



## Summary of the Secure Our Borders First Act

The insecurity of our border is a national security issue. In Fiscal Year 2014, the Border Patrol apprehended nearly 500,000 individuals who illegally crossed the southern border of the United States.<sup>1</sup> That's just who the Border Patrol stopped. There are currently no means to determine how many individuals the Border Patrol was not able to apprehend, or what they brought with them. Marine Corps Gen. John Kelly, commander of the U.S. Southern Command, has warned that terrorist organizations could easily leverage drug and human smuggling routes to move operatives or military weapons into the United States.<sup>2</sup>

H.R. 399, *the Secure Our Borders First Act* addresses the border security problem by providing the administration with prescriptive measures from Congress on how to secure the border and enforcing penalties on the Department of Homeland Security (DHS) political appointees if the terms of the bill are not met.

The bill passed the House Committee on Homeland Security on January 21, 2015.

Specifically, the *Secure Our Borders First Act*:

### ***Operational Control***

- Requires DHS to achieve “Operational Control” of the high traffic areas (those with significant illicit traffic) of the southern border in two years and “Operational Control” along the entire southern border in five years.
  - “Operational Control” is defined in current law as “the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics and other contraband.” (*Secure Fence Act of 2006*)

### ***Technology and Infrastructure***

- Mandates specific fencing and infrastructure requirements, specifically, the construction of 48 new miles of double layered fence to complete the 700 miles required under current law; the replacement of all 66 miles of landing mat fence with robust pedestrian fencing; and the construction of 415 miles of access roads, new boat ramps and access gates.
- Requires a deployment of 19 specified technological capabilities in each Border Patrol sector along the southern border of the United States and adjacent maritime regions.
  - Considers the geography, threats and challenges of each sector to ensure the most efficient and effective deployment of resources.
  - Includes the use of Department of Defense (DoD) excess wartime equipment such as aerostats.
- Requires Customs and Border Protection’s (CBP) Office of Air and Marine to fly a minimum of 130,000 annual flight hours – the office only logged 90,704 flight hours last year – and to operate Unmanned Aerial Vehicles (UAVs) at least 16 hours per day, seven days per week.

<sup>1</sup> U.S. Border Patrol Monthly Apprehensions (FY 2000 - FY 2014): <http://www.cbp.gov/newsroom/media-resources/stats>

<sup>2</sup> Feb. 26, 2014 Testimony of General John F. Kelly, USMC, Commander, U.S. Southern Command before U.S. House Armed Services Committee: <http://docs.house.gov/meetings/AS/AS00/20140226/101782/HHRG-113-AS00-Wstate-KellyUSMCJ-20140226.pdf>

### ***Metrics***

- Requires DHS to submit 28 different metrics, broken down by area of the border, to measure border security.
  - These include: an illegal border crossing effectiveness rate, a probability of detection measure, an illicit drugs seizure rate, estimates of the impact of the Border Patrol's Consequence Delivery System on the rate of recidivism, an inadmissible border crossing rate, a cocaine seizure effectiveness rate in the principal transit zones and a response rate which measures DHS's ability to respond to and resolve known maritime threats.
  - In order to ensure that the metrics are not altered in any way, the political appointees of DHS and the president are prohibited from amending or reviewing these metrics.

### ***Noncompliance Penalties***

- If operational control is not achieved by the timelines outlined in the bill, penalties are placed on political appointees within DHS. These include:
  - Prohibition on travel using government aircraft;
  - Prohibition on non-essential training/conferences; and
  - Prohibition on bonus pay/bonuses/raises.

### ***Department of Defense and National Guard***

- Authorizes the use of DoD aviation assets to assist the Border Patrol to achieve operational control until DHS can acquire additional aviation capability.
- Authorizes up to \$35,000,000 per year to reimburse states for National Guard missions performed in support of securing the border.
- Prioritizes border security agencies to receive transfers of excess DoD wartime equipment.

### ***Border Patrol Flexibility***

- Allows Border Patrol access to federal lands on the border
- Grants the chief of the Border Patrol the flexibility to relocate technology and resources, as well as transfer Border Patrol agents on a voluntarily basis, to the highest traffic areas to immediately confront changing threats.

### ***Illegal Crossing Penalties***

- Requires the chief of the Border Patrol to deliver a penalty to every alien that crosses the border illegally.

### ***Independent Certification Board***

- Establishes an independent Border Security Verification Commission (BSVC) to certify the accuracy of the submissions by DHS on whether or not the mandates of the legislation are achieved. The BSVC will be comprised of five border security professionals and will serve as a check on this administration. This bill takes certification out of the hands of the department. Members of the commission:
  - Must have five years of law enforcement or border security experience; and
  - Recommended by House and Senate leadership.

### ***Grants***

- Doubles the authorization for Operation Stonegarden grants that local law enforcement agencies use to assist DHS to secure the border.

### ***Biometric Exit***

- Requires the Secretary of Homeland Security to implement biometric exit at the nation's air, land and sea ports of entry within two years at the busiest ports of entry and within five years at all ports of entry.