



## **Border Security for America Act of 2017: Section-by-Section Summary**

Rep. Michael McCaul (R - Texas) introduced the Border Security for America Act of 2017 ([H.R. 3548](#)) in the U.S. House of Representatives on July 28, 2017 with [44 original Republican co-sponsors](#). The bill expands border security in the United States through the construction of physical barriers along the southern border, investment in border technology and ports of entry, and expansion of the number of Border Patrol agents and Office of Field Operations (OFO) officers in the country. This document provides a summary and analysis of the bill's main provisions.

### **TITLE I – Border Security**

#### **Subtitle I – Infrastructure and Equipment**

- **Physical Barriers and Technology Along the Border.** The bill requires the Secretary of the Department of Homeland Security (DHS) to “construct, install, deploy, operate, and maintain...the most practical and effective tactical infrastructure ...[and] technology available” along the United States border to achieve situational awareness and operational control of the border by January 20, 2021.

The term tactical infrastructure includes “physical barriers,” including fencing, a border wall system and levee walls. In fact, the bill amends Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) by striking the word “fencing” and inserting the term “physical barriers.” The bill also authorizes the DHS Secretary to “waive all legal requirements the Secretary...determines necessary to ensure the expeditious construction, installation, operation, and maintenance of the tactical infrastructure and technology” at the border upon publication of the Secretary’s decision in the Federal Register. (*Section 102*)

Analysis: In 2011, the Border Patrol [identified](#) a total of 652 miles of the southern border as operationally necessary for fencing and barriers to secure the border. By 2015, the United States had [built](#) border fencing along 653 miles of the southern border, including 353 miles of primary pedestrian fencing, 300 miles of vehicle fencing, 36 miles of secondary fencing behind the primary pedestrian fencing and 14 miles of tertiary pedestrian fencing behind the secondary fence. The cost of building a wall along the southern border is [expected to range](#) from \$21.6 billion to \$31.2 billion, not including the cost of maintaining the wall and other physical barriers over the years.

Congress should provide funding to build a fence in the southern border only where the use or placement of such a barrier is the most appropriate solution. Constructing a wall or fence along the entire 2,000 miles of the southern border region is not cost effective.

Instead, Congress should prioritize CBP’s use of modern technology to build a virtual fence in areas on the southern border where necessary and in which a physical barrier is not the most appropriate solution to secure the border.

- **Air and Marine Operations Flight Hours.** The bill directs the DHS Secretary to increase the annual flight hours of U.S. Customs and Border Protection (CBP)’s Air and

Marine Operations to at least 95,000 flight hours per year and requires the unmanned aerial systems to operate at least 24 hours per day for five days a week. (*Section 103*)

- **Border Patrol Infrastructure.** The bill directs the DHS Secretary to upgrade or construct additional Border Patrol stations, checkpoints, mobile command centers and other necessary facilities. The bill also deploys specific technology capabilities to each sector or region of the southern and northern borders (*Sections 104 and 105*)
- **Border Patrol Activities and Forward Operating Bases.** The bill requires the Chief of the Border Patrol to direct agents of the Border Patrol to position themselves as close to the border as possible. The bill also instructs the DHS Secretary to upgrade existing forward operating bases of the Border Patrol. (*Sections 106 and 107*)

Analysis: Requiring the Chief of the Border Patrol to direct agents to situate themselves as close to the border as possible may reduce reliance on Border Patrol checkpoints located many miles from the border. Some members of Congress [oppose the current placement of these checkpoints as ineffective](#). They argue that more resources should be put as close to the border as possible, not miles into the U.S.

The forward operating bases of the Border Patrol are permanent facilities established in strategic or remote locations to provide the Border Patrol with a tactical advantage by reducing the response time to threats or actionable intelligence. A DHS Office of the Inspector General (OIG) [report](#) found that one base had security issues, health concerns, and inadequate living conditions and that CBP was not performing all required inspections or adequately documenting maintenance and repairs. CBP must ensure it can provide adequate security and living conditions for its personnel working at these facilities.

- **Border Security Technology Program Management.** The bill directs the DHS Secretary to document the approved baseline, cost, schedule and performance thresholds of major border security technology acquisitions programs that have a life-cycle cost of \$300 million or more. (*Section 108*)
- **National Guard Assistance to Secure the Border.** The bill permits the DHS Secretary or the Governor of a State to order units of the National Guard to assist CBP in securing the border. The DHS Secretary and State Governors must receive prior approval from the Secretary of Defense to use the National Guard. The National Guard's operations and missions would include constructing reinforced fencing or other barriers along the border, constructing checkpoints and conducting surveillance, among other activities. The bill also allows the Department of Defense (DoD) to reimburse up to \$35 million a year to border states for the cost of deploying National Guard units to secure the border. (*Section 109*)

Analysis: The National Guard has been deployed to secure the southern border before. Presidents Bush and Obama both deployed and eventually withdrew the National Guard from the border. According to a Government Accountability Office [report](#), morale in the National Guard suffered and concern arose that if the Guard's tour were extended, it would hurt recruitment. In addition, the State Department worried about harming relations with Mexico because it "could create a perception of a militarized U.S. border with Mexico." In 2014, Governor Rick Perry (R-Texas) deployed about 1,000 members of the Texas National Guard to the state's southern border. By 2017, the number of guardsmen

stationed along the Texas-Mexico border had [decreased](#) to about 100 guardsmen amid [questions](#) about the effectiveness and cost of Texas' border operation.

The decision to begin new National Guard deployments would come at a time when border crossings have dipped to record low levels. From 2000 to 2016, apprehensions of undocumented immigrants crossing the border [dipped](#) from 1.7 million to about 415,000, rendering the use of the National Guard questionable.

- **Operation Phalanx.** The bill reauthorizes Operation Phalanx, which allows the Defense Secretary to provide assistance to CBP to secure the southern border by deploying DoD manned aircraft, unmanned aerial surveillance systems and ground-based surveillance systems to support surveillance of the southern border. The bill authorizes up to \$75 million to provide assistance under this section. (*Section 110*)
- **Merida Initiative.** The bill expresses a sense of Congress that assistance to Mexico should focus in part on providing enhanced border security and judicial reform. The bill also directs the Secretary of the State Department to provide assistance to Mexico to build a modern border security system to prevent illegal immigration, among other initiatives. (*Section 111*)
- **Access to Public Lands.** The bill prohibits impeding, prohibiting or restricting CBP activities on federal lands to prevent unlawful entries into the U.S. and waives certain laws to permit the construction of tactical infrastructure, including physical barriers (such as fencing, a border wall system and levee walls.), and border technology described in Section 102 in public lands. (*Section 112*)
- **National Border Security Advisory Committee.** The bill establishes a National Border Security Advisory Committee to consult with and make recommendations to the DHS Secretary on border security matters. The committee must include at least one member from each state who has five years of practical experience in border security operations and lives and works within 80 miles from the border. The bill's language is unclear if the committee will consist of members from all 50 states or just southern and northern border states. (*Section 113*)
- **Eradicating Carrizo Cane and Salt Cedar.** The bill directs the DHS Secretary to begin eradicating the Carrizo Cane and Salt Cedar along the Rio Grande before January 20, 2021. (*Section 114*)

Analysis: Eradicating the invasive and nonnative Carrizo Cane and Salt Cedar plants along the Rio Grande River in Texas would [provide](#) the Border Patrol with greater visibility and access to the Rio Grande. Visibility allows Border Patrol agents to do their jobs and maintain their safety. Currently, the density of the Carrizo Cane and Salt Cedar plants allows the plants to become a hiding place for immigrants and criminals who unlawfully enter the U.S. and, in that process, makes the Border Patrol and other law enforcement agents vulnerable to criminal groups. These plants, which cover between 30,000 and 60,000 acres, must be removed from the riverbanks and re-populated with native prairie grasses that have limited growth potential and can be easily and economically maintained. Estimates [indicate](#) that the total cost to remove up to 60,000 acres of cane would be approximately \$17.1 million. Providing Border Patrol agents with greater access and visibility by removing these plants is a thoughtful and effective policy that improves border

management in areas where building a fence or other physical barriers are not operationally necessary.

- **Southwest Border Threat Analysis.** The bill requires the DHS Secretary to develop a threat analysis that assesses current and potential terrorism and criminal threats posed by individuals seeking to unlawfully enter the U.S. through the southern border and improvements needed at and between ports of entry to secure the border. The bill also requires the Border Patrol to submit a report that, among other information, includes staffing requirements for all departmental border security functions, assessment of training programs (including use of force and identifying vulnerable populations) and an assessment of how border security operations affect border crossing times. (*Section 115*)

## **SUBTITLE II A – Personnel**

- **Additional CBP Personnel.** The bill requires the CBP Commissioner to maintain an active duty presence of at least 26,370 Border Patrol agents, which is 5,000 more Border Patrol agents than today's required active duty presence of 21,370 Border Patrol agents. The bill also requires CBP to maintain an active duty presence of at least 27,725 OFO officers at ports of entry, which is about 4,000 additional OFO officers from today's required active duty presence of 23,375 OFO officers. In addition, the bill provides retention incentives for CBP employees assigned to remote or hard-to-fill locations. (*Sections 131 and 132*)

Analysis: We must carefully examine whether spending money to hire and station more Border Patrol agents along our country's borders is the most effective investment to secure our borders. While staffing for the Border Patrol [nearly doubled](#) between FY 2004 and FY 2014 (increasing from 10,819 to 19,828), CBP OFO staffing at ports of entry increased less than 25 percent during this period (from 18,110 to 22,274). The Border Patrol's budget also increased from slightly more than \$1 billion in FY 2000 to almost \$3.6 billion in FY 2016, or about 245 percent in fifteen years. As the Border Patrol's budget expanded, the amount spent by the Border Patrol per apprehension at the border increased almost 1,300 percent from \$630 per migrant in FY 2000 to over \$8,760 per migrant in FY 2016.

Meanwhile, the average annual number of apprehensions for each Border Patrol agent dropped from 182 in FY 2000 to just less than 21 in FY 2016. Investments to increase personnel levels at ports of entry can help better manage the flow of commerce and immigrants through our borders, as well as stop the flow illicit drug and human trafficking through ports of entry. Through FY 2014, CBP OFO [identified a shortage](#) of 3,811 OFO officers to effectively manage ports of entry (CBP OFO currently has 1,046 unfilled officer positions and needs additional officers on top of today's required active duty presence to effectively operate ports of entry). The magnitude of the shortage is amplified by the fact that [adding a single CBP OFO officer](#) to a port of entry would result in annual benefits of a \$2 million increase in our country's Gross Domestic Product (GDP), \$640,000 saved in opportunity costs, and 33 jobs added to the economy.

- **Polygraph Waiver.** Adds the [Anti-Border Corruption Reauthorization Act](#) to the bill, which permits the CBP Commissioner to waive the polygraph requirement for certain Federal, state or local law enforcement officers and for members of the Armed Forces or veterans, if they meet certain requirements, when applying for a position at CBP. (*Section 133*)

## **SUBTITLE II B – Grants**

- **Operation Stonegarden.** The bill authorizes \$110 million through the Operation Stonegarden program for each of the fiscal years 2018 to 2021 to increase collaboration between CBP and state and local law enforcement entities to support border security operations. *(Section 141)*

Analysis: Operation Stonegarden is [a program administered](#) by the Federal Emergency Management Agency (FEMA), a component of DHS, to provide funding to state, local and tribal law enforcement agencies to enhance their ability to “jointly secure U.S. borders and territories.” Previous investigations of Operation Stonegarden indicate that not all funds are used for enhancing border security. An investigation by ABC-7’s New Mexico Mobile Newsroom [found](#) that funding was being spent on fuel for shifts of absent deputies or to work town events. In addition, an audit of the Dona Ana County Sherriff’s Office in New Mexico [found](#) a lack of internal controls that allowed upper management to consume about 30 percent of the grant’s resources for county activities. The lack of a clear mission for the program has historically contributed to the misuse of taxpayer funds.

## **SUBTITLE II C – Authorization of Appropriations**

- **Authorization of Appropriations.** Authorizes \$2.5 billion for each of the fiscal years 2018 to 2021 (a total of \$10 billion over four years) to cover the costs for implementing the bill’s provisions. *(Section 151)*

## **TITLE II – Emergency Port of Entry Personnel and Infrastructure Funding**

- **Port of Entry Infrastructure.** The bill authorizes the DHS Secretary to construct new ports of entry along the southern and northern borders. The bill also requires the DHS Secretary to expand the primary and secondary inspection lanes for vehicle, cargo and pedestrian lanes at the top ten highest-volume ports of entry at the southern border by September 30, 2021. *(Section 201)*

Analysis: Investing in infrastructure at our ports of entry is important to keep pace with increasing demand and security requirements. The revenue gained from trade at the border generates jobs for Americans – in fact, nearly six million American jobs [depend directly on trade](#) with Mexico. Yet, wait times to cross the border are often long, regularly reaching up to an hour, which can detract from commerce and lead to billions of dollars in spoiled goods and opportunity cost.

- **Biometric Exit Data System.** The bill directs the DHS Secretary to submit an implementation plan within 180 days of the bill’s enactment to establish a biometric exit data system. The plan must include a master schedule and cost estimate, as well as input from private sector stakeholders. Within 18 months of the bill’s enactment, the DHS Secretary must set up six-month biometric exit pilot programs. Within two years of the bill’s enactment, CBP must establish a biometric exit system at the 15 airports, 15 sea ports and 15 land ports that support the highest volume of crossings. *(Section 205)*

Analysis: While the government now collects biometric data on individuals entering the U.S., DHS has yet to implement a biometric exit system, which has been mandated by federal law since the aftermath of the terrorist attacks in 2001.

- **Authorization of Appropriations.** Authorizes \$1 billion for each of fiscal years 2018 through 2021 to carry out all of the provisions of Title II. (*Section 207*)