

ISSUE BRIEF

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Top Five Border Security Concerns in the Senate Immigration Bill

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The Senate passed the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744) in June. Rather than offering real reform for the nation's broken immigration and border security policies, the bill attempts to address all of these challenges at once in one sweeping piece of legislation. Debate has now shifted to the House, where the many aspects of immigration reform are being considered in a more step-by-step manner.

This strategy is the ideal approach to ensuring dynamic and meaningful reform. However, Congress should guard against the temptation to act for the sake of action. The border security provisions in the Senate immigration bill are one such example of the dangers of adopting rushed and misguided policy. This is particularly true given that much of the nation's border security challenges can be solved through carrying out existing law.

The following are the top five border security concerns in the Senate bill.

1. Amnesty First, Border Security (Maybe) Later. Proponents of S. 744 argue that the bill would not repeat the mistakes of 1986, when the promise of

amnesty was fulfilled but the commitments to border security and enforcement were not.

At that point in time there were approximately 3 million illegal immigrants present in the United States; today, that number is nearly 12 million. This time around, S. 744's authors included requirements that the Secretary of Homeland Security certify certain "border triggers"—security measures that proponents claim must be in place before amnesty can occur. In reality, however, many of these measures would be "triggered" only after the amnesty process has already begun.

Added to this is the fact that the Secretary of Homeland Security can waive the final border security requirements where litigation, a disaster, or an act of God has prevented their implementation; implementation has been declared unconstitutional; or 10 years have passed since the bill was enacted. There are so many loopholes around the triggers that it is hard to imagine the bill's border security commitments ever being kept.

2. No Required Reduction in Illegal Immigration. Contrary to popular belief, the Senate immigration bill does nothing to address the net flow of illegal immigration. The Congressional Budget Office (CBO), in fact, predicts that the bill would reduce future illegal immigration by only one-third to one one-half compared to what would occur under current law.

This means millions more illegal immigrants would enter or stay in the U.S. illegally, and under the provisions of the bill, the border could still be deemed secure.

3. Massive Border Security Slush Fund and Spending. The Senate bill also throws money at U.S.

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border security, with no guarantees of actions and often in slush funds with little accountability.

Of the \$46.3 billion the bill spends, approximately \$44.5 billion is spent on poorly defined and flawed border security measures. Indeed, at least \$2 billion is essentially a slush fund for the Secretary of Homeland Security. Making matters worse, the Senate bill uses an emergency loophole in the Budget Control Act to spend this money without any offsets elsewhere in the budget.

While some border security investments are necessary, Congress should not spend more money outside the normal appropriations and budget process.

4. No Attention Paid to the Maritime Domain. As security has increased along the southwest border, drug cartels and other bad actors have increasingly turned to smuggling drugs, weapons, and money into the U.S. by sea. At the same time, in 2012 alone, the U.S. Coast Guard (USCG) interdicted 2,955 illegal immigrants off the coast of the United States. Despite this fact, the Senate bill fails to address security in the maritime domain, making no mention of the role of the USCG in border security and its need for resources.

In recent years, the number of USCG missions has grown steadily due to the varied nature of maritime security threats and the need to protect U.S. interests. Despite this fact, however, the USCG continues to be forced to operate with aging resources. Indeed, many of the service's vessels have exceeded their expected service lives, and maintenance and repair is no longer enough to keep them operational.¹

5. Largely Ignores State, Local, and International Partners. The Senate bill includes opportunities for collaboration with state and local partners. However, these opportunities are very few. Overall, the bill grants massive powers to Washington while ignoring appropriate roles and responsibilities for the states. State and local governments and international partners alike represent valuable partners that should not be ignored.

Existing Laws and Meaningful Measures. Instead of the Senate's bloated, comprehensive bill,

the reality is that the U.S. does not need additional laws or slush funds to secure the border. The border can and should be secured through correct use of the regular appropriations process and through the faithful enforcement and application of existing law. Specifically, the U.S. should:

- Fully fund the National Guard and Coast Guard;
- Ensure that grants for border security and local law enforcement are administered correctly through Operation Stonegarden²;
- Support the construction and acquisition of appropriate border infrastructure and technology to identify and reduce illegal border activity and support cross-border commerce;
- Work with Canada and Mexico through cooperative programs such as the Border Enforcement Security Task Force teams; and
- Encourage the formation and operation of organized and accountable volunteers, such as State Defense Forces.

Further, rather than relying on false triggers to determine when the border is secure, the Administration should use the Census Bureau's annual American Community Survey (ACS) to measure the number of illegal immigrants entering the country. While not perfect, the ACS at least offers an objective and established measure of the net inflow of illegal immigrants, as well as a demonstrable measure of border security measures' success.

Action for the Sake of Action? S. 744 has many serious flaws, with at least five major problems on border security alone. With pressure on Congress to simply produce legislation, the House should be careful not to take any path that could serve as a vehicle for a Senate-like amnesty bill. The right approach to fixing the nation's immigration and

1. James Jay Carafano et al., "The Second Quadrennial Homeland Security Review: Setting Priorities for the Next Four Years," Heritage Foundation *Backgrounder* No. 2766, February 12, 2013, <http://www.heritage.org/research/reports/2013/02/the-second-quadrennial-homeland-security-review-setting-priorities-for-the-next-four-years>.

2. See The Heritage Foundation Immigration and Border Security Reform Task Force, "Advancing the Immigration Nation: Heritage's Positive Path to Immigration and Border Security Reform," Heritage Foundation *Backgrounder* No. 2813, June 14, 2013, <http://www.heritage.org/research/reports/2013/06/advancing-the-immigration-nation-heritages-positive-path-to-immigration-and-border-security-reform>.

border security challenges requires thoughtful and deliberate solutions.

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