

BORDER TUNNEL PREVENTION ACT OF 2012

MARCH 21, 2012.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. SMITH of Texas, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 4119]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4119) to reduce the trafficking of drugs and to prevent human smuggling across the Southwest Border by deterring the construction and use of border tunnels, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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Purpose and Summary

H.R. 4119 makes certain enhancements to Title 18, United States Code, Section 555 which criminalizes the construction, financing and use of unauthorized tunnels or subterranean passages across the U.S. border. The legislation prescribes the penalty for attempt or conspiracy to use, construct or finance a cross-border tun-

nel. It also identifies the construction, financing or use of a cross-border tunnel as a predicate offense for a charge of money laundering and for an application for judicial authorization to intercept wire, oral or electronic communications. H.R. 4119 allows the criminal or civil forfeiture of merchandise entering the United States through a cross-border tunnel and requires the submission of certain annual reports from the Secretary of Homeland Security to certain congressional committees.

Background and Need for the Legislation

Reports of drug smuggling tunnels have increased, particularly in the past 10 years. Drug traffickers have increased their use of subterranean smuggling in light of increased border security, either real or perceived. Mexican drug trafficking organizations have used tunnels as a smuggling method since at least 1990.

A majority of cross-border tunnels continue to be found in California and Arizona. These tunnels range in sophistication from a simple 16-inch pipe to well-engineered tunnels equipped with electricity, ventilation, and rails. When evidence exists, ownership of the tunnels is often attributed to the Mexican drug cartels.

To combat cross-border tunnels, U.S. agents use a range of devices from ground-penetrating radar to seismic sensors to find and destroy them. But despite these efforts, drug smugglers continue to build the tunnels, often spending \$1 million to dig a single pathway equipped with lighting, ventilation, water pumps, and hydraulic elevators. Traffickers frequently install a rail system to transit mining carts, each loaded with hundreds of pounds of marijuana or other contraband in airtight sealed packages.

In November 2011, Federal law enforcement agents shut down two sophisticated tunnels that led from an area near Tijuana's airport to an industrial park on the U.S. side. About 49 tons of marijuana were seized. Drug traffickers have also become skilled at setting up front companies to rent space in busy warehouse districts in the U.S. Mining engineers and architects are employed to construct the tunnel and bore directly into the foundation of the front company's rented warehouse.

Although cross-border tunnels represent a million-dollar investment, that investment is often recouped during the first transit of drugs and other contraband. Border tunnels are an unfortunate testament to the ingenuity and determination of the Mexican drug cartels.

Hearings

The Committee on the Judiciary held no hearings on H.R. 4119.

Committee Consideration

On March 6, 2012, the Committee met in open session and ordered the bill H.R. 4119 favorably reported without amendment, by voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were

no recorded votes during the Committee's consideration of H.R. 4119.

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 4119, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 12, 2012.

Hon. LAMAR SMITH, CHAIRMAN,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4119, the "Border Tunnel Prevention Act of 2012."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 4119—Border Tunnel Prevention Act of 2012.
As ordered reported by the House Committee on the Judiciary on
March 6, 2012

CBO estimates that implementing H.R. 4119 would have no significant cost to the Federal Government. Enacting the bill could affect direct spending and revenues; therefore, pay-as-you-go procedures apply. However, CBO estimates that any effects would be insignificant for each year.

H.R. 4119 would establish a new Federal crime relating to the unlawful construction or use of an underground tunnel between the United States and other countries. As a result, the government might be able to pursue criminal cases that it otherwise would not be able to prosecute. CBO expects that H.R. 4119 would apply to a relatively small number of additional offenders, however, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

In addition, H.R. 4119 would require the Department of Homeland Security (DHS) to submit annual reports to the Congress relating to investigations of unlawful tunnels between Mexico and the United States. Based on the costs of similar activities, CBO estimates that preparing the reports would not significantly affect DHS spending from appropriated funds.

Because those prosecuted and convicted under H.R. 4119 could be subject to criminal fines, the Federal Government might collect additional fines if the legislation is enacted. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent. CBO expects that any additional revenues and direct spending would not be significant because of the small number of cases likely to be affected.

H.R. 4119 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 January 5, 2012, CBO transmitted a cost estimate for S. 1236, the Border Tunnel Prevention Act of 2011, as reported by the Senate Committee on the Judiciary on December 15, 2011. The two bills are similar, and the cost estimates are the same.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 4119 makes certain enhancements to Title 18, United States Code, Section 555 which criminalizes the construction, financing and use of unauthorized tunnels or subterranean passages across the U.S. border.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 4119 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Sec. 1: Short Title

Section 1 provides that the short title of H.R. 4119 is the “Border Tunnel Prevention Act of 2012.”

Sec. 2: Findings

Section 2 declares certain findings of Congress. These findings include 1) drug trafficking and smuggling organizations are increasing their use of cross-border tunnels to transport narcotics, people and other contraband, 2) there has been a significant increase in cross-border tunnels discovered by law enforcement, particularly over the past 10 years and particularly in Arizona and California, and 3) 18 U.S.C. Section 555, criminalizing the construction, financing and use of cross-border tunnels is the foundation for this legislation.

Sec. 3: Attempt or Conspiracy to Use, Construct, or Finance a Border Tunnel

Section 3 prescribes the penalty for attempt or conspiracy to use, construct or finance a cross-border tunnel as the same as those for the offense itself.

Sec. 4: Authorization for Interception of Wire, Oral, or Electronic Communications

Section 4 permits the interception of wire, oral or electronic communications during the investigation of construction or use of cross-border tunnels.

Sec. 5: Forfeiture

Section 5 allows the criminal or civil forfeiture of merchandise entering the United States through a cross-border tunnel.

Sec. 6: Money Laundering Designation

Section 6 identifies the construction, financing or use of a cross-border tunnel as a predicate offense for a charge of money laundering.

Sec. 7: Sense of Congress

Section 7 declares that the success in combating cross-border tunnels requires the cooperation of federal, state, local and tribal officials, and private land owners and their tenants. The Department of Homeland Security is currently engaged in and should continue its outreach efforts to combat cross-border tunnels.

Sec. 8: Report

Section 8 requires the submission of certain annual reports from the Secretary of Homeland Security to certain congressional committees.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

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PART I—CRIMES

* * * * *

CHAPTER 27—CUSTOMS

* * * * *

§ 555. Border tunnels and passages

(a) * * *

* * * * *

(d) Any person who attempts or conspires to commit any offense under subsection (a) or subsection (c) of this section shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

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CHAPTER 46—FORFEITURE

* * * * *

§ 982. Criminal forfeiture

(a)(1) * * *

(2) The court, in imposing sentence on a person convicted of a violation of, or a conspiracy to violate—

(A) * * *

(B) section 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 485, 486, 487, 488, 501, 502, 510, 542, 545, 555, 842, 844, 1028, 1029, or 1030 of this title,

shall order that the person forfeit to the United States any property constituting, or derived from, proceeds the person obtained directly or indirectly, as the result of such violation.

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CHAPTER 95—RACKETEERING

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§ 1956. Laundering of monetary instruments

(a) * * *

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(c) As used in this section—

(1) * * *

* * * * *

(7) the term “specified unlawful activity” means—

(A) * * *

* * * * *

(D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at inter-

national airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 175c (relating to the variola virus), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 541 (relating to goods falsely classified), section 542 relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 554 (relating to smuggling goods from the United States), *section 555 (relating to border tunnels)*, section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844 (f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 922(1) (relating to the unlawful importation of firearms), section 924(n) (relating to firearms trafficking), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), section 1030 (relating to computer fraud and abuse), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2252A (relating to child pornography) where the child pornography contains a visual depiction of an actual minor engaging in sexually explicit conduct, section 2260 (production of certain child pornography for importation into the United States), section 2280 (relating to violence against maritime

navigation), section 2281 (relating to violence against maritime fixed platforms), section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services), section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), section 2332g (relating to missile systems designed to destroy aircraft), section 2332h (relating to radiological dispersal devices), section 2339A or 2339B (relating to providing material support to terrorists), section 2339C (relating to financing of terrorism), or section 2339D (relating to receiving military-type training from a foreign terrorist organization) of this title, section 46502 of title 49, United States Code, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, any felony violation of section 15 of the Food and Nutrition Act of 2008 (relating to supplemental nutrition assistance program benefits fraud) involving a quantity of benefits having a value of not less than \$5,000, any violation of section 543(a)(1) of the Housing Act of 1949 (relating to equity skimming), any felony violation of the Foreign Agents Registration Act of 1938, any felony violation of the Foreign Corrupt Practices Act, or section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) (relating to prohibitions governing atomic weapons)

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CHAPTER 119—WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

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§ 2516. Authorization for interception of wire, oral, or electronic communications

(1) The Attorney General, Deputy Attorney General, Associate Attorney General, or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in the Criminal Division or National Security Division specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the

Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of—

(a) * * *

* * * * *

(c) any offense which is punishable under the following sections of this title: section 37 (relating to violence at international airports), section 43 (relating to animal enterprise terrorism), section 81 (arson within special maritime and territorial jurisdiction), section 201 (bribery of public officials and witnesses), section 215 (relating to bribery of bank officials), section 224 (bribery in sporting contests), subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives), section 1032 (relating to concealment of assets), section 1084 (transmission of wagering information), section 751 (relating to escape), section 832 (relating to nuclear and weapons of mass destruction threats), section 842 (relating to explosive materials), section 930 (relating to possession of weapons in Federal facilities), section 1014 (relating to loans and credit applications generally; renewals and discounts), section 1114 (relating to officers and employees of the United States), section 1116 (relating to protection of foreign officials), “after” section 1014 (relating to loans and credit applications generally; renewals and discounts), sections 1503, 1512, and 1513 (influencing or injuring an officer, juror, or witness generally), section 1510 (obstruction of criminal investigations), section 1511 (obstruction of State or local law enforcement), section 1591 (sex trafficking of children by force, fraud, or coercion), section 1751 (Presidential and Presidential staff assassination, kidnapping, and assault), section 1951 (interference with commerce by threats or violence), section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), section 1958 (relating to use of interstate commerce facilities in the commission of murder for hire), section 1959 (relating to violent crimes in aid of racketeering activity), section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan), section 1955 (prohibition of business enterprises of gambling), section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 659 (theft from interstate shipment), section 664 (embezzlement from pension and welfare funds), section 1343 (fraud by wire, radio, or television), section 1344 (relating to bank fraud), section 1992 (relating to terrorist attacks against mass transportation), sections 2251 and 2252 (sexual exploitation of children), section 2251A (selling or buying of children), section 2252A (relating to material constituting or containing child pornography), section 1466A (relating to child obscenity), section 2260 (production of sexually explicit depictions of a minor for importation into the United States), sections 2421, 2422, 2423, and 2425 (relating to transportation for illegal sexual activity and related crimes), sections 2312, 2313, 2314, and 2315 (interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle

parts), section 2340A (relating to torture), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities), section 38 (relating to aircraft parts fraud), section 1963 (violations with respect to racketeer influenced and corrupt organizations), section 115 (relating to threatening or retaliating against a Federal official), section 1341 (relating to mail fraud), a felony violation of section 1030 (relating to computer fraud and abuse), section 351 (violations with respect to congressional, Cabinet, or Supreme Court assassinations, kidnapping, and assault), section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), section 175 (relating to biological weapons), section 175c (relating to variola virus) section 956 (conspiracy to harm persons or property overseas), section a felony violation of section 1028 (relating to production of false identification documentation), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), section 1541 (relating to passport issuance without authority), section 1542 (relating to false statements in passport applications), section 1543 (relating to forgery or false use of passports), section 1544 (relating to misuse of passports), or section 1546 (relating to fraud and misuse of visas, permits, and other documents), *section 555 (relating to construction or use of international border tunnels);*

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