Summary of S. 744—The Border Security, Economic Opportunity, and Immigration Modernization Act

On April 17, 2013, Senators Chuck Schumer, John McCain, Dick Durbin, Lindsey Graham, Bob Menendez, Marco Rubio, Michael Bennet, and Jeff Flake introduced S.744, entitled the Border Security, Economic Opportunity, and Immigration Modernization Act. If passed, S.744 would grant amnesty to the approximately 12 million illegal aliens currently living in the U.S., create new guest worker programs for agricultural workers and low-skilled workers, and significantly increase legal immigration.

**Border Security**

Securing our nation’s borders and ports of entry, as well as the regulation of who enters our country, under what conditions, and for what length of time is an integral aspect of national security policy.

The following summary covers the provisions in Title I of the bill that would expand border security.

**Title I—Border Security**

**EFFECTIVE DATE TRIGGERS** (Sec. 3, p. 9)

- The Department of Homeland Security (DHS) grants amnesty (“registered provisional immigrant” (RPI) status) to illegal aliens after the Secretary merely submits plans to Congress on border security and fencing.

- DHS can adjust the status of RPIs to legal permanent resident (LPR) status after the Secretary certifies to Congress that (p. 11):
  - The border security plan is “substantially deployed” and “substantially operational”;  
    - The border security plan must include a strategy for DHS to achieve and maintain an apprehension effectiveness rate of at least 90% in all border sectors. (p. 9)
  - DHS has “implemented” and “substantially completed” the border fencing plan.
    - The fencing plan must include a strategy that identifies where fencing (if any), including double-layer fencing, should be deployed along the Southern border (p. 10)
    - Note: current law requires a double-layer fence along the Southern border.
  - DHS has “implemented” the mandatory employment verification system required by INA 274A (as amended by sec. 3101); and
  - DHS is using an electronic (but not biometric) exit system at air and sea (but not land) ports of entry that operates by collecting machine-readable visa or passport information from air and vessel carriers. Note: current law requires a biometric entry-exit system at all ports of entry.

- DHS may adjust RPIs to LPR status without satisfying the “triggers,” if:
  - Litigation prevents one of the triggers from being implemented, OR implementation of the triggers was held unconstitutional by the U.S. Supreme Court; AND
  - 10 years have elapsed since the date of enactment. (p. 12)
The Secretary is authorized to waive all legal requirements that the Secretary determines to be necessary for expeditious construction of the barriers, roads, or other physical tactical infrastructure needed to meet the triggers. (p. 13)

- The waiver expires on the latter of the date the Secretary certifies that:
  - The fencing strategy is substantially completed; or
  - The border strategy is substantially deployed and substantially operational.

Judicial review (p. 13)

- Federal district courts have exclusive jurisdiction to hear all cases arising from any action or decision made by the Secretary under the waiver authorization.
  - A claim may only be brought alleging a violation of the U.S. Constitution.
  - The court does not have jurisdiction to hear other claims.
- Claims must be filed within 60 days after the date of the contested action or decision by the Secretary.
- Appeals can only be heard by the U.S. Supreme Court.

COMPREHENSIVE SOUTHERN BORDER SECURITY STRATEGY (Sec. 5(a), p. 19)

- The Secretary shall submit to Congress and the Comptroller General within 180 days of enactment a strategy for achieving and maintaining “effective control” in all border sectors along the U.S.-Mexico border.
- The plan shall specify:
  - The priorities that must be met for the strategy to be successfully executed;
  - The capabilities that must be obtained to meet each of the priorities, including:
    - Surveillance and detection capabilities developed or used by DOD to increase situational awareness; and
    - The requirement for stationing sufficient Border Patrol agents and CBP officers at and between ports of entry along the Southern border; and
  - The resources, including personnel, infrastructure, and technology that must be procured and successfully deployed to obtain the capabilities listed above, including:
    - Fixed, mobile, and agent portable surveillance systems; and
    - Unarmed, unmanned aerial systems and unarmed, fixed-wing aircraft and necessary and qualified staff and equipment to fully utilize such systems.
- The plan must also:
  - Specify how resources will be used to meet the priorities to successfully execute the strategy;
  - Identify interim goals; and
  - Establish the schedule and supporting milestones for DHS to accomplish the interim goals. (p. 21)
- DHS shall implement the plan “immediately after” notifying Congress and the Comptroller General of its commencement. (p. 21)
- The Secretary must submit a status report on the implementation of the plan within 180 days after it is submitted, and every 180 days subsequently. (p. 22)
- The Comptroller General must conduct an annual audit of the semiannual reports submitted by the Secretary and submit an assessment of the plan to Congress.
SOUTHERN BORDER SECURITY COMMISSION (Sec. 4, p. 14)

- If the Secretary certifies that DHS has not achieved its border security goal within 5 years of enactment, a 10-person appointed Commission is created within 60 days to make recommendations for achieving “effective control” in all border sectors along the Southern border.
  - Effective control: the ability to achieve and maintain in a Border Patrol sector:
    - Persistent surveillance in all border sectors along the U.S.-Mexico border; and
    - An apprehension rate of 90% (including undetected illegal “gotaways”) in all border sectors along the U.S.-Mexico border. Note: DHS does not currently have a metric to calculate the number of illegal entrants that entered undetected.

- The Commission shall submit its recommendations within 180 days after the 5-year authorization period.
  - The Commission terminates 30 days after submitting its recommendations. (p. 18)
- The Comptroller General will review the recommendations in order to determine:
  - Whether any of the recommendations are likely to achieve effective control in all border sectors;
  - Which recommendations are most likely to achieve effective control; and
  - Whether such recommendations are feasible within existing budget constraints. (p. 18)

SOUTHERN BORDER FENCING STRATEGY (Sec. 5(b), p. 24)

- The Secretary shall submit to Congress and the Comptroller General within 180 days of enactment a fencing plan to identify where fencing (if any), including double-layer fencing, infrastructure, and technology, including at ports of entry, should be deployed along the Southern border.
  - The Secretary must also notify the above once implementation of the plan begins.
- The Secretary must minimize the impact on the environment, culture, commerce, and quality of life for residents near fencing constructing by consulting with:
  - Secretaries of the Interior and Agriculture;
  - States and local governments;
  - Indian tribes; and
  - Property owners.

- The Secretary does not have to install fencing or infrastructure in a particular location if the Secretary determines it is not the “most appropriate means” for achieving effective control at that location.

COMPREHENSIVE IMMIGRATION REFORM TRUST FUNDS (Sec. 6, p. 25)

- S.744 creates a Comprehensive Immigration Reform Trust Fund (CIR Trust Fund) that will consist of $8.3 billion appropriated from the Treasury (Note: the initial funding was originally $6.5 billion) and certain amounts from various immigration fees: (p. 25)
  - $16 border processing fee added to ESTA fees under the Visa Waiver program (INA 217(h)(3)(B)(i)), as added by sec. 1102(c). (p. 34)
$1,000 penalty for RPI applicants under INA 245B(c)(10)(C), as added by sec. 2101. (p. 85)
$100 penalty for blue card applicants 21 years or older (sec. 2211(b)(9)(C), p. 167).
$400 fine to adjust from blue card status to LPR status under INA 245F(a)(5), as added by sec. 2212(a). (p. 180)
Criminal fines for false statements in blue card applications under INA 245F(f), as added by Sec. 2212(a). (p. 185)
$1,500 fee for aliens seeking green cards through the new merit system under INA 203(c)(6), as amended by Sec. 2301(a)(2). (p. 267)
H-1B and L-visa fees collected under INA 281(d), as added by Sec. 4105 (p. 691).
o $1,250 fee for employers that have 25 or fewer full-time employees; or
o $2,500 fee for employers that have more than 25 full-time employees.
$500 fee for non-H-1B-dependent employers who wish to contract for the services or placement of an H-1B worker, INA 212(n)(1)(F)(ii) as amended by Sec. 4211(d). (p. 701)
$10,000 filing fee per H-1B application from H-1B dependent employers. (Sec. 4233(a)(2), p. 724)
o This fee is only effective for FY15-17.
$10,000 filing fee per L-nonimmigrant application from H-1B dependent employers. (Sec. 4305(a)(2), p. 733)
o This fee is only effective for FY14-17.
$500 fee from employers for each J-1 visa application. (Sec. 4407, p. 757)
$100 fee from F-1 visa students under INA 281(f), as added by Sec. 4408. (p. 758) Note: fee was $500 in initial draft of the bill.
$1,000 fee for new retiree visas created under INA 214(w)(1)(B), as added by Sec. 4504(b). (p. 765)
$5 visitor visa fee (INA 101(a)(15)(B)) under INA 281(g), as added by Sec. 4509. (p. 786)
$500 fee to recover costs of H-2A labor certification application under INA 214(x)(5)(A), as added by Sec. 4602(a). (p. 790)
$500 fee per nonimmigrant performing maintenance on common carriers under INA 214(z), as added by sec. 4604 (drafting error, should be Sec. 4606). (p. 796)
$1,000 fee per X-1 visa holder under INA 214(s)(6), as added by Sec. 4801. (p. 853)
$1,000 penalty for RPIs adjusting to LPR status under INA 245C(c)(5)(B), as added by Sec. 2101. (p. 110)
The Secretary may adjust all fees and penalties except for:
- RPI penalty;
- Blue card penalty;
- Blue card fine to adjust to LPR; and
- RPI penalty to adjust to LPR.
Distribution of money in CIR Trust Fund (p. 29):
- Of the initial funding ($8.3 billion appropriated from the Treasury):
  o $3 billion during the 5-year period after enactment for DHS to carry out the border security plan;
$2 billion during the 10-year period after enactment for DHS to carry out the recommendations by the Commission.

$1.5 billion during the 5-year period after enactment to build additional fencing (if any), infrastructure, and technology in all border sectors pursuant to the fencing plan;
   - At least $1 billion must be spent to deploy, repair, or replace fencing.

$750 million during the 6-year period after enactment to implement mandatory E-Verify;

$900 million during the 8-year period after enactment for one-time and startup costs; and

$150 million during the 2-year period after enactment for the DHS Secretary to transfer to the Secretaries of Labor, Agriculture, or the Attorney General for initial costs of implementing this Act.

The $8.3 billion of initial funding is repaid to the Treasury from (p. 30):

- RPI penalties;
- Blue card penalties;
- Blue card adjustment to LPR fine;
- Merit system green card fees;
- Retiree visa fees;
- X-1 visa fees; and
- RPI adjustment to LPR penalties.

$50 million each year for FY14-18 from the CIR Trust Fund goes to:

- Operation Streamline (Sec. 1104(a)(1), p. 37); and
- Operation Stonegarden. (Sec. 1104(b), p.37).

“Such sums as may be necessary” from collected immigration fees to carry out:

- S. 744 authorizations; and
- Operations and maintenance of border security and immigration enforcement investments.

The Secretary must submit to the Senate and House Judiciary and Appropriations Committees with the border strategy and fencing plans, a detailed expenditure plan.

- The plan will be revised and submitted with the President’s budget proposal for FY16-19.

If the Commission is established after 5 years, the Secretary must submit a detailed expenditure plan to:

- Senate
  - Appropriations committee;
  - Judiciary committee; and
  - Finance committee.

- House
  - Appropriations committee;
  - Judiciary committee; and
  - Ways and Means committee.

S.744 creates a Comprehensive Immigration Reform Startup Account (Startup Account) that will consist of $3 billion appropriated from the Treasury.
- The Secretary must submit a detailed expenditure plan within 90 days after enactment to the Senate and House Appropriations and Judiciary committees.
- The $3 billion initial funding for the Startup Account is repaid with 50 percent of the RPI processing fee for amnestied illegal aliens each month until fully repaid.
- The extra fees are deposited in the Immigration Examinations Fee Account and used for one-time and startup costs, including:
  - Equipment, information technology systems, infrastructure, and human resources;
  - Public outreach on regulations, rule, and other public notices;
  - Grants to community and faith-based organizations; and
  - Anti-fraud programs.
- The DHS Chief Financial Officer and Inspector General must annually audit the Trust Fund and submit a report to Congress by October 1 of each year. The report must be available to the public on the DHS website. The audit must include:
  - Report of an independent certified public accountant;
  - Balance sheet listing:
    - Assets;
    - Liabilities;
    - Capital; and
    - Surplus;
  - Cash flow statement; and
  - Other information “appropriate to facilitate a comprehensive understanding of the Trust Fund.”
- All funding under this section is designated as an “emergency” requirement and is exempt from the Statutory Pay-As-You-Go Act. (pp. 31-32)

**GRANT ACCOUNTABILITY (Sec. 9)**
- All grants are subject to the following accountability provisions:
  - Annual audits to prevent waste, fraud, and abuse of funds;
    - The Inspector Generals will determine the appropriate number of audits per year.
    - Recipients with unresolved audit findings are ineligible for 2 years
      - An unresolved audit finding means the audited grantee used funds for unauthorized expenses that are not resolved within 1 year from the audit report’s issuance.
    - Applicants without an unresolved audit finding in the last 3 years get priority in awarding grants
  - Non-profits that hold money in offshore accounts to avoid paying taxes are prohibited from receiving grants;
  - Non-profit applicants must disclose the process for determining compensation of its officers, directors, trustees, and key employees
  - Grants cannot be used for conference expenditures over $20,000 unless prior written authorization
  - An annual report to Congress must:
    - Indicate if all audits have been completed;
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- All mandatory exclusions issued; and
- All reimbursements made
- List any grant recipient that was disqualified the previous year

ADDITIONAL U.S. CUSTOMS AND BORDER PROTECTION OFFICERS (Sec. 1102, p. 33)
- DHS shall increase the number of CBP officers by 3,500 by the end of FY17. Note: CBP officers have jurisdiction at U.S. ports of entry and are not Border Patrol agents, which have jurisdiction between ports of entry.
- The Secretary may reassign CBP officers and Border Patrol agents from the Northern border to the Southern border (although it may be prohibited elsewhere).
- Amends the INA to increase the fee Visa Waiver travelers pay for using ESTA, the electronic program that pre-screens passengers. (See INA 217(h)(3)(B))
  - Currently the ESTA fee is $10 per traveler authorization fee plus “an amount that will at least ensure recovery of the full costs of providing and administering” the electronic travel authorization system. S.744 will add another $16 for “border processing.”
  - The border processing fee shall be deposited into the CIR Trust Fund.
- Eliminates the FY15 sunset for sec. 9(d)(2)(B) of the Travel Promotion Act of 2009.

NATIONAL GUARD SUPPORT TO SECURE THE SOUTHERN BORDER (Sec. 1103, p. 35)
- A Governor, with approval from the Secretary of Defense, may order that state’s National Guard to perform missions to assist CBP in securing the Southern border.
  - Such duty is treated as full-time duty under Title 32 of the U.S. Code.
- The operations and missions shall include temporary authority to:
  - Construct fencing, including double-layer and triple-layer fencing;
  - Increase ground-based mobile surveillance systems;
  - Deploy additional unmanned aerial systems and manned aircraft sufficient to maintain continuous surveillance of the Southern border;
  - Deploy and provide capability for radio communications interoperability between CBP and State, local, and tribal law enforcement agencies;
  - Construct checkpoints along the Southern border to bridge the gap to long-term permanent checkpoints; and
  - Provide assistance to CBP, particularly in rural areas where drugs and illegal aliens are routinely smuggled, as designated by the CBP Commissioner. (p. 33)
- National Guard personnel deployed to assist securing the Southern border shall not be included in:
  - The calculation to determine compliance with limits on end strength for National Guard personnel; or
  - Limits on the number of National Guard personnel that may be placed on active duty for operational support under 10 U.S.C. 115.

ENHANCING EXISTING BORDER SECURITY OPERATIONS (Sec. 1104, p. 37)
- Operation Streamline
• $50 million per year from FY14-18 are specifically appropriated from the CIR Trust Fund to increase border crossing prosecutions in the Tucson Sector (p. 30) up to 210 prosecutions per day. The funding is used for:
  o Attorneys and administrative support staff in the Tucson U.S. Attorney Office;
  o Support staff and interpreters in the Tucson Court Clerks Office;
  o Pre-trial services;
  o Activities of the Tucson Federal Public Defenders Office; and
  o Additional personnel, including Deputy U.S. Marshals to perform intake, coordination, transportation, and court security. (p. 37-38); and
  o Reimburse Federal, State, local, and tribal law enforcement agencies for any detention costs related to border crossing prosecutions in the Tucson Sector.
• “Such sums as may be necessary” from the CIR Trust Fund:
  o The U.S. District Court for the District of Arizona is authorized to appoint additional full-time magistrate judges.

  ▪ Operation Stonegarden (p. 39)
  • FEMA shall enhance law enforcement preparedness and operational readiness along the U.S. borders through Operation Stonegarden.
    o At least 90% of the funds made available ($50 million each year for FY 14-18, p.30) shall be allocated for grants and reimbursements to law enforcement agencies in border states for personnel, overtime, travel, and other costs related to combating illegal immigration and drug smuggling within 100 miles of the U.S.-Mexico border.
    o The FEMA grants must be awarded through a competitive process.
  • Also authorizes “such sums as necessary” from the $3 billion appropriated in the CIR Trust Fund for the border security plan for Operation Stonegarden activities. (p.39-40)

  ▪ Infrastructure improvements (p. 40)
  • DHS shall construct additional Border Patrol stations in the Southwest Border region that U.S. Border Patrol determines are needed to provide full operational support in “rural, high-trafficked areas.” Note: S.744 does not require DHS to add Border Patrol agents.
  • The Secretary shall evaluate creating additional Border Patrol “sectors” (stations?) along the Southern border to interrupt drug trafficking operations.
  • DHS shall enhance the security of the Southwest Border region by:
    o Establishing additional permanent “forward operating bases” for the U.S. Border Patrol, “as needed”;
    o Upgrading the existing forward operating bases to include modular buildings, electricity, and potable water; and
    o “Ensuring” that forward operating bases surveil and interdict individuals entering the U.S. unlawfully “immediately after” crossing the Southern border.
  • The Secretaries of DHS and Transportation will establish a grant program, in consultation with the governors of the Northern and Southern border regions, to construct transportation and supporting infrastructure improvements at current and new border crossings to make border crossings safe and efficient.
  • Appropriations “as may be necessary” for infrastructure improvements are authorized for FY14-18.
- Adds permanent district court judges in Southwest border states:
  - 2 for the district of Arizona;
  - 3 for the eastern district of California;
  - 2 for the western district of Texas; and
  - 1 for the southern district of Texas.
- Converts the temporary district court judgeships for the district of Arizona and the central district of California to permanent district court judgeships.
- Increases the 28 U.S.C. 1914(a) filing fee from $350 to $360.
- Adds whistleblower protection and a civil cause of action for employees providing information of possible violations of Federal law or regulation by a judicial branch employee, including the judge.

**BORDER SECURITY ON CERTAIN FEDERAL LAND** (Sec. 1105, p. 41)
- **Definitions**
  - Federal lands means all land under the control of the “Secretary concerned” that is located in Arizona along the U.S.-Mexico border.
  - Secretary concerned means:
    - Secretary of Agriculture for land under the jurisdiction of that Secretary;
    - Secretary of Interior for land under the jurisdiction of that Secretary
- To achieve effective control of federal lands:
  - The Secretary concerned shall authorize and provide CBP personnel with immediate access to Federal lands for security activities, including:
    - Routine motorized patrols; and
    - The deployment of communications, surveillance, and detection equipment.
  - The security activities shall be conducted, to the maximum extent possible, in a manner that best protects the natural and cultural resources on Federal lands; and
  - The Secretary concerned may provide education and training to CBP personnel on the natural and cultural resources present on individual Federal land units.
- After access to land is granted, Department of Agriculture and DHS shall prepare a programmatic environmental impact statement (EIS) and shall amend any land use plans, “as appropriate,” upon completion of the EIS. (p.42)
  - The EIS shall not control, delay, or restrict actions by DHS to achieve effective control (surveillance and a 90 percent apprehension rate) in federal lands. (p.43)

**EQUIPMENT AND TECHNOLOGY** (Sec. 1106, p. 44)
- The Commissioner of CBP, working through U.S. Border Patrol, shall:
  - Deploy additional mobile, video, and agent-portable surveillance systems, and unarmed, unmanned aerial vehicles in the Southwest Border region as necessary to provide 24-hour operation and surveillance;
  - Operate unarmed, unmanned aerial vehicles along the Southern border 24/7;
  - Deploy unarmed additional fixed-wing aircraft and helicopters along the Southern border;
  - Acquire new “rotocraft” and make upgrades to the existing helicopter fleet; and
  - Increase horse patrols in the Southwest Border region;
- Acquire and deploy watercraft and other equipment to provide support for border-related maritime anti-crime activities.
  - Border Patrol cannot operate unarmed, unmanned aerial vehicles in the San Diego and El Centro Sectors, except within 3 miles of the Southern border.
  - This limit does not restrict CBP’s maritime operations.
- In addition to otherwise appropriated amounts, between FY14-18 CBP is appropriated such sums “as may be necessary” to carry out this section.

**ACCESS TO EMERGENCY PERSONNEL** (Sec. 1107, p. 45)

- Emergency Communications Grants
  - DHS, in consultation with the Border State Governors, shall establish a 2-year emergency communications grant program. An individual is eligible if he/she:
    - Regularly resides or works in the Southwest Border region; and
    - Is at a greater risk of border violence due to:
      - Lack of cellular service at residence or business; and
      - Proximity to the Southern border.
  - Grants may be used to purchase satellite telephone communications systems that:
    - Provide access to 911; and
    - Are equipped with GPS.
  - Such sums “as may be necessary” are appropriated to carry out the grant program. *Note: Florida-based Tracphone makes these phones.*

- Federal law enforcement interoperable communications (p. 46)
  - 5 year appropriations “as may be necessary” to DHS, DOJ, and Interior to:
    - Purchase P25-compliant radios, which may include a multi-band option, for federal law enforcement agents “working in the Southwest Border region in support of CBP and ICE,” including law enforcement agents of DEA, ATF, Interior, and the Forest Service; and
    - Upgrade the DOJ communications network to ensure coverage and capacity in the Southwest Border region for appropriate law enforcement personnel of:
      - DOJ (including DEA and ATF);
      - DHS (including CBP and ICE);
      - U.S. Marshals Service;
      - Other Federal agencies;
      - State of Arizona;
      - Tribes; and
      - Local government.

- State and local law enforcement interoperable communications (p. 47)
  - 5 year appropriations “as may be necessary” to DOJ to purchase P25-compliant radios, which may include a multi-band option, for state and local law enforcement agents working in the Southwest Border region.
  - State, local, or tribal law enforcement may access the appropriate Federal agency spectrum if such agency experiences an emergency situation that necessitates immediate communication with DOJ, DHS, or Interior.
SOUTHWEST BORDER REGION PROSECUTION INITIATIVE (Sec. 1108, p. 48)
- The Attorney General shall reimburse State, local, and tribal governments for federally initiated immigration-related criminal cases declined by local offices of the U.S. Attorneys the cost of:
  - Prosecution;
  - Pre-trial services and detention;
  - Clerical support; and
  - Public defenders’ services associated with the prosecution.
- Such sums “as may be necessary” are authorized for FY14-18 to carry out this initiative.
- The Attorney General has the discretion to withhold reimbursement if he determines the jurisdiction engaged in unlawful conduct during immigration-related apprehensions.

INTERAGENCY COLLABORATION (Sec. 1109, p. 49)
- The Assistant Secretary of Defense for Research and Engineering shall collaborate with the DHS Under Secretary for Science and Technology to identify equipment and technology used by DOD that could be used by CBP to improve Southern border security by:
  - Detecting border tunnels;
  - Detecting the use of ultralight aircraft;
  - Enhancing wide aerial surveillance; and
  - Otherwise improving the enforcement of the Southern border.

STATE CRIMINAL ALIEN ASSISTANCE PROGRAM (Sec. 1110, p. 49)
- SCAAP appropriations for incarcerations of criminal illegal aliens are reauthorized through FY2016.
- Expands the definition of “undocumented criminal alien” in INA 241(i)(3) to include “charged with” a felony or two or more misdemeanors.
- Requires the Attorney General to reimburse a State if DHS is unable to verify the immigration status of an alien who would be an undocumented criminal alien if the alien is unlawfully present.
- Requires the funds to be distributed within 120 days after the last day of the application period.

USE OF FORCE (Sec. 1111, p. 49-50)
Within 180 days after enactment the Secretary, in consultation with the Assistant AG for the Civil Rights Division of DOJ, shall issue policies governing the use of force by all DHS personnel that:
- Require all DHS personnel to report each use of force; and
- Establish procedures for:
  - Accepting and investigating complaints regarding the use of force by DHS personnel;
  - Disciplining DHS personnel who violate any law or DHS policy relating to the use of force; and
  - Reviewing all uses of force by DHS personnel to determine whether the use of force:
Complied with DHS policy; or
- Demonstrates the need for changes in policy, training, or equipment.

**BORDER PATROL AGENT AND ICE OFFICER TRAINING** (Sec. 1112, p. 50)
- DHS shall ensure that CBP officers, Border Patrol agents, ICE officers and agents, U.S. Air and Marine Division agents, and “agriculture specialists” stationed within 100 miles of any land or marine border or at any U.S. port of entry receive “appropriate training” in:
  - Identifying and detecting fraudulent travel documents;
  - Civil, constitutional, human, and privacy rights of individuals;
  - The scope of enforcement authorities, including interrogations, stops, searches, seizures, arrests, and detentions;
  - The use of force policies (see above);
  - Immigration laws, including screening, identifying, and addressing “vulnerable populations,” such as children, victims of crime and human trafficking, and individuals fleeing persecution or torture;
  - Social and cultural “sensitivity” toward border communities;
  - The impact of border operations on communities; and
  - Any particular environmental concerns in a particular area.

The Secretary shall ensure that “border communities liaison officers” in Border Patrol sectors along the Northern and Southern borders receive training to better:
- Act as a liaison between border communities and the DHS Office for Civil Rights and Civil Liberties and the DOJ Civil Rights Division;
- Foster and institutionalize consultation with border communities;
- Consult with border communities on DHS programs, policies, strategies, and directives; and
- Receive DHS performance assessments from border communities.

The Secretary must establish, within 90 days after enactment, standards ensuring that children in CBP custody:
- Are given adequate medical and mental health care (including emergency care);
- Receive adequate nutrition;
- Are given “climate-appropriate” clothing, shoes, and bedding;
- Have basic personal hygiene and sanitary products; and
- Are allowed to make supervised phone calls to family members.

**DHS BORDER OVERSIGHT TASK FORCE** (Sec. 1113, p. 52)
- An “independent” DHS Border Oversight Task Force is created for 3 years to:
  - Make recommendations on immigration and border enforcement policies, strategies, and programs that take into consideration their impact on border communities;
  - Make recommendations on ways border liaison officers can strengthen relations and collaboration between communities in the border regions and Federal agencies;
  - Evaluate how the policies, strategies, and programs of Federal agencies operating along the Northern and Southern borders protect the due process, civil, and human rights of border residents, visitors, and migrants at and near such borders; and
Evaluate and make recommendations regarding the training of border enforcement personnel (see above).

The 29 member Task Force is appointed by the President and composed of individuals who have expertise in migration, local crime indices, civil and human rights, community relations, cross-border trade and commerce, quality of life indicators, or other pertinent experience:

- 12 members from the Northern border region:
- 17 members from the Southern border region:

The Task Force may make findings and recommendations to the Secretary and the Secretary must respond within 180 days.

- The response shall describe how DHS has addressed or will address the findings and recommendations.
- If the Secretary disagrees with any finding, the Secretary shall provide an explanation for the disagreement.

The Task Force must submit a final report within 2 years of its first meeting to the President, Congress, and the Secretary that contains:

- Findings with respect to the duties of the Task Force; and
- Recommendations regarding border and immigration enforcement policies, strategies, and programs, including:
  - A recommendation as to whether the Task Force should continue to operate; and
  - A description of any duties the Task Force should be responsible for after it terminates (60 days after submitting the report).

Such sums “as may be necessary” are authorized from FY14-17 to carry out this section.

OMBUDSMAN FOR IMMIGRATION RELATED CONCERNS OF DHS (Sec. 1114)

Repeals sec. 452 of the Homeland Security Act of 2002 and establishes a DHS Ombudsman for Immigration Related Concerns who is appointed to carry out the following functions:

- Resolve complaints with the immigration components of DHS;
- Conduct inspections of DHS facilities related to immigration;
- Identify areas within DHS having problems related to immigration and propose administrative changes to mitigate these problems; and
- Review and make recommendations on CBP, ICE, and USCIS immigration and enforcement policies.

Additionally, the Ombudsman will monitor the coverage of local offices for immigration related concerns and take any necessary personnel action.

The Ombudsman has the authority to request the DHS Inspector General to conduct inspections, investigations, and audits.

The Ombudsman must submit, by June 30 each year, a report to the Senate and House Judiciary Committees containing:

- The objectives of the Ombudsman for the FY;
- A full and substantive analysis with statistical information; and
- Recommendations on improving ICE, CBP, and USCIS.
PROTECTION OF FAMILY VALUES IN APPREHENSION PROGRAMS (Sec. 1115)
- Establishes a DHS migration deterrence program requiring law enforcement to take the following steps “as soon as practicable” after apprehending individuals at the border:
  - Ask if the person is:
    - A parent, legal guardian, or primary caregiver of a child; or
    - Traveling with a spouse or child; and
  - Determine whether repatriation presents any public safety or humanitarian concerns.
- A decision of repatriation or referral for prosecution must give “due consideration” to:
  - The best interests of the apprehended individual’s child;
  - Family unity when possible; and
  - Other public interest factors, including physical safety and humanitarian concerns.
- DHS must develop specialized training for CBP personnel related to:
  - Preserving the child’s best interest;
  - Family unity; and
  - Other public interest factors.
- CBP personnel must take periodic continuing training on the best practices and changes related to the specialized training.
- DHS Secretary must annually submit a report to Congress on the migration deterrence program with an assessment of:
  - Number of apprehended individuals removed, repatriated, or referred for prosecution who are the parent, legal guardian, or primary caregiver of a child who is a U.S. citizen;
  - Number of times both parents, or the primary caregiver was removed, repatriated, or referred for prosecution as part of a migration deterrence program;
  - Number of apprehended individuals traveling with close family members who are removed, repatriated, or referred for prosecution; and
  - The impact of migration deterrence programs on public interest factors, including humanitarian concerns and physical safety.
- The Secretary must promulgate regulations within 120 days after enactment.

REPORTS (Sec. 1116, p. 59)
- The Secretary must submit a report to the Senate Judiciary, and Homeland Security and Governmental Affairs Committees, the House Judiciary, and Homeland Security Committees that sets forth the:
  - Effectiveness rate of each Border Patrol sector for the Northern and Southern borders;
  - Number of miles along the Southern border that is under persistent surveillance;
  - Monthly wait times per passenger, including data on averages and peaks, for crossing the Southern border, and the staffing of such border crossings; and
  - Allocations at each port of entry along the Southern border.
The Under Secretary of Defense for Acquisition, Technology, and Logistics and the DHS Under Secretary for Science and Technology shall jointly submit a report on the results of the interagency collaboration (see above) to:

- Senate
  - Armed Services Committee;
  - Homeland Security and Governmental Affairs Committee;
  - Judiciary;
- House
  - Armed Services Committee;
  - Homeland Security Committee;
  - Judiciary.

SEVERABILITY AND DELEGATION (Sec. 1117, p. 60)

- If any provision of S. 744 is held unconstitutional, the remaining provisions are legally enforceable.
- The Secretary may delegate any authority granted by this Act, including amendments, to:
  - Secretary of Agriculture;
  - Attorney General;
  - Secretary of Defense;
  - Secretary of Health and Human Services;
  - Secretary of State; or
  - Commissioner of Social Security. Note: this authority to delegate was not included in the original draft of the bill.

PROHIBITION ON LAND BORDER CROSSING FEES (Sec. 1118)

- The Secretary cannot charge a border crossing fee at ports of entry along the Northern or Southern border for:
  - Pedestrians; or
  - Passenger vehicles.
- The Secretary cannot conduct a study evaluating a land border crossing fee.

HUMAN TRAFFICKING REPORTING (Sec. 1119)


RULE OF CONSTRUCTION (Sec. 1120)

- S. 744 does not authorize the deployment, procurement, or construction of fencing along the Northern border.

LIMITATIONS ON DANGEROUS DEPORTATION PRACTICES (Sec. 1121)
The Secretary must certify to Congress within 1 year after enactment and every 180 days afterward that DHS only deported illegal aliens at entry or exit points on the Southern border during daylight hours.

The daylight hours deportation requirement does not apply if:

- Deportation or removal is justified by a compelling government interest;
- Deportation complies with applicable Local Arrangement for the Repatriation of Mexican Nationals; or
- The illegal alien is not an unaccompanied minor and:
  - Is deported in the same sector the illegal alien was apprehended; or
  - Agrees to be deported after notice of the intended manner of deportation

The Secretary must submit to Congress a study of the Alien Transfer Exit Program (ATEP) that includes:

- Specific locations on the Southern border where lateral repatriations occurred in the previous year;
- Performance measures developed by CBP to determine if ATEP is deterring recidivism; and
- Rates of violent crime and the availability of infrastructure and social services in Mexico

Federal authorities must return all lawful, nonperishable belongings of detained illegal aliens before repatriation.