

## H.R.2764

### Consolidated Appropriations Act, 2008 (Enrolled as Agreed to or Passed by Both House and Senate)

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#### **BORDER SECURITY FENCING, INFRASTRUCTURE, AND TECHNOLOGY**

For expenses for customs and border protection fencing, infrastructure, and technology, \$1,225,000,000, to remain available until expended: *Provided*, That of the amount provided under this heading, \$1,053,000,000 is designated as described in section 5 (in the matter preceding division A of this consolidated Act): *Provided further*, That of the amount provided under this heading, \$650,000,000 shall not be obligated until the Committees on Appropriations of the Senate and the House of Representatives receive and approve a plan for expenditure, prepared by the Secretary of Homeland Security and submitted within 90 days after the date of enactment of this Act, for a program to establish a security barrier along the borders of the United States of fencing and vehicle barriers, where practicable, and other forms of tactical infrastructure and technology, that includes:

- (1) a detailed accounting of the program's progress to date relative to system capabilities or services, system performance levels, mission benefits and outcomes, milestones, cost targets, program management capabilities, identification of the maximum investment (including lifecycle costs) required by the Secure Border Initiative network or any successor contract, and description of the methodology used to obtain these cost figures;
- (2) a description of how activities will further the objectives of the Secure Border Initiative, as defined in the Secure Border Initiative multi-year strategic plan, and how the plan allocates funding to the highest priority border security needs;
- (3) an explicit plan of action defining how all funds are to be obligated to meet future program commitments, with the planned expenditure of funds linked to the milestone-based delivery of specific capabilities, services, performance levels, mission benefits and outcomes, and program management capabilities;
- (4) an identification of staffing (including full-time equivalents, contractors, and detailees) requirements by activity;
- (5) a description of how the plan addresses security needs at the Northern Border and the ports of entry, including infrastructure, technology, design and operations requirements;
- (6) a report on costs incurred, the activities completed, and the progress made by the program in terms of obtaining operational control of the entire border of the United States;
- (7) a listing of all open Government Accountability Office and Office of Inspector General recommendations related to the program and the status

of Department of Homeland Security actions to address the recommendations, including milestones to fully address them;

(8) a certification by the Chief Procurement Officer of the Department that the program has been reviewed and approved in accordance with the investment management process of the Department, and that the process fulfills all capital planning and investment control requirements and reviews established by the Office of Management and Budget, including Circular A-11, part 7;

(9) a certification by the Chief Information Officer of the Department that the system architecture of the program is sufficiently aligned with the information systems enterprise architecture of the Department to minimize future rework, including a description of all aspects of the architectures that were and were not assessed in making the alignment determination, the date of the alignment determination, and any known areas of misalignment along with the associated risks and corrective actions to address any such areas;

(10) a certification by the Chief Procurement Officer of the Department that the plans for the program comply with the Federal acquisition rules, requirements, guidelines, and practices, and a description of the actions being taken to address areas of non-compliance, the risks associated with them along with any plans for addressing these risks, and the status of their implementation;

(11) a certification by the Chief Information Officer of the Department that the program has a risk management process that regularly and proactively identifies, evaluates, mitigates, and monitors risks throughout the system life cycle and communicates high-risk conditions to U.S. Customs and Border Protection and Department of Homeland Security investment decision makers, as well as a listing of all the program's high risks and the status of efforts to address them;

(12) a certification by the Chief Human Capital Officer of the Department that the human capital needs of the program are being strategically and proactively managed, and that current human capital capabilities are sufficient to execute the plans discussed in the report;

(13) an analysis by the Secretary for each segment, defined as no more than 15 miles, of fencing or tactical infrastructure, of the selected approach compared to other, alternative means of achieving operational control; such analysis should include cost, level of operational control, possible unintended effects on communities, and other factors critical to the decision making process;

(14) a certification by the Chief Procurement Officer of the Department of Homeland Security that procedures to prevent conflicts of interest between the prime integrator and major subcontractors are established and that the Secure Border Initiative Program Office has adequate staff and resources to effectively manage the Secure Border Initiative program, Secure Border Initiative network contract, and any related contracts, including the exercise of technical oversight, and a certification by the Chief

Information Officer of the Department of Homeland Security that an independent verification and validation agent is currently under contract for the projects funded under this heading; and

(15) is reviewed by the Government Accountability Office:

*Provided further*, That the Secretary shall report to the Committees on Appropriations of the Senate and the House of Representatives on program progress to date and specific objectives to be achieved through the award of current and remaining task orders planned for the balance of available appropriations: (1) at least 30 days prior to the award of any task order requiring an obligation of funds in excess of \$100,000,000; and (2) prior to the award of a task order that would cause cumulative obligations of funds to exceed 50 percent of the total amount appropriated: *Provided further*, That of the funds provided under this heading, not more than \$2,000,000 shall be used to reimburse the Defense Acquisition University for the costs of conducting a review of the Secure Border Initiative network contract and determining how and whether the Department is employing the best procurement practices: *Provided further*, That none of the funds under this heading may be obligated for any project or activity for which the Secretary has exercised waiver authority pursuant to section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) until 15 days have elapsed from the date of the publication of the decision in the Federal Register.

SEC. 564. IMPROVEMENT OF BARRIERS AT BORDER. (a) Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) is amended--

(1) in subsection (a), by striking 'Attorney General, in consultation with the Commissioner of Immigration and Naturalization,' and inserting 'Secretary of Homeland Security'; and

(2) in subsection (b)--

(A) in the subsection heading, by striking 'in the Border Area' and inserting 'Along the Border';

(B) in paragraph (1)--

(i) in the heading, by striking 'SECURITY FEATURES' and inserting 'ADDITIONAL FENCING ALONG SOUTHWEST BORDER'; and

(ii) by striking subparagraphs (A) through (C) and inserting the following:

`(A) REINFORCED FENCING- In carrying out subsection (a), the Secretary of Homeland Security shall construct reinforced fencing along not less than 700 miles of the southwest border where fencing would be most practical and effective and provide for the installation of additional physical barriers, roads, lighting, cameras, and sensors to gain operational control of the southwest border.

`(B) PRIORITY AREAS- In carrying out this section, the Secretary of Homeland Security shall--

`(i) identify the 370 miles, or other mileage determined by the Secretary, whose authority to determine other mileage shall expire on December 31, 2008, along the southwest border where fencing would be most practical and effective in deterring smugglers and aliens attempting to gain illegal entry into the United States; and

`(ii) not later than December 31, 2008, complete construction of reinforced fencing along the miles identified under clause (i).

`(C) CONSULTATION-

`(i) IN GENERAL- In carrying out this section, the Secretary of Homeland Security shall consult with the Secretary of the Interior, the Secretary of Agriculture, States, local governments, Indian tribes, and property owners in the United States to minimize the impact on the environment, culture, commerce, and quality of life for the communities and residents located near the sites at which such fencing is to be constructed.

`(ii) SAVINGS PROVISION- Nothing in this subparagraph may be construed to--

`(I) create or negate any right of action for a State, local government, or other person or entity affected by this subsection; or

`(II) affect the eminent domain laws of the United States or of any State.

`(D) LIMITATION ON REQUIREMENTS- Notwithstanding subparagraph (A), nothing in this paragraph shall require the Secretary of Homeland Security to install fencing, physical barriers, roads, lighting, cameras, and sensors in a particular location along an international border of the United States, if the Secretary determines that the use or placement of such resources is not the most appropriate means to achieve and maintain operational control over the international border at such location.'; and

(C) in paragraph (4), by striking 'to carry out this subsection not to exceed \$12,000,000' and inserting 'such sums as may be necessary to carry out this subsection'.

(b) No funds appropriated in this Act for U.S. Customs and Border Protection 'Border Security Fencing, Infrastructure, and Technology' may be obligated unless the Secretary of Homeland Security has complied with section 102(b)(2)(C)(i) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) as amended by subsection (a)(2).