

117TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 117-215

DHS ILLICIT CROSS-BORDER TUNNEL
DEFENSE ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

H.R. 4209

TO SUPPORT REMEDIATION OF ILLICIT CROSS-BORDER
TUNNELS, AND FOR OTHER PURPOSES



NOVEMBER 28, 2022.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

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DHS ILLICIT CROSS-BORDER TUNNEL DEFENSE ACT

NOVEMBER 28, 2022.—Ordered to be printed

Mr. PETERS, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany H.R. 4209]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (H.R. 4209) to support remediation of illicit cross-border tunnels, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

H.R. 4209, the *DHS Illicit Cross-Border Tunnel Defense Act*, requires that the Commissioner of U.S. Customs and Border Protection (CBP), in coordination with the Department of Homeland Security (DHS) Under Secretary of Science and Technology and other DHS officials, as appropriate, develop a strategic plan to counter illicit cross-border tunnel operations within 180 days of enactment of the bill. The strategic plan is required to include, among other things, risk-based criteria for tunnel identification and remediation and an assessment of resource needs to address counter tunnel technology and staffing, such as personnel with specialized skills, such as geology and mapping. The bill also requires the CBP Com-

missioner to provide a report to Congress on the implementation of this strategic plan. Finally, the bill authorizes \$1 million in appropriations for each of fiscal years 2023 and 2024 to the Commissioner of CBP to develop the strategic plan and carry out the tunnel identification and remediation efforts described in the plan.

II. BACKGROUND AND NEED FOR THE LEGISLATION

Cross-border tunnels—man-made sub-surface passageways that are used to conceal the movement of people or contraband and circumvent U.S. border controls—have long been a threat to U.S. border security.¹ Since the U.S. Border Patrol (Border Patrol) discovered the first cross-border tunnel in Douglas, Arizona in 1990, law enforcement officials have since discovered over 200 tunnels located primarily along the western half of the southwest border of the United States.² In recent years, transnational criminal organizations have built more sophisticated cross-border tunnels.³ For example, in January 2020, DHS encountered the longest cross-border tunnel ever discovered near the Otay Mesa Port of Entry in California that was over three-quarters of a mile long and had ventilation, drainage, rail, and elevator systems.⁴ While transnational criminal organizations use cross-border tunnels to smuggle people, contraband, currency, and weapons, the primary use of tunnels has been to smuggle drugs, including synthetic opioids such as illicitly manufactured fentanyl, further contributing to the current drug epidemic that has claimed hundreds of thousands of lives in the United States.⁵

DHS plays an important role in countering illicit cross-border tunnels. DHS's CBP is responsible for safeguarding the borders of the United States from illicit activity—such as drug smuggling through cross-border tunnels.⁶ CBP is also responsible for tunnel interdiction through Border Patrol, as well as tunnel remediation.⁷ In 2013, CBP established a Tunnel Program Management Office within Border Patrol to lead and coordinate CBP's counter tunnel efforts following a DHS Office of Inspector General audit that iden-

¹Department of Homeland Security, Office of Inspector General, *CBP Has Improved Southwest Border Technology, but Significant Challenges Remain* (OIG-21-21) (Feb. 2021) and Government Accountability Office, *Border Security: Additional Actions Could Strengthen DHS Efforts to Address Subterranean, Aerial, and Maritime Smuggling* (GAO-17-474) (May 2017).

²The White House, Executive Office of the President, Office of National Drug Control Policy, *National Drug Control Strategy Southwest Border Counternarcotics Strategy* (2022) and House Committee on Homeland Security, Subcommittee on Border and Maritime Security, Testimony Submitted for the Record of Paul Beeson, Director of Department of Homeland Security Joint Task Force—West, U.S. Customs and Border Protection, *Hearing on A Dangerous and Sophisticated Adversary: The Threat to the Homeland Posed by Cartel Operations*, 115th Cong. (Feb. 16, 2017).

³House Committee on Homeland Security, Subcommittee on Border and Maritime Security, Testimony Submitted for the Record of Paul Beeson, Director of Department of Homeland Security Joint Task Force—West, U.S. Customs and Border Protection, *Hearing on A Dangerous and Sophisticated Adversary: The Threat to the Homeland Posed by Cartel Operations*, 115th Cong. (Feb. 16, 2017).

⁴U.S. Customs and Border Protection, *Longest Cross-Border Tunnel Discovered in San Diego* (Jan. 1, 2020) (www.cbp.gov/newsroom/local-media-release/longest-cross-border-tunnel-discovered-san-diego).

⁵The White House, Executive Office of the President, Office of National Drug Control Policy, *National Drug Control Strategy Southwest Border Counternarcotics Strategy* (2022) and Centers for Disease Control and Prevention, *Drug Overdose Deaths in the U.S. Top 100,000 Annually* (Nov. 17, 2021) (www.cdc.gov/nchs/pressroom/nchs_press_releases/2021/20211117.htm).

⁶U.S. Customs and Border Protection, Home Page (www.cbp.gov/about) (accessed Sept. 26, 2022).

⁷Government Accountability Office, *Border Security: Additional Actions Could Strengthen DHS Efforts to Address Subterranean, Aerial, and Maritime Smuggling* (GAO-17-474) (May 2017).

tified a gap in CBP’s ability to detect tunnels.⁸ DHS’s Science and Technology Directorate—the research and development arm of the department—is responsible for assisting CBP in obtaining the technology it needs to counter cross-border tunnels.⁹ U.S. Immigration and Customs Enforcement’s Homeland Security Investigations—the principal investigative component of DHS—is responsible for investigating, disrupting, and dismantling the transnational criminal organizations responsible for cross-border tunnels.¹⁰ In addition, DHS participates in a variety of task forces and partnerships with other federal and state law enforcement agencies to counter cross-border tunnels.

In recent years, CBP has received funding to test and acquire technologies that can predict tunnel locations, detect and project the path of tunnels, and confirm a tunnel’s existence and location through mapping and measurements.¹¹ H.R. 4209 requires that the Commissioner of CBP, in coordination with the Under Secretary of Science and Technology and other DHS officials as appropriate, develop a counter illicit cross-border tunnel operations strategic plan within 180 days. The strategic plan must include, among other things, risk-based criteria to prioritize tunnel identification and remediation and identification of innovative technologies that limit impacts on local communities. It must also include a needs assessment that addresses counter tunnel technology and staffing, such as personnel with specialized skills, including geology and mapping.¹² The bill requires the CBP Commissioner provide a report to Congress on the implementation of this strategic plan. Finally, the bill authorizes \$1 million in appropriations for each of fiscal years 2023 and 2024 to the Commissioner of CBP to develop the strategic plan and carry out the tunnel identification and remediation efforts described in the plan.

III. LEGISLATIVE HISTORY

H.R. 4209 was introduced by Representative August Pfluger (R–TX) on June 28, 2021 with Representative Debbie Lesko (R–AZ). The bill was referred to the Committee on Homeland Security. Representatives Elissa Slotkin (D–MI) and Jared Golden (D–ME) joined as cosponsors on January 6, 2022. Representative Young Kim (R–CA) joined as a cosponsor on February 11, 2022 and Representative Jaime Herrera Beutler (R–WA) joined as a cosponsor on February 18, 2022. On July 28, 2021, the House Committee on Homeland Security met to consider the bill, and ordered the bill, as amended, reported favorably to the House by voice vote. The bill was agreed to by voice vote in the House of Representatives under

⁸ Department of Homeland Security, Office of Inspector General, *CBP’s Strategy to Address Illicit Cross-Border Tunnels* (OIG–12–132) (Sept. 2012).

⁹ Department of Homeland Security Science and Technology, About S&T (www.dhs.gov/science-and-technology/about-st) (accessed Sept. 26, 2022) and Government Accountability Office, *Border Security: Additional Actions Could Strengthen DHS Efforts to Address Subterranean, Aerial, and Maritime Smuggling* (GAO–17–474) (May 2017).

¹⁰ U.S. Department of Homeland Security U.S. Immigration and Customs Enforcement, About Homeland Security Investigations (www.ice.gov/about-ice/homeland-security-investigations) (accessed Sept. 26, 2022) and Government Accountability Office, *Border Security: Additional Actions Could Strengthen DHS Efforts to Address Subterranean, Aerial, and Maritime Smuggling* (GAO–17–474) (May 2017).

¹¹ House Committee on Appropriations, *Joint Explanatory Statement—Division F to the Consolidated Appropriations Act of 2022* (Mar. 2022).

¹² Email from Daniel Schroeder, Deputy Director, U.S. Customs and Border Protection Office of Congressional Affairs, Homeland Security and Governmental Affairs Committee Staff (Oct. 25, 2022).

suspension of the rules on April 5, 2022. It was received in the Senate on April 6, 2022 and was referred to the Senate Committee on Homeland Security and Governmental Affairs.

The Committee considered H.R. 4209 at a business meeting on September 28, 2022. The bill was ordered reported favorably by voice vote *en bloc*. Senators Peters, Carper, Hassan, Sinema, Rosen, Padilla, Ossoff, Portman, Paul, Johnson, Lankford, Romney, Scott, and Hawley were present.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section designates the name of the bill as the “DHS Illicit Cross-Border Tunnel Defense Act.”

Section 2. Counter illicit cross-border tunnel operations

Subsection (a) requires that the Commissioner of CBP, in coordination with the Under Secretary of Science and Technology and other DHS officials, as appropriate, to develop a strategic plan to counter illicit cross-border tunnel operations no later than 180 days after enactment of the bill. The strategic plan is to include risk-based criteria to prioritize tunnel identification and remediation; identification of innovative technologies to locate and remediate tunnels that limit the impacts on local communities; information sharing processes; and indicators of specific types of illicit cross-border tunnels—by Border Patrol sector—that are to be periodically shared with sector officials. The strategic plan is also required to include a counter illicit cross-border tunnel operations resource needs assessment that addresses technology and staffing. Specifically related to staffing, it should include position descriptions, specialized skills, and the number of personnel by Border Patrol sector needed to counter illicit cross-border tunnel operations.

In addition, subsection (a) requires that the CBP Commissioner submit a report to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate on the implementation of the strategic plan within one year of its development.

Subsection (b) authorizes \$1 million in appropriations for each of fiscal years 2023 and 2024 to the Commissioner of CBP to carry out the development of the strategic plan described in subsection (a) and remediation operations of illicit cross-border tunnels in accordance with the plan.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 20, 2022.

Hon. GARY C. PETERS,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4209, the DHS Illicit Cross-Border Tunnel Defense Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Margot Berman.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 4209, DHS Illicit Cross-Border Tunnel Defense Act			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on September 28, 2022			
By Fiscal Year, Millions of Dollars	2023	2023-2027	2023-2032
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	1	2	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2033?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

H.R. 4209 would require Customs and Border Protection (CBP) in the Department of Homeland Security (DHS) to develop a strategic plan for identifying and remediating cross-border tunnels into the United States within 180 days of the act's enactment. The plan would include ways of using technology and sharing information to identify and block tunnels as well as an assessment of staffing needs. The act would require CBP to submit a report on implementation to the Congress one year after the development of the plan.

H.R. 4209 would authorize the appropriation of \$1 million for each of fiscal years 2023 and 2024 for CBP to develop the strategic plan and carry out tunnel remediation operations. Using historical patterns of spending for similar programs and assuming appropriation of the authorized amounts, CBO estimates CBP would spend \$2 million over the 2023–2027 period to implement the act.

H.R. 4209 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On November 5, 2021, CBO transmitted a cost estimate for H.R. 4209, the DHS Illicit Cross-Border Tunnel Defense Act, as ordered

reported by the House Committee on Homeland Security on July 28, 2021. The pieces of legislation are similar, and CBO's estimates of their budgetary effects are similar.

The CBO staff contact for this estimate is Margot Berman. The estimate was reviewed by Leo Lex, Deputy Director of Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation would make no change in existing law, within the meaning of clauses (a) and (b) of subparagraph 12 of rule XXVI of the Standing Rules of the Senate, because this legislation would not repeal or amend any provision of current law.

