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H.R. 399, the Secure Our Borders First Act of 2015: Report in Brief

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Introduction

The Secure Our Borders First Act of 2015 (H.R. 399) was introduced on January 16, 2015. On January 21, 2015, an amendment in the nature of a substitute to the bill was offered and marked up.¹ The bill was also reported out of the House Homeland Security Committee on January 21, 2015.

This report provides a summary of select provisions in the bill that fall under two major headings—*Operational Control of the Borders* and *Biometric Entry and Exit System*. The report concludes with a brief description of additional provisions collected under a third heading—*CBP Agents and Officers, and Federal Land*. **Figure 1** provides a brief sketch of select provisions in H.R. 399 concerning operational control of the border, **Figure 2** briefly sketches the implementation timeline of the biometric exit data system, and the **Appendix** lists the reporting requirements in the bill.

Operational Control of the Borders

One of the cornerstones of H.R. 399 is the requirement that the Secretary of Homeland Security (Secretary) gains *situational awareness* and *operational control* over both the southern and northern borders. For the southern border, H.R. 399 would require that certain elements be met within a specified time period in order for the Secretary to attest² that he has achieved operational control over the border.

Border Technology, Infrastructure, and Fencing

Figure 1 provides an overview of the bill's provisions that would require the Secretary to gain situational awareness and operational control over the southern border. As indicated in **Figure 1**, operational control³ is defined as the prevention of *all* unlawful entries.

Section 3(b-c) of the bill would require that certain elements be met as part of achieving situational awareness and operational control of the border, including the following:

- The deployment of certain types of technology in specified southern border patrol sectors within one year of enactment.⁴
- Section 7 of the bill would permit the Chief of the Border Patrol to alter the deployment of such technology if he determines (after consultation with Congress⁵) that the principal border security threats outlined in the Operational Plan (see “Operational Plan”) necessitate such alteration.

¹ Representative Candice Miller offered the amendment in the nature of a substitute to H.R. 399.

² See the **Appendix**.

³ The bill would adopt the language found in the Secure Fence Act of 2006 (§2(b) of P.L. 109-367).

⁴ The bill specifies, at a minimum, which types of technology to be deployed and in which border patrol sector.

⁵ The appropriate congressional committees.

- In addition to what has already been constructed, the erection of fencing in specified southern border patrol sectors within 18 months of enactment.⁶ *The bill makes a distinction between “fencing” and “vehicle fence.”*⁷
- In addition to what has already been erected, the erection of *vehicle fencing* in the Big Bend Sector within one year of enactment.⁸
- The completion of road construction and road maintenance projects in specified border patrol sectors within 18 months of enactment.⁹
- In addition to what is already in existence, the construction of boat ramps in specified border patrol sectors within 180 days of enactment.¹⁰
- The construction of an access gate in the Rio Grande Valley sector within 180 days of enactment.
- The construction of forward operating bases in specified border patrol sectors within one year of enactment.¹¹

Figure 1, below, depicts provisions in H.R. 399 that would require the Secretary to gain situational awareness and operational control of the southern border.

⁶ The bill specifies, at a minimum, how many miles of fence and the type of fence to be erected and in which border patrol sectors.

⁷ “Fencing” is erected to prevent pedestrians from unlawfully crossing the border, while the construction of “vehicle fencing” provides a barrier to prevent vehicles from illegally crossing the border.

⁸ The bill specifies six miles of fencing.

⁹ The bill specifies, at a minimum, which types of projects to be completed and in which border patrol sectors.

¹⁰ The bill specifies, at a minimum, how many ramps to be constructed and in which border patrol sectors.

¹¹ The bill specifies, at a minimum, how many bases to be constructed and in which border patrol sectors. It also specifies the requirements for these bases.

Figure I. Sketch of Select Provisions in H.R. 399—Operational Control of the Border

Securing the Border

According to H.R. 399, the DHS Secretary would “gain and maintain”

- Situational awareness and operational control of high traffic areas within 2 Years of enactment.
- Situational awareness and operational control over the entire southern border within 5 years of enactment.

Key Ideas



Situational Awareness

Knowledge and an understanding of current unlawful cross-border activity, including cross-border threats and trends concerning illicit trafficking and unlawful crossings along the international borders of the United States, the ability to forecast future shifts in such threats and trends, and the operational capability to conduct continuous and integrated surveillance of the international borders of the United States.

Operational Control

The prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.

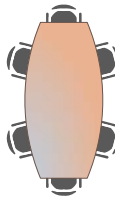
High Traffic Areas

Sectors along the northern and southern borders of the United States that are within the responsibility of the Border Patrol that have significant unlawful cross-border activity, informed through situational awareness.

Border Security Verification Commission

H.R. 399 would establish the Border Security Verification Commission, its membership, and its lifespan to certify the accuracy of the notifications regarding situational awareness and operational control.

DHS Operational Plan and Reports



Within 120 days of enactment, the DHS Secretary would submit to appropriate congressional committees, the Border Security Verification Commission, and the Comptroller General of the United States (head of the U.S. Government Accountability Office) a comprehensive operational plan to gain and maintain situational awareness and operational control of high traffic areas and operational control along the southern land border. The plan would include each DHS component responsible for border or maritime security. The DHS Secretary would implement the plan within 30 days after its submission. Within 90 days, the Comptroller General would submit to appropriate congressional committees and to the Border Security Verification Commission a report on the operational plan. H.R. 399 would require periodic updates of the plan from DHS.

H.R. 399 would require the DHS Secretary to submit 60 days after enactment and annually thereafter a report to the appropriate congressional committees that includes 1) a resource allocation model for current and future staffing of Customs and Border Protection personnel, 2) detailed information on available manpower at and between ports of entry, 3) detailed information describing any differences between the staffing model and actual manpower levels, 4) information on monthly passenger wait times at all ports of entry, 5) a description of infrastructure, security resources, and other measures necessary to achieve substantial reduction in average wait times of vehicles at land border ports of entry.

Metrics



H.R. 399 would mandate a minimum array of metrics for each of four functional zones along the border:

- The land border between ports of entry—metrics to be developed by the Chief of the Border Patrol.
- The land border at ports of entry—metrics to be developed by the Assistant Commissioner for the Office of Field Operations in U.S. Customs and Border Protection.
- The air and marine dimensions of the land border—metrics to be developed by the Assistant Commissioner for the Office of Air and Marine in U.S. Customs and Border Protection.
- The maritime border—metrics developed by the Commandant of the U.S. Coast Guard and the Assistant Commissioner for the Office of Air and Marine in U.S. Customs and Border Protection.

Consultation and Penalties

The bill describes which elements in DHS would consult in the development of metrics, and would prevent particular elements within the Executive Branch from reviewing the metrics. The bill also would establish penalties for DHS political appointees if the Department failed to meet any deadlines related to metrics.

Review and Certification



Evaluation by Government Accountability Office

DHS would submit the metrics required under H.R. 399 as well as the data and methodologies used to establish the metrics to appropriate congressional committees, the Border Security Verification Commission, and the Comptroller General of the United States. Within 270 days of receiving this information, the Government Accountability Office would submit a report to appropriate congressional committees and the Border Security Verification Commission. The report would cover the suitability and statistical validity of the methodology and data used for the border security metrics in the Operational Plan. It would make recommendations to the DHS Secretary and inform the Border Security Verification Commission's work.

Border Security Verification Commission Certification

Within 2 years of enactment, the DHS Secretary would submit to appropriate congressional committees and the Commission a notification attesting to situational awareness and operational control of high traffic areas. Within 5 years of enactment, DHS Secretary would submit to appropriate congressional committees and the Commission a notification attesting to operational control of the southern land border with annual updates thereafter. The bill would establish a process by which the Commission produces Operational Control Reviews and Reviews of Metrics. The Commission would report to Congress the results of the Operational Control Reviews. It would also evaluate the accuracy of metrics.

Failure

H.R. 399 would impose penalties for failure by DHS to establish situational awareness or operational control.

Capability Deployment, Fencing, and Infrastructure



H.R. 399 would mandate that DHS deploy along the southern border in a prioritized, risk-based manner to achieve situational awareness and operational control a variety of capabilities such as subterranean surveillance and detection technologies, unmanned aerial vehicles, and tower-based surveillance technology. The bill also would establish increased fencing along the southern border as well as other infrastructure such as roads. It calls for eradication of Carrizo cane, a non-native, invasive plant that causes serious officer safety issues and operational concerns along the Rio Grande River.

Source: CRS analysis of H.R. 399.

Although not a part of what would be required to gain situational awareness and operational control of the border, Section 15(c) of H.R. 399 contains similar requirements for technological deployments at the northern border.¹² H.R. 399 would also permit the Chief of the Border Patrol to alter the deployment if he determines (after consultation with Congress¹³) that the principal border security threats outlined in the threat analysis necessitate such alteration.¹⁴

Operational Plan

As iterated in **Figure 1**, Section 3(f) of H.R. 399 would require the Secretary to submit an operational plan. The bill would require the plan to include a variety of items such as an assessment of principal border security threats, a description of the staffing requirements for all of the border security functions of the border security components in the Department of Homeland Security (DHS), a prioritized list of research and development objectives to enhance the security of U.S. international borders, and identification of impediments to the deployment of technologies (see “Border Technology, Infrastructure, and Fencing”).

Border Metrics

Section 3(h) of H.R. 399 would require the development of metrics for each of the four functional zones along the border—land (at and between ports of entry), air, and sea ports of entry—within 120 days of enactment.¹⁵ **Figure 1** provides a brief overview of such metrics. The bill specifies what should be included in each metric for each functional zone along the border.

The bill would require that such metrics and their data and methodology be made available to the appropriate congressional committees, the Border Security Verification Commission, and the Comptroller General of the United States.

Border Security Verification Commission

Section 4 of H.R. 399 would create a Border Security Verification Commission (BSVC) to certify whether DHS has established situational awareness and operational control of the border (see **Figure 1**). The bill specifies the composition of the BSVC, among other things.

Biometric Entry-Exit System

Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA, P.L. 104-208, Div. C) required the Attorney General, within two years of enactment

¹² The bill specifies, at a minimum, which types of technology to be deployed and in which border patrol sectors along the northern border. While such deployments at the southern border would need to be completed within one year of enactment, the bill would require these deployments at the northern border to be completed within 18 months of enactment.

¹³ The appropriate congressional committees.

¹⁴ Section 15(a) of the bill would require a threat assessment of the northern border.

¹⁵ After the submission of the first set of metrics (within 120 days of enactment of the act), H.R. 399 would require metrics to be submitted annually.

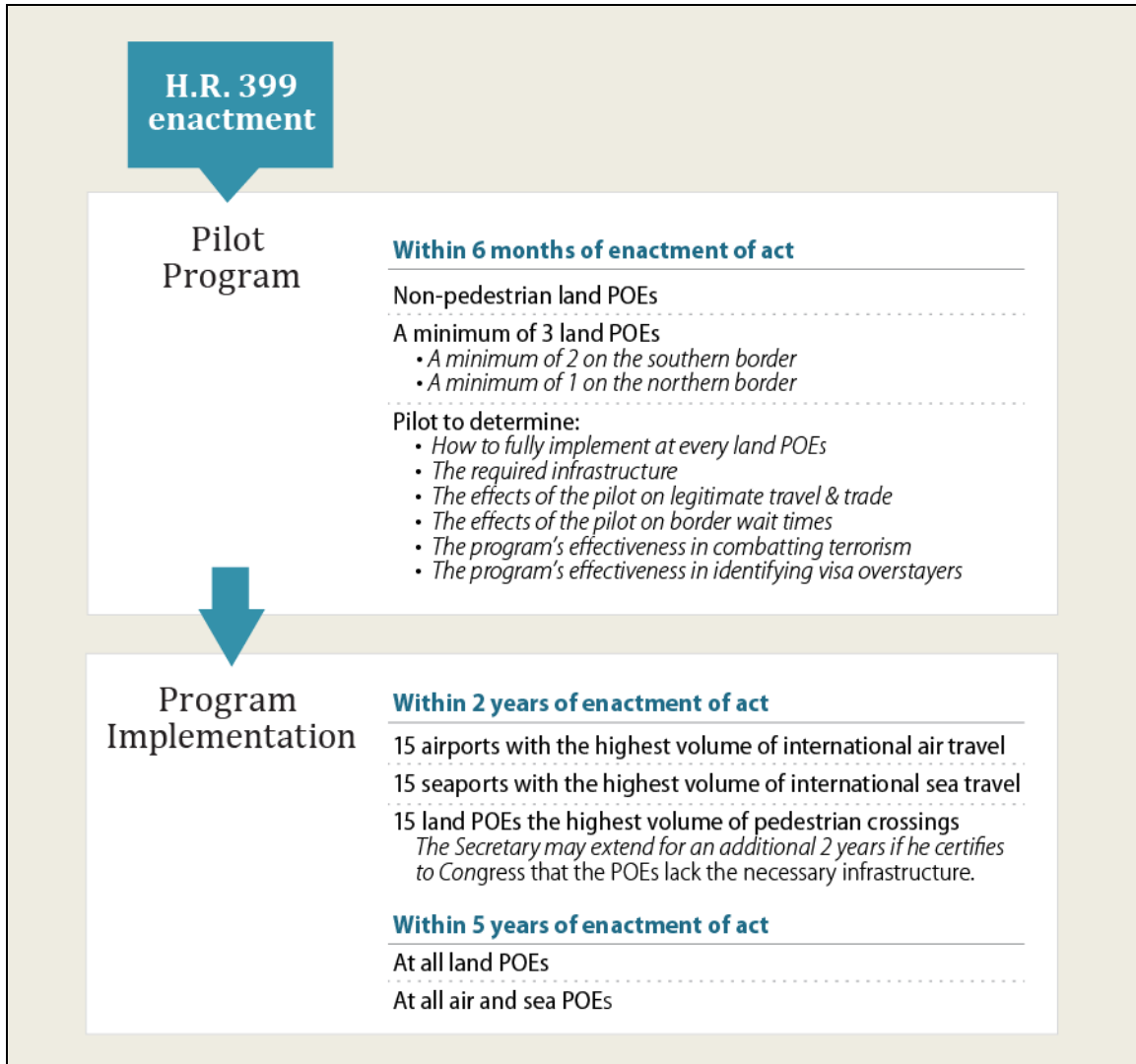
(i.e., by September 30, 1998), to develop an automated entry and exit control system that would collect records of alien arrivals and departures and allow the Attorney General, through online searches, to match such arrivals and departures and thereby identify nonimmigrant aliens who remain in the United States beyond the periods of their visas.

Congress has amended the system's requirements and deadlines on several occasions since then, including by adding an entry-exit requirement to legislation authorizing the Visa Waiver Program and by requiring the entry-exit system to include biometric technology and be fully interoperable with the Departments of State and Justice databases.¹⁶

Section 14 of H.R. 399 would require the Secretary to submit an implementation plan to execute a biometric *exit* data system. The bill would create a six-month pilot program to test the biometric exit system, which would precede the implementation of the roll out of the program. The bill sets forth staggered deadlines for full implementation of the entry-exit system (see **Figure 2**). H.R. 399 would require the Secretary to submit an implementation plan to the relevant committees of Congress. Similar to other provisions, the bill would establish penalties levied against DHS political appointees for failing to meet the requirements by the deadline it mandates.

¹⁶ For additional information, see CRS Report R43356, *Border Security: Immigration Inspections at Ports of Entry*.

Figure 2. Biometric Exit Data System Implementation Timeline



Source: CRS analysis of H.R. 399.

CBP Agents and Officers, and Federal Land

This section briefly describes select provisions in H.R. 399 pertaining to Customs and Border Protection (CBP) agents and officers, and a prohibition on acts that might impede border security on federal land.

CBP Agents and Officers

Section 9 of H.R. 399 would require components of CBP to maintain a minimum number of personnel:

- The Border Patrol would be required to maintain at least 21,370 active duty Border Patrol agents.

- The Office of Field Operations (OFO)¹⁷ would be required to maintain at least 23,775 officers.
- The Office of Air and Marine (OAM) would be required to maintain at least 1,675 agents.¹⁸

Section 12(a) of the bill would permit the Chief of the Border Patrol to transfer agents, who desire such transfer, to high traffic areas; *and*, Section 12(b) would permit the Chief of the Border Patrol to provide an incentive bonus to such agents.¹⁹

Federal Land

Section 13 of H.R. 399 would prohibit the Secretaries of Interior or Agriculture from impeding, prohibiting, or restricting CBP activities on federal land (that is under their respective jurisdictions) within 100 miles of the international border with Mexico or Canada. It also lists activities that CBP would be authorized to engage in on federal land, among other things.

¹⁷ OFO staff the nation's POEs.

¹⁸ The bill also specifies minimum flight hours for OAM and its unmanned aerial systems.

¹⁹ Section 12(c) would authorize \$30 million in appropriations for each fiscal year to fund the incentive bonuses. (*While the provision does not specify which fiscal years, the last section in the bill, which authorizes appropriations for the entire bill, specifies FY2016-FY2025.*)

Appendix. Reporting Requirements

Table A-1 lists the various reports and plans H.R. 399 would require.

Table A-1. Select Reporting Requirements in H.R. 399

Report	Responsible Individual	Retriever of Report	Deadline
Assess and describe state of situational awareness and operational control along both borders	Secretary of Homeland Security	Congress, the BSVC, and GAO	Initial report—within 30 days of enactment; subsequent reports every 180 days for the first two years and annually thereafter
Verification of the data and methodology used to ascertain high-traffic areas and unlawful border crossing effectiveness rate	Comptroller General (GAO)	Congress and the BSVC	Within 90 days of receiving the aforementioned initial report
Operational Plan (see “Operational Plan”)	Secretary of Homeland Security	Congress, the BSVC, and GAO	Within 120 days of enactment and 180 days after the submission of each Quadrennial Homeland Security review
Review of the Operational Plan	GAO	Congress and the BSVC	Within 90 days after receiving the Operational Plan
Certification of the accuracy of operational control	BSVC	Congress	Within 120 days after conducting a review of DHS’s notification of achieving operational control
Suitability and statistical validity of the metrics data and methodology	GAO	Congress and the BSVC	Within 270 days after receiving the metrics data and methodology
Notification that operational control is being maintained	Secretary of Homeland Security	Congress and the BSVC	Annually, beginning with the year after the Secretary first submits notification that operational control is being maintained
A revised plan to achieve situational awareness and/or operational control <i>(In a case where one or both has not been achieved by the deadline)</i>	Secretary of Homeland Security	Congress and the BSVC	Within 180 days (of deadline)
Results of metrics review	BSVC	Congress	Within 120 days after conducting a review of the metrics required by Sec. 3(h)
Various reports on the entry-exit system from DHS component agencies	Secretary of Homeland Security	Congress	Within 90 days of enactment
A plan to establish a biometric entry and exit system	Secretary of Homeland Security	Congress	Within 180 days of enactment

Report	Responsible Individual	Retriever of Report	Deadline
A plan for DHS to acquire and deploy aviation capabilities along the southern border	Secretary of Homeland Security	Congress and the BSVC	Within 180 days of enactment
Operating hours of unmanned aerial systems	Office of Air & Marine	Congress	Annually
Resource allocation model at all POEs and measures that are necessary to achieve reductions in wait times at land POEs	Secretary of Homeland Security	Congress	Within 60 days of enactment and annually thereafter
Northern border threat analysis	Secretary of Homeland Security	Congress	Within six months of enactment
Expenditure of grants made under the Operation Stonegarden program	Administrator of the program	Congress	Annually

Source: H.R. 399.

Notes: Congress—appropriate congressional committees; BSVC—Border Security Verification Commission; GAO—Government Accountability Office.

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Acknowledgments

Amber Wilhelm, CRS Graphics Specialist, created **Figure 2**.