



Jon Kyl, Chairman

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No. 56

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H.R. 6061 – Secure Fence Act of 2006

Calendar No. 615

H.R. 6061 was read the second time, and placed on the Senate Calendar on September 15, 2006.

Noteworthy

- Cloture was invoked on the motion to proceed to H.R. 6061 by a vote of 94 to 0.
- The bill would authorize approximately 700 miles of double-layered fencing *at specified locations* along the almost 2,000-mile southwest U.S. international border with Mexico (see map on page 4).
- The bill also would require the Secretary of Homeland Security, within 18 months of enactment, to take all appropriate actions to achieve operational control over all U.S. international land and maritime borders.
- On August 2, during Senate consideration of H.R. 5631, the Department of Defense appropriations bill, Senators Sessions and Kyl offered an amendment (#4775) providing \$1.829 billion in emergency funding for the National Guard to construct 370 miles of triple- and double-layered border fencing and 461 miles of vehicle barriers (at unspecified locations) within two years. *The amendment passed 94-3.* (See recorded vote No. 220). That bill is currently pending in a House-Senate conference.
- Another amendment, passed by a vote of 83-16, was made to S. 2611, the Comprehensive Immigration Reform Act of 2006, to authorize construction of 370 miles of fencing and 500 miles of physical barriers along the southwest border. (See recorded vote No. 126).
- The House of Representatives passed H.R. 6061 on September 14, by a vote of 283-138 (1 present).

Background

Current Barriers on the Land Borders

The land border with Mexico is almost 2,000 miles long and the land border with Canada is 4,000 miles long (excluding the mostly impassable land border with Alaska). The Rio Grande

River provides a natural barrier with Mexico; however, each year *over 1 million unauthorized aliens are interdicted entering the country mostly on the southwest border*. Testimony by the Border Patrol union chief places the estimate of illegal entrants *not interdicted* by Border Patrol to be two times those actually caught.¹ U.S. Citizenship & Immigration Services (USCIS) estimated that, during the last decade, the illegal alien population increased by 350,000 people a year.

Of those illegal immigrants who entered the U.S. in 1999, 500,000 are estimated to be Mexican nationals, 225,000 were estimated to be Central American nationals, and 30,000 to 40,000 were smuggled in from Asia. Worldwide, the United Nations estimates that 4 million people are smuggled annually, amounting to a \$7 billion enterprise (U.S. government estimates reach \$9.5 billion).

Currently, there are 75 miles of fence and about 55 miles of vehicle barriers. Probably the most well known border fence runs along the border area near San Diego and Tijuana. It is 14 miles long and starts from the Pacific Ocean leading to a mountainous region. It was constructed of 10-foot-high welded steel and later became a triple-layered fence with Border Patrol roads running in-between; however, the fence was never fully completed due to environmental-related litigation. *The Government Accountability Office has reported, in report GAO-95-30, that the San Diego fence actually has had a deterrent effect*. In FY1996, there were 480,000 apprehensions in the San Diego sector, compared to 100,000 apprehensions in FY2002.²

Border Patrol

The Border Patrol patrols over 8,000 miles of American international borders with Mexico and Canada and the coastal waters around Florida and Puerto Rico. In addition, Customs & Border Protection (CBP) assigns resources to and is responsible for another approximately 2,000 miles of coastal border. There are approximately 1,000 agents stationed along the Northern Border and approximately 10,000 stationed along the southwest border. At eight-hour shifts, this approximates to one agent for every 12 miles in the northern border, and with both borders together, 1.67 miles per agent on an eight-hour shift. This average does not discount for a small amount stationed in the coastal sectors of New Orleans, Miami and Ramey, Puerto Rico. Further, these figures are conservative when examining the actual enforcement coverage, since this assumes that all agents are working along all external border areas all of the time (many are supervisors, or chasing smugglers, and some are employed at road blocks and inspection stations).

Before 9/11, border security was the responsibility of different agencies, including the Immigration and Naturalization Service, the Customs Service, the Department of Agriculture's Animal and Plant Health Inspection Service, and the Coast Guard. These elements have been combined under the Department of Homeland Security.

¹ T.J. Bonner, president of Border Patrol Council, testimony before the House of Representatives, Subcommittee on Immigration, Border Security and Claims, March 3, 2005: "The reason that so many people can easily cross our borders illegally is quite simple: The Border Patrol is overwhelmed by the sheer volume of traffic. Last fiscal year, it apprehended nearly 1.2 million people trying to illegally enter the country. Front-line agents estimate that two to three times that number managed to slip by them."

² See Blas Nunez-Neto and Stephen Vina, Congressional Research Service, RS22026, "Fences Along the U.S. International Border," January 13, 2005.

9/11 Commission Report and the threat of terrorist penetration

The 9/11 Commission report estimated that 500,000 illegal entrants come to the United States each year. It found that “it is elemental to border security to know who is coming into the country. ... We must . . . be able to monitor and respond to entrances between our ports of entry. ... The challenge for national security in an age of terrorism is to prevent the ... people who may pose overwhelming risks from entering ... the U.S. undetected.”¹ The Commission’s staff report on “9/11 and Terrorist Travel” found that “there is also evidence that terrorists used human smugglers to sneak across borders.”² The Department of Homeland Security periodically has reported on the entry of “Special Interest Aliens,” including, from last year 8 from Afghanistan, 6 from Algeria, 13 from Egypt, 20 from Indonesia, 10 from Iran, 55 from Israel, 122 from Pakistan, 6 from Saudi Arabia, 6 from Syria, 22 from Turkey, and 2 from Yemen.

Last year, the nation’s intelligence chiefs testified in Congressional hearings that al-Qaeda and other terrorist groups will vigorously attempt to circumvent American border security and enter the country to perpetrate further terrorism on a scale large than 9/11. Admiral James Loy, former Deputy Secretary of Homeland Security, testified:

“Entrenched human smuggling networks ... in areas beyond our borders can be exploited by terrorist organizations. Recent information ... *strongly suggests that al-Qaeda has considered using the southwest border to infiltrate the United States.* Several al-Qaida leaders believe operatives can pay their way into the country through Mexico and also believe illegal entry is more advantageous than legal entry for operational security reasons. ... [Also,] the long United States–Canada border, often rugged and remote, includes a variety of terrain and waterways, some suitable for illicit border crossings.”

The Director of Central Intelligence testified that “al-Qaeda is intent on finding ways to circumvent U.S. security enhancements to strike Americans and the Homeland.” Navy Vice Admiral Lowell E. Jacoby, Director of the Defense Intelligence Agency, testified “*al-Qaeda’s stated intention to conduct an attack exceeding the destruction of 9/11* raises the possibility that planned attacks may involve unconventional weapons.” Since infiltration is often necessary to conduct a terrorist attack, lax border controls may allow terrorists to achieve that infiltration.

Fences in the Illegal Immigration Reform and Immigrant Responsibility Act

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), P.L. 104-208, provides for the building of 14 miles of border fence in the San Diego sector. The fence was left uncompleted because environmentally-related litigation halted construction. Part B of the Omnibus Appropriations bill of 2005, sec. 102, provided a waiver of any legal grounds to halt the completion of that fence. A provision in H.R. 6061 would replace section 102(b) of IIRIRA, but in mandating a fence, refers to section 101(a) specifying that in implementing the requirements for a fence, the Secretary of Homeland Security “shall take such actions as may be necessary to install

¹ 9-11 Commission Report, pp. 383, 390 (2004).

² 9-11 and Terrorist Travel: Staff Report of the National Commission on Terrorist Attacks Upon the United States, p. 59 (2004).

additional physical barriers and roads ... to deter illegal crossings in areas of high illegal entry into the United States.”

House Action

On September 14, 2006, the House of Representatives passed H.R. 6061, by a recorded vote of 283 - 138, and 1 Present. By a Rules Committee amendment, the bill was not subject to further amendment.

Bill Provisions

The bill requires the Secretary of Homeland Security, within 18 months of enactment, to take all appropriate actions to achieve operational control over U.S. international land and maritime borders. Under the bill, “Operational control” is defined as “the prevention of all unlawful U.S. entries, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.” This includes more effective use of personnel and technology (unmanned aerial vehicles, ground-based sensors, satellites, radar, cameras, and the like) for systematic border surveillance. In addition, the Secretary would be required to upgrade physical infrastructure to prevent illegal entries and create more checkpoints, vehicle barriers, and all-weather access roads. The bill requires the Secretary to provide an annual report to Congress on the progress made towards achieving operational control of the border.



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Section 102(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 would be amended to require the Secretary to provide at least two layers of reinforced fencing (unless the topography of the area has an elevation grade of 10 percent, in which case sensors and barriers can be used), installation of additional physical barriers, roads, lighting, cameras, and sensors extending:

- (1) from 10 miles west of Tecate, California, to 10 miles east of Tecate,
- (2) from 10 miles west of Calexico, California to 5 miles east of Douglas, Arizona,³
- (3) from 5 miles west of Columbus, New Mexico to 10 miles east of El Paso, Texas,
- (4) from 5 miles northwest of Del Rio, Texas to 5 miles southeast of Eagle Pass, Texas,
- and
- (5) from 15 miles northwest of Laredo, Texas to Brownsville, Texas.⁴

³ It also requires installation of an interlocking surveillance camera system by May 30, 2007, and completion of this section of fence by May 30, 2008.

⁴ It requires completion of this section of fence by December 31, 2008.

The Secretary would be required to produce a study for the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Homeland Security, on the need, feasibility, and economic impact of constructing a state-of-the-art infrastructure security system along the northern international land and maritime border of the United States.

The Secretary would also have to report to those Committees with a comparison of the legal authority of U.S. Customs and Border Protection (CBP) (and any possible expansion of such authority) to stop vehicles that enter the United States illegally and disobey orders to stop, to the legal authority that the Coast Guard has to stop fleeing vessels. The Secretary would also have to evaluate whether related CBP training, technology, and equipment allow CBP to make those stops.

Administration Position

At press time, the Administration had not issued a Statement of Administration Policy (SAP) for H.R. 6061.

The Administration supported Senator Sessions' amendment on S. 2611, the Comprehensive Immigration Reform Act of 2006, to construct 370 miles of fencing and 500 miles of physical barriers along the southwest border. That amendment was approved overwhelmingly by a vote of 83-16. (See recorded vote No. 126, and vote analysis on the Senate GOP's Trunkline).

CBO Estimate

At press time, the Congressional Budget Office had not provided an estimate on the cost of H.R. 6061.

Possible Amendments

At press time, there were no indications of what might be offered as amendments to the bill.