

118TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To remove legal impediments preventing construction of a border barrier along the international border between the United States and Mexico, improve the construction requirements for such barrier, make previously appropriated funds available for constructing such barrier until expended, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

---

Mr. BUDD introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

---

**A BILL**

To remove legal impediments preventing construction of a border barrier along the international border between the United States and Mexico, improve the construction requirements for such barrier, make previously appropriated funds available for constructing such barrier until expended, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Build the Wall Now  
5 Act”.

1 **SEC. 2. RESUME CONSTRUCTION OF BARRIERS AND ROADS**  
2 **ALONG UNITED STATES AND MEXICO BOR-**  
3 **DER.**

4 (a) DEFINITIONS.—In this section:

5 (1) DEPARTMENT.—The term “Department”  
6 means the Department of Homeland Security.

7 (2) PHYSICAL BARRIERS.—The term “physical  
8 barriers” has the meaning given such term in sec-  
9 tion 102(e) of the Illegal Immigration Reform and  
10 Immigrant Responsibility Act of 1996, as added by  
11 section 3(5) of this Act.

12 (3) SECRETARY.—The term “Secretary” means  
13 the Secretary of Homeland Security.

14 (4) TACTICAL INFRASTRUCTURE; TECH-  
15 NOLOGY.—The terms “tactical infrastructure” and  
16 “technology” have the meanings given such terms in  
17 section 102(e) of the Illegal Immigration Reform  
18 and Immigrant Responsibility Act of 1996, as added  
19 by section 3(5) of this Act.

20 (b) IN GENERAL.—

21 (1) IMMEDIATE RESUMPTION OF BORDER BAR-  
22 RIER CONSTRUCTION.—Not later than 1 day after  
23 the date of the enactment of this Act, the Secretary  
24 shall resume all projects relating to the construction  
25 of physical barriers, tactical infrastructure, and  
26 technology along the international border between

1 the United States and Mexico that were underway,  
2 or being planned for, prior to January 20, 2021.

3 (2) NO CANCELLATIONS.—The Secretary may  
4 not cancel any contract for activities related to the  
5 construction of the border barrier system that was  
6 entered into on or before January 20, 2021.

7 (3) USE OF FUNDS.—To carry out this section,  
8 the Secretary shall expend all funds that were ap-  
9 propriated or explicitly obligated for the construction  
10 of the border barrier system on or after October 1,  
11 2016.

12 (c) UPHOLD NEGOTIATED AGREEMENTS.—The Sec-  
13 retary shall ensure that all agreements entered into before  
14 January 20, 2021 that were executed in writing between  
15 the Department and any State, local, or Tribal govern-  
16 ment, private citizen, or other stakeholder are honored by  
17 the Department relating to current and future construc-  
18 tion of the border barrier system in accordance with such  
19 agreements.

20 (d) AVAILABILITY OF FUNDS.—Notwithstanding any  
21 other provision of law, any amount appropriated or other-  
22 wise made available during fiscal year 2018, 2019, 2020,  
23 or 2021 for any project relating to the construction of  
24 physical barriers, tactical infrastructure, and technology

1 along the southern border shall remain available until ex-  
2 pended.

3 (e) USE OF FUNDS.—Any amounts appropriated or  
4 otherwise made available for fiscal year 2021 that remain  
5 available pursuant to subsection (d) may only be used for  
6 barriers, technology, or roads that—

7 (1) use—

8 (A) operationally effective designs deployed  
9 as of the date of enactment of the Consolidated  
10 Appropriations Act, 2017 (Public Law 115–31),  
11 such as currently deployed steel bollard designs,  
12 that prioritize agent safety; or

13 (B) operationally effective adaptations of  
14 such designs that help mitigate community or  
15 environmental impacts of barrier system con-  
16 struction, including adaptations based on con-  
17 sultation with jurisdictions within which barrier  
18 system will be constructed; and

19 (2) are constructed in the highest priority loca-  
20 tions as identified in the Border Security Improve-  
21 ment Plan.

22 **SEC. 3. IMPROVING THE REQUIREMENTS FOR BARRIERS**  
23 **ALONG THE SOUTHERN BORDER.**

24 (a) IN GENERAL.—Section 102 of the Illegal Immi-  
25 gration Reform and Immigrant Responsibility Act of 1996

1 (division C of Public Law 104–208; 8 U.S.C. 1103 note)  
2 is amended—

3 (1) in subsection (a), by striking “to install”  
4 and all that follows and inserting “(including the re-  
5 moval of obstacles to detection of illegal entrants) to  
6 design, test, construct, install, deploy, integrate, and  
7 operate physical barriers, tactical infrastructure, and  
8 technology in the vicinity of the United States bor-  
9 der to achieve situational awareness and operational  
10 control of the border and deter, impede, and detect  
11 illegal activity in high traffic areas.”;

12 (2) in subsection (b)—

13 (A) in the subsection heading, by striking  
14 “FENCING AND ROAD IMPROVEMENTS” and in-  
15 serting “PHYSICAL BARRIERS”;

16 (B) in paragraph (1)—

17 (i) in subparagraph (A)—

18 (I) by striking “subsection (a)”  
19 and inserting “this section”; and

20 (II) by striking “roads, lighting,  
21 cameras, and sensors to gain” and in-  
22 serting “tactical infrastructure, and  
23 technology to achieve situational  
24 awareness and”;

1 (ii) by amending subparagraph (B) to  
2 read as follows:

3 “(B) PHYSICAL BARRIERS AND TACTICAL  
4 INFRASTRUCTURE.—The Secretary, in carrying  
5 out this section, shall deploy along the United  
6 States border the most practical and effective  
7 physical barriers and tactical infrastructure  
8 available for achieving situational awareness  
9 and operational control of the border.”;

10 (iii) in subparagraph (C)—

11 (I) in clause (i)—

12 (aa) by striking “the Sec-  
13 retary of the Interior, the Sec-  
14 retary of Agriculture, States,  
15 local governments, Indian tribes,  
16 and” and inserting “appropriate  
17 Federal agency partners, appro-  
18 priate representatives of Federal,  
19 State, Tribal, and local govern-  
20 ments, and appropriate private”;  
21 and

22 (bb) by striking “fencing is”  
23 and inserting “physical barriers  
24 are”; and

25 (II) in clause (ii)—

1 (aa) in subclause (I), by  
2 striking “or” after the semicolon  
3 at the end;

4 (bb) by amending subclause  
5 (II) to read as follows:

6 “(II) delay the transfer to the  
7 United States of the possession of  
8 property or affect the validity of any  
9 property acquisition by the United  
10 States by purchase or eminent do-  
11 main, or to otherwise affect the emi-  
12 nent domain laws of the United States  
13 or of any State; or”; and

14 (cc) by adding at the end  
15 the following:

16 “(III) create any right or liability  
17 for any party.”; and

18 (iv) by striking subparagraph (D);

19 (C) in paragraph (2)—

20 (i) by striking “Attorney General”  
21 and inserting “Secretary of Homeland Se-  
22 curity”; and

23 (ii) by striking “this subsection and  
24 shall commence construction of fences”  
25 and inserting “this section and shall com-

1                   mence the construction of physical bar-  
2                   riers”;

3                   (D) by amending paragraph (3) to read as  
4                   follows:

5                   “(3) AGENT SAFETY.—In carrying out this sec-  
6                   tion, the Secretary of Homeland Security, when de-  
7                   signing, constructing, and deploying physical bar-  
8                   riers, tactical infrastructure, or technology, shall in-  
9                   corporate such safety features into such design, con-  
10                  struction, or deployment of such physical barriers,  
11                  tactical infrastructure, or technology, as the case  
12                  may be, that the Secretary determines, in consulta-  
13                  tion with the labor organization representing agents  
14                  of U.S. Border Patrol, are necessary to maximize  
15                  the safety and effectiveness of officers or agents of  
16                  the Department of Homeland Security or of any  
17                  other Federal agency deployed in the vicinity of such  
18                  physical barriers, tactical infrastructure, or tech-  
19                  nology.”; and

20                  (E) in paragraph (4), by striking “this  
21                  subsection” and inserting “this section”;

22                  (3) by striking subsection (c);

23                  (4) by inserting after subsection (b) the fol-  
24                  lowing:



1 “(c) TECHNOLOGY.—In carrying out this section, the  
2 Secretary of Homeland Security shall deploy along the  
3 United States border the most practical and effective tech-  
4 nology available for achieving situational awareness and  
5 operational control of the border.”; and

6 (5) by adding at the end the following:

7 “(e) DEFINITIONS.—In this section:

8 “(1) ADVANCED UNATTENDED SURVEILLANCE  
9 SENSORS.—The term ‘advanced unattended surveil-  
10 lance sensors’ means sensors that utilize an onboard  
11 computer to analyze detections in an effort to dis-  
12 cern between vehicles, humans, and animals, and ul-  
13 timately filter false positives prior to transmission.

14 “(2) HIGH TRAFFIC AREAS.—The term ‘high  
15 traffic areas’ means areas in the vicinity of the  
16 United States border that—

17 “(A) are within the responsibility of U.S.  
18 Customs and Border Protection; and

19 “(B) have significant unlawful cross-border  
20 activity, as determined by the Secretary of  
21 Homeland Security.

22 “(3) OPERATIONAL CONTROL.—The term ‘oper-  
23 ational control’ has the meaning given such term in  
24 section 2(b) of the Secure Fence Act of 2006 (Public  
25 Law 109–367; 8 U.S.C. 1701 note).

1           “(4) PHYSICAL BARRIERS.—The term ‘physical  
2 barriers’ includes reinforced fencing, the border bar-  
3 rier system, and levee walls.

4           “(5) SITUATIONAL AWARENESS.—The term ‘sit-  
5 uational awareness’ has the meaning given such  
6 term in section 1092(a)(7) of the National Defense  
7 Authorization Act for Fiscal Year 2017 (Public Law  
8 114–328; 6 U.S.C. 223(a)(7)).

9           “(6) TACTICAL INFRASTRUCTURE.—The term  
10 ‘tactical infrastructure’ includes boat ramps, access  
11 gates, checkpoints, lighting, and roads.

12           “(7) TECHNOLOGY.—The term ‘technology’  
13 means border surveillance and detection technology,  
14 including—

15               “(A) tower-based surveillance technology;

16               “(B) deployable, lighter-than-air ground  
17 surveillance equipment;

18               “(C) Vehicle and Dismount Exploitation  
19 Radars (VADER);

20               “(D) 3-dimensional, seismic acoustic detec-  
21 tion and ranging border tunneling detection  
22 technology;

23               “(E) advanced unattended surveillance  
24 sensors;



1           “(1) IN GENERAL.—Notwithstanding any other  
2           provision of law, the Secretary of Homeland Security  
3           shall have the authority to waive all legal require-  
4           ments that the Secretary determines necessary to  
5           ensure the expeditious design, testing, construction,  
6           installation, deployment, integration, and operation  
7           of the physical barriers, tactical infrastructure, and  
8           technology under this section and section 102 of the  
9           Illegal Immigration Reform and Immigrant Respon-  
10          sibility Act of 1996 (division C of Public Law 104–  
11          208; 8 U.S.C. 1103 note). Such waiver authority  
12          shall also apply with respect to any maintenance car-  
13          ried out on such physical barriers, tactical infra-  
14          structure, or technology. Any such decision by the  
15          Secretary shall be effective upon publication in the  
16          Federal Register.

17           “(2) NOTIFICATION.—Not later than 7 days  
18          after the date on which the Secretary of Homeland  
19          Security exercises the waiver authority under para-  
20          graph (1), the Secretary shall notify the Committee  
21          on Homeland Security of the House of Representa-  
22          tives and the Committee on Homeland Security and  
23          Governmental Affairs of the Senate of such waiver.

24           “(3) FEDERAL COURT REVIEW.—

1           “(A) IN GENERAL.—The district courts of  
2           the United States shall have exclusive jurisdic-  
3           tion to hear all causes or claims arising from  
4           any action undertaken, or any decision made,  
5           by the Secretary of Homeland Security pursu-  
6           ant to paragraph (1). A cause of action or  
7           claim may only be brought alleging a violation  
8           of the Constitution of the United States. The  
9           court shall not have jurisdiction to hear any  
10          claim not specified in this subparagraph.

11          “(B) TIME FOR FILING OF COMPLAINT.—  
12          Any cause or claim brought pursuant to sub-  
13          paragraph (A) shall be filed not later than 60  
14          days after the date of the action or decision  
15          made by the Secretary of Homeland Security. A  
16          claim shall be barred unless it is filed within  
17          the time specified.

18          “(C) ABILITY TO SEEK APPELLATE RE-  
19          VIEW.—An interlocutory or final judgment, de-  
20          cree, or order of the district court may be re-  
21          viewed only upon petition for a writ of certio-  
22          rari to the Supreme Court of the United States.

23          “(4) PREVIOUSLY WAIVED LEGAL REQUIRE-  
24          MENTS.—

1           “(A) IN GENERAL.—Any project relating  
2 to the construction of physical barriers, tactical  
3 infrastructure, and technology along the inter-  
4 national border between the United States and  
5 Mexico shall be exempt from any law or regula-  
6 tion referred to in subparagraph (B).

7           “(B) ELEMENTS.—The laws and regula-  
8 tions referred to in this subparagraph are—

9                   “(i) an Act to facilitate the work of  
10 the Forest Service (Public Law 87–869);

11                   “(ii) subchapter II of chapter 5 and  
12 chapter 7 of title 5, United States Code  
13 (commonly known as the ‘Administrative  
14 Procedure Act’);

15                   “(iii) the American Indian Religious  
16 Freedom Act of 1978 (Public Law 101–  
17 628);

18                   “(iv) the Arizona Desert Wilderness  
19 Act (6 U.S.C. 460ddd et seq.);

20                   “(v) the Arizona-Idaho Conservation  
21 Act of 1988 (Public Law 100–696);

22                   “(vi) the Act of June 8, 1940 (16  
23 U.S.C. 668 et seq.) (commonly known as  
24 the ‘Bald and Golden Eagle Protection  
25 Act’);

1 “(vii) the Clean Air Act (42 U.S.C.  
2 7401 et seq.);

3 “(viii) the Federal Water Pollution  
4 Control Act (33 U.S.C. 1151 et seq.) (com-  
5 monly known as the ‘Clean Water Act’);

6 “(ix) the Coastal Zone Management  
7 Act (16 U.S.C. 1451 et seq.);

8 “(x) the Comprehensive Environ-  
9 mental Response, Compensation, and Li-  
10 ability Act of 1980 (42 U.S.C. 9601 et  
11 seq.);

12 “(xi) the Endangered Species Act of  
13 1973 (16 U.S.C. 1531 et seq.);

14 “(xii) the Farmland Protection Policy  
15 Act (7 U.S.C. 4201 et seq.);

16 “(xiii) the Federal Cave Resources  
17 Protection Act of 1988 (16 U.S.C. 4301 et  
18 seq.);

19 “(xiv) chapter 63 of title 31, United  
20 States Code (originally enacted as the  
21 ‘Federal Grants and Cooperative Agree-  
22 ments Act of 1977’);

23 “(xv) the Federal Land Policy and  
24 Management Act of 1976 (43 U.S.C. 1701  
25 et seq.);

1           “(xvi) the Fish and Wildlife Coordina-  
2           tion Act (16 U.S.C. 662 et seq.);

3           “(xvii) the Migratory Bird Conserva-  
4           tion Act of 1929 (16 U.S.C. 715 et seq.);

5           “(xviii) the Migratory Bird Treaty Act  
6           (16 U.S.C. 703 et seq.);

7           “(xix) the Military Lands Withdrawal  
8           Act of 1999 (title XXX of Public Law  
9           106–65);

10           “(xx) the Act of June 12, 1960 (Pub-  
11           lic Law 86–517; 16 U.S.C. 528 et seq.)  
12           (commonly known as the ‘Multiple-Use and  
13           Sustained-Yield Act of 1960’);

14           “(xxi) the National Environmental  
15           Policy Act of 1969 (42 U.S.C. 4321 et  
16           seq.);

17           “(xxii) the National Fish and Wildlife  
18           Act of 1956 (16 U.S.C. 742a et seq.);

19           “(xxiii) the National Forest Manage-  
20           ment Act of 1976 (16 U.S.C. 472a et  
21           seq.);

22           “(xxiv) the National Historic Preser-  
23           vation Act (16 U.S.C. 470 et seq.);

24           “(xxv) the National Parks and Recre-  
25           ation Act of 1978 (Public Law 95–625);



1 “(xxvi) the National Trails System  
2 Act (16 U.S.C. 1241 et seq.);

3 “(xxvii) the National Wildlife Refuge  
4 System Administration Act of 1966 (16  
5 U.S.C. 668dd et seq.);

6 “(xxviii) the Native American Graves  
7 Protection and Repatriation Act (25  
8 U.S.C. 3001 et seq.);

9 “(xxix) the Noise Control Act of 1972  
10 (42 U.S.C. 4901 et seq.);

11 “(xxx) the Otay Mountain Wilderness  
12 Act of 1999 (Public Law 106–145);

13 “(xxxi) subtitle D of title VI of the  
14 Omnibus Public Land Management Act of  
15 2009 (16 U.S.C. 470aaa et seq.) (com-  
16 monly known as the ‘Paleontological Re-  
17 sources Preservation Act’);

18 “(xxxii) section 10 of the Act of Au-  
19 gust 4, 1939 (43 U.S.C. 387) (commonly  
20 known as the ‘Reclamation Project Act of  
21 1939’);

22 “(xxxiii) the Act of March 3, 1899  
23 (30 Stat. 1121, chapter 425; (33 U.S.C.  
24 403 et seq.) (commonly known as the ‘Riv-  
25 ers and Harbors Act of 1899’);

1 “(xxxiv) the Safe Drinking Water Act  
2 (42 U.S.C. 300f et seq.);

3 “(xxxv) the Sikes Act (16 U.S.C. 670  
4 et seq.);

5 “(xxxvi) the Small Business Act (15  
6 U.S.C. 631 et seq.);

7 “(xxxvii) the Solid Waste Disposal Act  
8 (42 U.S.C. 6901 et seq.) (commonly known  
9 as the ‘Resource Conservation and Recov-  
10 ery Act of 1976’);

11 “(xxxviii) the Wild and Scenic Rivers  
12 Act (16 U.S.C. 1271 et seq.);

13 “(xxxix) the Act of December 15,  
14 1971 (16 U.S.C. 1331 et seq.) (commonly  
15 known as the ‘Wild Free-Roaming Horses  
16 and Burros Act of 1971’);

17 “(xl) the Wilderness Act (16 U.S.C.  
18 1131 et seq.);

19 “(xli) sections 2304, 2304c, 2305,  
20 2505a, and 2306a of title 10, United  
21 States Code;

22 “(xlii) section 550 of title 40, United  
23 States Code;

24 “(xliii) title 41, United States Code;

1 “(xiv) sections 100101(a), 100751(a),  
2 and 102101 of title 54, United States  
3 Code;

4 “(xlv) chapters 1003, 1005, 1007,  
5 1009, 1021, 3125, 3201, and 3203 of title  
6 54, United States Code;

7 “(xlvii) division A of subtitle III of  
8 title 54, United States Code;

9 “(xlviii) part 125 of title 13, Code of  
10 Federal Regulations; and

11 “(xlviii) sections 16.504, 16.505,  
12 17.205, 17.207, 22.404, 22.404–5, and  
13 28.102–1 of title 48, Code of Federal Reg-  
14 ulations.

15 “(5) DEFINITIONS.—In this subsection, the  
16 terms ‘physical barriers’, ‘tactical infrastructure’,  
17 and ‘technology’ have the meanings given such terms  
18 in section 102(e) of the Illegal Immigration Reform  
19 and Immigrant Responsibility Act of 1996 (division  
20 C of Public Law 104–208; 8 U.S.C. 1103 note).”.

21 (b) CLERICAL AMENDMENT.—The table of contents  
22 of the Immigration and Nationality Act (8 U.S.C. 1101  
23 et seq.) is amended by striking the item relating to section  
24 103 and inserting the following:

“Sec. 103. Powers and duties of the Secretary, the Under Secretary, and the  
Attorney General.”.

1 **SEC. 5. PROHIBITION AGAINST USE OF FUNDS TO IMPLE-**  
2 **MENT OR ENFORCE PRESIDENTIAL PROCLA-**  
3 **MATION 10142.**

4 No funds, resources, or fees made available to the  
5 Secretary of Homeland Security, or to any other official  
6 of any Federal agency by any Act of Congress for any  
7 fiscal year, may be used to implement or enforce Presi-  
8 dential Proclamation 10142 of January 20, 2021 (86 Fed.  
9 Reg. 7225).