

Calendar No. 410

116TH CONGRESS }
2d Session }

SENATE

{ REPORT
116-212 }

OPERATION STONEGARDEN AUTHORIZATION
ACT OF 2019

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2750

TO AMEND THE HOMELAND SECURITY ACT OF 2002 TO AUTHOR-
IZE THE OPERATION STONEGARDEN GRANT PROGRAM, AND FOR
OTHER PURPOSES



FEBRUARY 4, 2020.—Ordered to be printed

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OPERATION STONEGARDEN AUTHORIZATION ACT OF 2019

FEBRUARY 4, 2020.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 2750]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 2750) to amend the Homeland Security Act of 2002 to authorize the Operation Stonegarden grant program, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

CONTENTS

	Page
I. Purpose and Summary	1
II. Background and Need for the Legislation	2
III. Legislative History	4
IV. Section-by-Section Analysis	4
V. Evaluation of Regulatory Impact	5
VI. Congressional Budget Office Cost Estimate	5
VII. Changes in Existing Law Made by the Bill, as Reported	7

I. PURPOSE AND SUMMARY

S. 2750, the Operation Stonegarden Authorization Act, authorizes the Operation Stonegarden grant program for \$110 million annually from fiscal year (FY) 2020 through FY 2024. Operation Stonegarden is a grant program operated under the Department of Homeland Security's (DHS or the Department) Homeland Security Grant Program, which provides grants to local, state and tribal law enforcement to improve cooperation and coordination with Customs

and Border Protection (CBP) and United States Border Patrol (USBP) on border security.¹

The grants awarded under the Operation Stonegarden program may be used to support equipment acquisition and maintenance, personnel, and border security activities. The Administrator of the Federal Emergency Management Administration (FEMA)—the agency within DHS responsible for managing the grants issued under the Homeland Security Grant Program—must collect and maintain information on the Operation Stonegarden grants and establish guidelines for oversight of the program as part of S. 2750. The FEMA Administrator must also develop guidelines for financial review of the grants. Finally, the FEMA Administrator is required to, in coordination with CBP, report annually from FYs 2020 to 2024 to Congress on the expenditure of grants made under Operation Stonegarden. Each report must include information on how each grant recipient expended the funds and a list of all operations carried out using Operation Stonegarden grants.

II. BACKGROUND AND THE NEED FOR LEGISLATION

The Homeland Security Act of 2002 authorized DHS to administer Federal homeland security grant programs to assist state and local governments and other partners to enhance the homeland security enterprise.² Grants issued under the Department’s Homeland Security Grant Program are used to help state and local governments prepare for and respond to terrorist attacks, secure critical infrastructure, assist nonprofit organizations, and secure high-threat and high-risk urban areas.³ The Homeland Security Grant Program was expanded with the enactment of The Implementing Recommendations of the 9/11 Commission Act of 2007, which authorized additional homeland security grants and mandated some of their allocation methodologies.⁴ Operation Stonegarden is one of the grants operated under the Department’s Homeland Security Grant Program.⁵

Operation Stonegarden was expanded in 2006 to “give states additional funding and flexibility to strengthen America’s borders”.⁶ Recipients of Operation Stonegarden grants include states along the northern or southwest borders, and other states and territories with international water borders. Funds under Operation Stonegarden are provided to state, local, tribal, and territorial law

¹ On April 16, 2018 the Committee approved H.R. 2825 (115th Cong.). Section 1417 of that bill is substantially similar to S. 2750. Accordingly, this committee report is in part a reproduction of Chairman Johnson’s committee report for H.R. 2825, S. Rep. No. 115–351.

² Pub. L. No. 107–296 (2002). Grant programs over time included: Nunn-Lugar-Domenici Program, Emergency Management Performance Grant Program, Homeland Security Grant Program, State Homeland Security Grant Program, Urban Area Security Initiative, Operation Stonegarden, Intercity Bus Security Grant Program, Intercity Passenger Rail Security—Amtrak Grant Program, Port Security Grant Program, Tribal Homeland Security Grant Program, and Transit Security Grant Program. See Shawn Reese, Cong. Research Serv., R44669, Department of Homeland Security Preparedness Grants: A Summary and Issues, at 2 (Oct. 28, 2016), <https://fas.org/sgp/crs/homesecc/R44669.pdf>.

³ *Id.*

⁴ Pub. L. No. 110–53, 110th Cong. (2007).

⁵ Homeland Security Grants, *Operation Stonegarden (OPSG) Program*, <http://www.homelandsecuritygrants.info/GrantDetails.aspx?gid=21875> (last visited Nov. 21, 2019).

⁶ G&T Information Bulletin from Tracy Henke, Assistant Sec’y, Fed. Emergency Mgmt. Agency, to All State Administrative Heads, All State Administrative Agency Points of Contact, and All State Homeland Security Directors (Mar. 20, 2006), https://www.fema.gov/media-library-data/1568206660864-3ee266568513a169d80d05385be50a53/IB_204_508_review_AB.pdf.

enforcement agencies for border-security purposes.⁷ Operation Stonegarden was provided \$90 million in FY 2019⁸ and \$85 million in FY 2018.⁹ During FY 2019, 22 states and territories were allocated funds under Operation Stonegarden.¹⁰ This bill authorizes \$110 million for each of the FYs 2020 through 2024.

In FY 2019, 977,509 individuals were apprehended or found to be inadmissible at the southwest border,¹¹ a 72 percent increase in comparison to FY 2014. The grants provided by Operation Stonegarden have been particularly useful to border communities as they are being asked to purchase and operate equipment as well as to pay salaries and overtime for border-security purposes.¹² According to local law enforcement officers, Operation Stonegarden is one of the most effective and beneficial programs for certain jurisdictions in securing the border.¹³

The DHS Office of Inspector General (DHS OIG) and the Government Accountability Office have consistently identified issues with the preparedness grants, such as lack of internal oversight and metrics to show that the grants are reducing the Nation's collective risk.¹⁴ In a 2016 report to DHS, the DHS OIG determined "that FEMA had not adequately analyzed recurring recommendations to implement changes to improve its oversight of these grants. This occurred because FEMA did not clearly communicate internal roles and responsibilities and did not have policies and procedures to conduct substantive trend analyses of audit recommendations."¹⁵ DHS OIG further determined that "because FEMA regularly waives these questioned costs, the subgrantees have no motivation to comply with basic contracting and acquisition principles, and the problem will continue to fester."¹⁶

⁷Homeland Security Grants, *Operation Stonegarden (OPSG) Program*, <http://www.homelandsecuritygrants.info/GrantDetails.aspx?gid=21875> (last visited Nov. 21, 2019).

⁸Press Release, U.S. Dep't of Homeland Sec., DHS Announces Funding Opportunity for FY 2019 Preparedness Grants (Apr. 12, 2019), available at <https://www.dhs.gov/news/2019/04/12/dhs-announces-funding-opportunity-fiscal-year-2019-preparedness-grants>.

⁹Press Release, U.S. Dep't of Homeland Sec., DHS Announces Grant Allocations for FY 2018 Preparedness Grants (Aug. 24, 2018), available at <https://www.dhs.gov/news/2018/08/24/dhs-announces-grant-allocations-fiscal-year-2018-preparedness-grants>.

¹⁰Announcement from the Federal Emergency Management Agency, to Members of Congress (Aug. 2, 2019) (on file with Comm. staff).

¹¹Media Release, U.S. Customs and Border Prot., *U.S. Customs and Border Protection Announces September Border Enforcement Actions* (Oct. 8, 2019), available at <https://www.cbp.gov/newsroom/national-media-release/us-customs-and-border-protection-announces-september-border>.

¹²PEW, *Immigration Enforcement Along U.S. Borders & at Ports of Entry* (Feb. 6, 2015), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/02/immigration-enforcement-along-us-borders-and-at-ports-of-entry>.

¹³See *Securing the Southwest Border: Perspectives from Beyond the Beltway: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 114th Cong. (2015); see also U.S. Customs And Border Prot., *Performance and Accountability Report: FY 2013*, 12 (2014) ("Stonegarden funds increase operational capabilities for multijurisdictional law enforcement entities, promoting a layered, coordinated approach to law enforcement.")

¹⁴See e.g. U.S. Gov't Accountability Office, GAO-16-38, *Strengthening Regional Coordination Could Enhance Preparedness Efforts* (2016), <https://www.gao.gov/assets/650/674968.pdf>; U.S. Gov't Accountability Office, GAO-12-526T, *Managing Preparedness Grants and Assessing National Capabilities: Continuing Challenges Impede FEMA's Progress* (2012); Office of Inspector Gen., U.S. Dep't of Homeland Sec., OIG-16-49, *Analysis of Recurring Audit Recommendations Could Improve FEMA's Oversight of HSGP* (2016), <https://www.oig.dhs.gov/assets/Mgmt/2016/OIG-16-49-Mar16.pdf>.

¹⁵Office of Inspector Gen., U.S. Dep't of Homeland Sec., OIG-17-08, *Major Management and Performance Challenges Facing the Department of Homeland Security*, at 6 (Nov. 2016) <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-08-Nov16.pdf>.

¹⁶*Preparedness, Response, and Rebuilding: Lessons from the 2017 Disasters: Hearing Before the H. Comm. on Homeland Sec.*, 115th Cong. (2018) (statement of John Kelly, Acting Inspector Gen., Office of Inspector Gen., U.S. Dep't of Homeland Sec.).

The Operation Stonegarden program is an important tool to help protect our borders and prevent drug trafficking by ensuring that law enforcement agencies in border communities have access to important resources. In conjunction with authorizing Operation Stonegarden, this bill requires the creation of grants metrics to create transparency and accountability within the grant program. Once metrics are developed, DHS will be able to measure the programs' effectiveness.

To increase the efficiency of Operation Stonegarden, the bill requires that FEMA collect and maintain financial information at the award level. It also requires that the FEMA Administrator establish guidelines to oversee funding requirements and improve program performance. Additionally, to ensure more effective oversight of Operation Stonegarden, this bill requires that FEMA report to Congress a list of all expenditures and operations broken down by recipient.

III. LEGISLATIVE HISTORY

Senator Martha McSally (R-AZ) introduced S. 2750, the Operation Stonegarden Authorization Act, on October 30, 2019, with Senator Doug Jones (D-AL). The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 2750 at a business meeting on November 6, 2019. During the business meeting, a substitute amendment was offered by Chairman Ron Johnson and Ranking Member Gary Peters and adopted by unanimous consent. Senator Carper (D-DE) offered an amendment that requires FEMA to conduct oversight of Operation Stonegarden grants and report expenditures to Congress. Both amendments were adopted en bloc by voice vote, with Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Sinema, and Rosen present.

The bill, as amended, was ordered reported favorably en bloc by voice vote. Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Sinema, and Rosen were present.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section established that the bill may be cited as the "Operation Stonegarden Authorization Act."

Section 2. Operation Stonegarden

Subsection (a) establishes the Operation Stonegarden grant program within the Department, and specifies that the grants may be awarded to states that border Canada or Mexico. In addition, States and U.S. territories with international maritime border may also be eligible to receive grants under this program, and eligible law enforcement agencies for enhancing border security.

Subsection (b) defines eligible law enforcement agencies, which includes law enforcement agencies within States and territories bordering Canada or Mexico. Law enforcement agencies involved in ongoing CBP operations are also eligible to receive grants under this program.

Subsection (c) outlines the allowable uses of funds awarded under this program. The grant may be used to support, among other things, equipment acquisition and maintenance, personnel, and border security activities.

Subsection (d) defines the length of the grant award period, which is to be for not less than 36 months.

Subsection (e) requires the Administrator to separately collect and maintain financial information, including but not limited to, the amounts awarded, obligated, and outlays under the Operation Stonegarden program within 30 days of enactment of this bill.

Subsection (f) requires the Administrator to establish and implement guidelines to ensure the proper administration and awarding of grants under the Operation Stonegarden program. The guidelines established under this bill are to be submitted to Congress within 90 days of the bill's enactment.

Subsection (g) requires the Administrator, in coordination with the Commissioner of CBP, to develop guidelines for financial review, including the establishment of auditing and reporting requirements. Within 90 days of the bill's enactment, the financial review guidelines established under this subsection are to be submitted to Congress.

Subsection (h) requires the Administrator, in coordination with CBP, to report annually from FY 2020 to FY 2024 to Congress on the expenditure of grants made under Operation Stonegarden. Each report must include information on how each grant recipient expended the funds and the nature of operations carried out using Operation Stonegarden grants.

Subsection (i) authorizes appropriations of \$110 million annually for Operation Stonegarden from FY 2020 through FY 2024.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 29, 2020.

Hon. RON JOHNSON,
*Chairman, U.S. Committee on Homeland Security and Govern-
mental Affairs, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2750, the Operation Stonegarden Authorization Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jon Sperl.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

S. 2750, Operation Stonegarden Authorization Act			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on November 6, 2019			
By Fiscal Year, Millions of Dollars	2020	2020-2025	2020-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	8	412	461
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

S. 2750 would codify Operation Stonegarden, a grant program administered by the Federal Emergency Management Agency (FEMA). Under the program, FEMA awards grants to state and tribal law enforcement agencies to enhance security along the nation's borders and to improve coordination between those agencies and the federal government. The bill would authorize the appropriation of \$110 million annually through 2024 to award grants.

CBO assumes that the bill will be enacted in 2020. In 2020, FEMA received appropriations totaling \$90 million to administer the program, thus, CBO estimates \$20 million of that total authorization would remain effective in 2020. Using information provided by FEMA, CBO estimates that, implementing S. 2750 would cost \$412 million over the 2020–2025 period and \$49 million after 2025, assuming appropriation of the authorized amounts.

S. 2750 also would require FEMA to collect and maintain information on each grant, establish guidelines for tracking program performance and conducting audits, and report additional information to the Congress. To implement those additional requirements, CBO estimates that FEMA would need to hire one additional employee at an average annual cost of about \$150,000.

The costs of the legislation (detailed in Table 1) fall within budget function 450 (community and regional development).

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER S. 2750

	By fiscal year, millions of dollars—						
	2020 ^a	2021	2022	2023	2024	2025	2020–2025
Operation Stonegarden Grants:							
Authorization	20	110	110	110	110	0	460
Estimated Outlays	8	50	81	100	106	66	411

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER S. 2750—
Continued

	By fiscal year, millions of dollars—						
	2020 ^a	2021	2022	2023	2024	2025	2020– 2025
Administrative Costs:							
Estimated Authorization	*	*	*	*	*	*	1
Estimated Outlays	*	*	*	*	*	*	1
Total Changes:							
Estimated Authorization	20	110	110	110	110	*	461
Estimated Outlays	8	50	81	110	106	66	412

Components may not sum to the totals because of rounding.* = between zero and \$500,000.
^aThe bill would authorize the appropriation of \$110 million in 2020 for Operation Stonegarden. In 2020, the Congress provided \$90 million for that purpose. Thus, CBO shows an authorization of \$20 million in 2020, the difference between the authorized amount (\$110 million) and the amount appropriated in 2020 (\$90 million).

The CBO staff contact for this estimate is Jon Sperl. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002

* * * * *

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. * * *

* * * * *

TITLE XX—HOMELAND SECURITY GRANTS

* * * * *

2009. Operation Stonegarden.

* * * * *

TITLE XX—HOMELAND SECURITY GRANTS

* * * * *

Subtitle A—Grants to State and High-Risk Urban Areas

* * * * *

SEC. 2002. HOMELAND SECURITY GRANT PROGRAMS.

(a) GRANTS AUTHORIZED.—The Secretary [through the Administrator] may award grants under sections 2003, [and] 2004, and

2009 to State, tribal, territorial, and local [and tribal] governments, as appropriate.

* * * * *

SEC. 2009. OPERATION STONEGARDEN.

(a) *ESTABLISHMENT.*—There is established in the Department a program, which shall be known as “Operation Stonegarden”, under which the Secretary may award grants to States that border Canada or Mexico, States with an international maritime border, and eligible law enforcement agencies for the purpose of enhancing border security.

(b) *ELIGIBLE LAW ENFORCEMENT AGENCIES.*—A law enforcement agency is eligible to receive a grant under this section if the agency, either directly or through the State in which agency is located, if the agency—

(1) is located in—

(A) a State bordering Canada or Mexico; or

(B) a State or territory with an international maritime border; and

(2) is involved in an active, ongoing, U.S. Customs and Border Protection operation coordinated through a sector office.

(c) *PERMITTED USES.*—Grant funds received under this section may be used by a State or an eligible law enforcement agency for—

(1) equipment, including maintenance and sustainment costs;

(2) personnel, including overtime and backfill for law enforcement personnel or non-law enforcement personnel who support enhanced border law enforcement activities;

(3) allowable and approved personnel costs, including salaries, fringe benefits, overtime and backfill for dedicated intelligence analysts supporting Operation Stonegarden operations in support of enhanced border law enforcement activities

(4) any activity permitted for Operation Stonegarden under—

(A) the Department of Homeland Security’s most recent Homeland Security Grant Program Notice of Funding Opportunity; or

(B) the Federal Emergency Management Agency’s Preparedness Grants Manual; and

(5) any other appropriate activity, as determined by the Secretary.

(d) *PERIOD OF PERFORMANCE.*—The Secretary may award grants under this section to grant recipients for a period of not less than 36 months.

(e) *COLLECTION OF INFORMATION.*—For any FY beginning on or after the date that is 30 days after the date of the enactment of the Operation Stonegarden Authorization Act for which grants are made under Operation Stonegarden, the Administrator shall separately collect and maintain financial information with respect to grants awarded under Operation Stonegarden, including—

(1) the amount of the awards;

(2) the amount obligated for the awards;

(3) the amount of outlays under the awards;

(4) financial plans with respect to the use of the awards;

(5) any funding transfers or reallocations; and

(6) any adjustments to spending plans or reprogramming.

(f) *ADMINISTRATOR OVERSIGHT.*—

(1) *IN GENERAL.*—*The Administrator shall establish and implement guidelines—*

(A) *to ensure that amounts made available under Operation Stonegarden are used in accordance with grant guidance and applicable Federal laws;*

(B) *to increase the proportion of each grant made under Operation Stonegarden that is used for operational expenses by the ultimate grantee;*

(C) *to improve program performance reporting and program performance measurements to facilitate designing, implementing, and enforcing procedures under Operation Stonegarden; and*

(D) *to require the recording of standardized performance data regarding program output.*

(2) *SUBMISSION.*—*Not later than 90 days after the date of the enactment of the Operation Stonegarden Authorization Act, the Administrator shall submit the guidelines established under paragraph (1) to—*

(A) *the Committee on Homeland Security and Governmental Affairs of the Senate;*

(B) *the Committee on Homeland Security of the House of Representatives; and*

(C) *the Committee on Oversight and Reform of the House of Representatives.*

(g) *FINANCIAL REVIEW GUIDELINES.*—

(1) *IN GENERAL.*—*The Administrator, in coordination with the Commissioner of U.S. Customs and Border Protection, shall develop and implement guidelines establishing procedures for implementing the auditing and reporting requirements set forth in section 2022 with respect to Operation Stonegarden.*

(2) *SUBMISSION.*—*Not later than 90 days after the date of the enactment of the Operation Stonegarden Authorization Act, the Administrator shall submit the guidelines developed under paragraph (1) to the congressional committees listed under subsection (f)(2).*

(h) *REPORT AND BRIEFING.*—*During each of the FYs 2020 through 2024, the Administrator, in coordination with the Commissioner of U.S. Customs and Border Protection, shall submit a report and provide a briefing to the congressional committees listed under subsection (f)(2) that includes, for the period covered by the report—*

(1) *information on how each recipient of a grant under Operation Stonegarden expended amounts received under the grant;*

(2) *information regarding the nature of operations carried out using amounts made available under Operation Stonegarden; and*

(3) *in the first report submitted under this subsection—*

(A) *an examination of the effects changing Operation Stonegarden to award multi-year grants would have on its mission; and*

(B) *the findings and recommendations of the Administrator regarding what changes could improve Operation Stonegarden, which may include feedback from grant recipients.*

(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated \$110,000,000 for each of the FYs 2020 through 2024 for grants under this section.

