

118TH CONGRESS  
1ST SESSION

# S. 422

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.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2023

Mr. BUDD (for himself, Mr. TILLIS, Mr. RISCH, Mr. CRAPO, Mr. CRUZ, Mr. DAINES, Mr. ROUNDS, and Mrs. BLACKBURN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## 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           “(F) mobile vehicle-mounted and man-  
2           portable surveillance capabilities;

3           “(G) unmanned aircraft systems; and

4           “(H) other border detection, communica-  
5           tion, and surveillance technology.

6           “(8) UNMANNED AIRCRAFT SYSTEM.—The term  
7           ‘unmanned aircraft system’ has the meaning given  
8           such term in section 44801(12) of title 49, United  
9           States Code.”.

10          (b) EXISTING WAIVERS NOT AFFECTED.—A waiver  
11 issued by the Secretary of Homeland Security pursuant  
12 to section 102(c) of the Illegal Immigration Reform and  
13 Immigrant Responsibility Act of 1996 (division C of Pub-  
14 lic Law 104–208; 8 U.S.C. 1103 note) that was published  
15 in the Federal Register before the date of the enactment  
16 of this Act shall not be affected by the amendment made  
17 by subsection (a).

18 **SEC. 4. RECODIFYING THE SECRETARY OF HOMELAND SE-**  
19 **CURITY’S WAIVER AUTHORITY; ADDING PRE-**  
20 **VIOUSLY WAIVED LEGAL REQUIREMENTS.**

21          (a) IN GENERAL.—Section 103 of the Immigration  
22 and Nationality Act (8 U.S.C. 1103) is amended by add-  
23 ing at the end the following:

24          “(h) WAIVER AUTHORITY.—

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 Arizona Desert Wilderness  
16 Act (6 U.S.C. 460ddd et seq.);

17                   “(iv) the Arizona-Idaho Conservation  
18 Act of 1988 (Public Law 100–696);

19                   “(v) the Act of June 8, 1940 (16  
20 U.S.C. 668 et seq.) (commonly known as  
21 the ‘Bald and Golden Eagle Protection  
22 Act’);

23                   “(vi) the Clean Air Act (42 U.S.C.  
24 7401 et seq.);

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

4           “(viii) the Coastal Zone Management  
5 Act (16 U.S.C. 1451 et seq.);

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

10           “(x) the Endangered Species Act of  
11 1973 (16 U.S.C. 1531 et seq.);

12           “(xi) the Farmland Protection Policy  
13 Act (7 U.S.C. 4201 et seq.);

14           “(xii) the Federal Cave Resources  
15 Protection Act of 1988 (16 U.S.C. 4301 et  
16 seq.);

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

21           “(xiv) the Federal Land Policy and  
22 Management Act of 1976 (43 U.S.C. 1701  
23 et seq.);

24           “(xv) the Fish and Wildlife Coordina-  
25 tion Act (16 U.S.C. 662 et seq.);

1 “(xvi) the Migratory Bird Conserva-  
2 tion Act of 1929 (16 U.S.C. 715 et seq.);

3 “(xvii) the Migratory Bird Treaty Act  
4 (16 U.S.C. 703 et seq.);

5 “(xviii) the Military Lands With-  
6 drawal Act of 1999 (title XXX of Public  
7 Law 106–65);

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

12 “(xx) the National Environmental  
13 Policy Act of 1969 (42 U.S.C. 4321 et  
14 seq.);

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

17 “(xxii) the National Forest Manage-  
18 ment Act of 1976 (16 U.S.C. 472a et  
19 seq.);

20 “(xxiii) the National Historic Preser-  
21 vation Act (16 U.S.C. 470 et seq.);

22 “(xxiv) the National Parks and Recre-  
23 ation Act of 1978 (Public Law 95–625);

24 “(xxv) the National Trails System Act  
25 (16 U.S.C. 1241 et seq.);



1           “(xxvi) the National Wildlife Refuge  
2 System Administration Act of 1966 (16  
3 U.S.C. 668dd et seq.);

4           “(xxvii) the Native American Graves  
5 Protection and Repatriation Act (25  
6 U.S.C. 3001 et seq.);

7           “(xxviii) the Noise Control Act of  
8 1972 (42 U.S.C. 4901 et seq.);

9           “(xxix) the Otay Mountain Wilderness  
10 Act of 1999 (Public Law 106–145);

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

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

20           “(xxxii) the Act of March 3, 1899 (30  
21 Stat. 1121, chapter 425; (33 U.S.C. 403 et  
22 seq.) (commonly known as the ‘Rivers and  
23 Harbors Act of 1899’);

24           “(xxxiii) the Safe Drinking Water Act  
25 (42 U.S.C. 300f et seq.);

1 “(xxxiv) the Sikes Act (16 U.S.C. 670  
2 et seq.);

3 “(xxxv) the Small Business Act (15  
4 U.S.C. 631 et seq.);

5 “(xxxvi) the Solid Waste Disposal Act  
6 (42 U.S.C. 6901 et seq.) (commonly known  
7 as the ‘Resource Conservation and Recov-  
8 ery Act of 1976’);

9 “(xxxvii) the Wild and Scenic Rivers  
10 Act (16 U.S.C. 1271 et seq.);

11 “(xxxviii) the Act of December 15,  
12 1971 (16 U.S.C. 1331 et seq.) (commonly  
13 known as the ‘Wild Free-Roaming Horses  
14 and Burros Act of 1971’);

15 “(xxxix) the Wilderness Act (16  
16 U.S.C. 1131 et seq.);

17 “(xl) sections 2304, 2304c, 2305,  
18 2505a, and 2306a of title 10, United  
19 States Code;

20 “(xli) section 550 of title 40, United  
21 States Code;

22 “(xlii) title 41, United States Code;

23 “(xliii) sections 100101(a),  
24 100751(a), and 102101 of title 54, United  
25 States Code;

1 “(xiv) chapters 1003, 1005, 1007,  
2 1009, 1021, 3125, 3201, and 3203 of title  
3 54, United States Code;

4 “(xlv) division A of subtitle III of title  
5 54, United States Code;

6 “(xlv) part 125 of title 13, Code of  
7 Federal Regulations; and

8 “(xlvii) sections 16.504, 16.505,  
9 17.205, 17.207, 22.404, 22.404–5, and  
10 28.102–1 of title 48, Code of Federal Reg-  
11 ulations.

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

18 (b) CLERICAL AMENDMENT.—The table of contents  
19 of the Immigration and Nationality Act (8 U.S.C. 1101  
20 et seq.) is amended by striking the item relating to section  
21 103 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).

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