their land. In addition, the law doubled the sentence for using a tunnel to smuggle aliens, weapons, drugs, terrorists or illegal goods.

While the Border Tunnel Prevention Act of 2006 gave law enforcement agencies powerful tools to combat the construction of illegal border tunnels, they are still being used by criminals to smuggle drugs and other materials into our country. For example, last fall, in my home state of California, I was troubled to learn that an elaborate tunnel was discovered in San Diego that linked to a warehouse in Tijuana. The tunnel contained wooden flooring, a rail system and an elevator. Its discovery led to the seizure of more than 32 tons of marijuana. Unfortunately, this is just one example of the more than 40 tunnels that have been discovered in California in the last five years. H.R. 4119 will give law enforcement additional ability to investigate and prosecute criminals using these tunnels. The bill also prohibits attempts to use, construct or finance a cross-border tunnel. Finally, it provides for the forfeiture of cash and merchandise that is illegally brought into our country through a tunnel.

Madam Speaker, H.R. 4119 is a common sense solution that helps combat those who attempt to illegally bring goods into our country. I urge all my colleagues to support this important legislation.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. SMITH) that the House suspend the rules and pass the bill, H.R. 4119, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. SMITH of Texas. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

## NATIONAL BLUE ALERT ACT OF 2012

Mr. SMITH of Texas. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 365) to encourage, enhance, and integrate Blue Alert plans throughout the United States in order to disseminate information when a law enforcement officer is seriously injured or killed in the line of duty, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 365

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. SHORT TITLE.

This Act may be cited as the “National Blue Alert Act of 2012”.

### SEC. 2. DEFINITIONS.

In this Act:

(1) **COORDINATOR.**—The term “Coordinator” means the Blue Alert Coordinator of the Department of Justice designated under section 4(a).

(2) **BLUE ALERT.**—The term “Blue Alert” means information relating to the serious injury or death of a law enforcement officer in the line of duty sent through the network.

(3) **BLUE ALERT PLAN.**—The term “Blue Alert plan” means the plan of a State, unit of local government, or Federal agency participating in the network for the dissemination of information received as a Blue Alert.

(4) **LAW ENFORCEMENT OFFICER.**—The term “law enforcement officer” shall have the same meaning as in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(6)).

(5) **NETWORK.**—The term “network” means the Blue Alert communications network established by the Attorney General under section 3.

(6) **STATE.**—The term “State” means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

### SEC. 3. BLUE ALERT COMMUNICATIONS NETWORK.

The Attorney General shall establish a national Blue Alert communications network within the Department of Justice to issue Blue Alerts through the initiation, facilitation, and promotion of Blue Alert plans, in coordination with States, units of local government, law enforcement agencies, and other appropriate entities.

### SEC. 4. BLUE ALERT COORDINATOR; GUIDELINES.

(a) **COORDINATION WITHIN DEPARTMENT OF JUSTICE.**—The Attorney General shall assign an existing officer of the Department of Justice to act as the national coordinator of the Blue Alert communications network.

(b) **DUTIES OF THE COORDINATOR.**—The Coordinator shall—

(1) provide assistance to States and units of local government that are using Blue Alert plans;

(2) establish voluntary guidelines for States and units of local government to use in developing Blue Alert plans that will promote compatible and integrated Blue Alert plans throughout the United States, including—

(A) a list of the resources necessary to establish a Blue Alert plan;

(B) criteria for evaluating whether a situation warrants issuing a Blue Alert;

(C) guidelines to protect the privacy, dignity, independence, and autonomy of any law enforcement officer who may be the subject of a Blue Alert and the family of the law enforcement officer;

(D) guidelines that a Blue Alert should only be issued with respect to a law enforcement officer if—

(i) the law enforcement agency involved—

(I) confirms—

(aa) the death or serious injury of the law enforcement officer; or

(bb) the attack on the law enforcement officer and that there is an indication of the death or serious injury of the officer; or

(II) concludes that the law enforcement officer is missing in the line of duty;

(ii) there is an indication of serious injury to or death of the law enforcement officer;

(iii) the suspect involved has not been apprehended; and

(iv) there is sufficient descriptive information of the suspect involved and any relevant vehicle and tag numbers;

(E) guidelines—

(i) that information relating to a law enforcement officer who is seriously injured or

killed in the line of duty should be provided to the National Crime Information Center database operated by the Federal Bureau of Investigation under section 534 of title 28, United States Code, and any relevant crime information repository of the State involved;

(ii) that a Blue Alert should, to the maximum extent practicable (as determined by the Coordinator in consultation with law enforcement agencies of States and units of local governments), be limited to the geographic areas most likely to facilitate the apprehension of the suspect involved or which the suspect could reasonably reach, which should not be limited to State lines;

(iii) for law enforcement agencies of States or units of local government to develop plans to communicate information to neighboring States to provide for seamless communication of a Blue Alert; and

(iv) providing that a Blue Alert should be suspended when the suspect involved is apprehended or when the law enforcement agency involved determines that the Blue Alert is no longer effective; and

(F) guidelines for—

(i) the issuance of Blue Alerts through the network; and

(ii) the extent of the dissemination of alerts issued through the network;

(3) develop protocols for efforts to apprehend suspects that address activities during the period beginning at the time of the initial notification of a law enforcement agency that a suspect has not been apprehended and ending at the time of apprehension of a suspect or when the law enforcement agency involved determines that the Blue Alert is no longer effective, including protocols regulating—

(A) the use of public safety communications;

(B) command center operations; and

(C) incident review, evaluation, debriefing, and public information procedures;

(4) work with States to ensure appropriate regional coordination of various elements of the network;

(5) establish an advisory group to assist States, units of local government, law enforcement agencies, and other entities involved in the network with initiating, facilitating, and promoting Blue Alert plans, which shall include—

(A) to the maximum extent practicable, representation from the various geographic regions of the United States; and

(B) members who are—

(i) representatives of a law enforcement organization representing rank-and-file officers;

(ii) representatives of other law enforcement agencies and public safety communications;

(iii) broadcasters, first responders, dispatchers, and radio station personnel; and

(iv) representatives of any other individuals or organizations that the Coordinator determines are necessary to the success of the network;

(6) act as the nationwide point of contact for—

(A) the development of the network; and

(B) regional coordination of Blue Alerts through the network; and

(7) determine—

(A) what procedures and practices are in use for notifying law enforcement and the public when a law enforcement officer is killed or seriously injured in the line of duty; and

(B) which of the procedures and practices are effective and that do not require the expenditure of additional resources to implement.

(c) **LIMITATIONS.**—