

115TH CONGRESS
1ST SESSION

S. 1856

To prevent the militarization of Federal, State, and local law enforcement by Federal excess property transfers and grant programs.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25, 2017

Mr. PAUL (for himself, Mr. SCHATZ, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To prevent the militarization of Federal, State, and local law enforcement by Federal excess property transfers and grant programs.

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 “Stop Militarizing Law
5 Enforcement Act”.

1 **SEC. 2. ADDITIONAL LIMITATIONS ON TRANSFER OF DE-**
2 **PARTMENT OF DEFENSE PERSONAL PROP-**
3 **ERTY TO FEDERAL AND STATE LAW EN-**
4 **FORCEMENT AGENCIES.**

5 (a) ADDITIONAL LIMITATIONS.—

6 (1) IN GENERAL.—Section 2576a of title 10,
7 United States Code, is amended—

8 (A) in subsection (a)—

9 (i) in paragraph (1)—

10 (I) in the matter preceding sub-
11 paragraph (A), by striking “sub-
12 section (b)” and inserting “the provi-
13 sions of this section”; and

14 (II) in subparagraph (A), by
15 striking “, including counter-drug and
16 counterterrorism activities”; and

17 (ii) in paragraph (2), by striking “and
18 the Director of National Drug Control Pol-
19 icy”;

20 (B) in subsection (b)—

21 (i) in paragraph (3), by striking
22 “and” at the end;

23 (ii) in paragraph (4), by striking the
24 period and inserting a semicolon; and

25 (iii) by adding at the end the fol-
26 lowing new paragraphs:

1 “(5) the recipient certifies to the Department of
2 Defense that it has the personnel and technical ca-
3 pacity, including training, to operate the property;
4 and

5 “(6) the recipient certifies to the Department of
6 Defense that if the recipient determines that the
7 property is surplus to the needs of the recipient, the
8 recipient will return the property to the Department
9 of Defense.”;

10 (C) by striking subsection (d); and

11 (D) by adding at the end the following new
12 subsections:

13 “(d) LIMITATIONS ON TRANSFERS.—The Secretary
14 of Defense may not transfer under this section any prop-
15 erty as follows:

16 “(1) Weapons, weapon parts, and weapon com-
17 ponents, including camouflage and deception equip-
18 ment, and optical sights.

19 “(2) Weapon system specific vehicular acces-
20 sories.

21 “(3) Demolition materials.

22 “(4) Explosive ordinance.

23 “(5) Night vision equipment.

1 “(6) Tactical clothing, including uniform cloth-
2 ing and footwear items, special purpose clothing
3 items, and specialized flight clothing and accessories.

4 “(7) Drones.

5 “(8) Combat, assault, and tactical vehicles, in-
6 cluding Mine-Resistant Ambush Protected (MRAP)
7 vehicles.

8 “(9) Training aids and devices.

9 “(10) Firearms of .50 caliber or higher, ammu-
10 nition of .50 caliber or higher, grenade launchers,
11 flash grenades, and bayonets.

12 “(e) APPROVAL BY LAW REQUIRED FOR TRANSFER
13 OF PROPERTY NOT PREVIOUSLY TRANSFERRABLE.—(1)
14 In the event the Secretary of Defense proposes to make
15 available for transfer under this section any property of
16 the Department of Defense not previously made available
17 for transfer under this section, the Secretary shall submit
18 to the appropriate committees of Congress a report setting
19 forth the following:

20 “(A) A description of the property proposed to
21 be made available for transfer.

22 “(B) A description of the conditions, if any, to
23 be imposed on use of the property after transfer.

1 “(C) A certification that transfer of the prop-
2 erty would not violate a provision of this section or
3 any other provision of law.

4 “(2) The Secretary may not transfer any property
5 covered by a report under this subsection unless author-
6 ized by a law enacted by Congress after the date of the
7 receipt of the report by Congress.

8 “(f) ANNUAL CERTIFICATION ACCOUNTING FOR
9 TRANSFERRED PROPERTY.—(1) The Secretary of Defense
10 shall submit to the appropriate committees of Congress
11 each year a certification in writing that each recipient to
12 which the Secretary has transferred property under this
13 section during the preceding fiscal year—

14 “(A) has provided to the Secretary documenta-
15 tion accounting for all property the Secretary has
16 previously transferred to such recipient under this
17 section; and

18 “(B) has complied with paragraphs (5) and (6)
19 of subsection (b) with respect to the property so
20 transferred during such fiscal year.

21 “(2) If the Secretary cannot provide a certification
22 under paragraph (1) for a recipient, the Secretary may
23 not transfer additional property to such recipient under
24 this section, effective as of the date on which the Secretary
25 would otherwise make the certification under this sub-

1 section, and such recipient shall be suspended or termi-
2 nated from further receipt of property under this section.

3 “(g) CONDITIONS FOR EXTENSION OF PROGRAM.—

4 Notwithstanding any other provision of law, amounts au-
5 thorized to be appropriated or otherwise made available
6 for any fiscal year may not be obligated or expended to
7 carry out this section unless the Secretary submits to the
8 appropriate committees of Congress a certification that for
9 the preceding fiscal year that—

10 “(1) each recipient agency that has received
11 property under this section has—

12 “(A) demonstrated 100 percent account-
13 ability for all such property, in accordance with
14 paragraph (2) or (3), as applicable; or

15 “(B) been suspended or terminated from
16 the program pursuant to paragraph (4);

17 “(2) with respect to each non-Federal agency
18 that has received property under this section, the
19 State Coordinator responsible for each such agency
20 has verified that the State Coordinator or an agent
21 of the State Coordinator has conducted an in-person
22 inventory of the property transferred to the agency
23 and that 100 percent of such property was ac-
24 counted for during the inventory or that the agency

1 has been suspended or terminated from the program
2 pursuant to paragraph (4);

3 “(3) with respect to each Federal agency that
4 has received property under this section, the Sec-
5 retary of Defense or an agent of the Secretary has
6 conducted an in-person inventory of the property
7 transferred to the agency and that 100 percent of
8 such property was accounted for during the inven-
9 tory or that the agency has been suspended or ter-
10 minated from the program pursuant to paragraph
11 (4);

12 “(4) the eligibility of any agency that has re-
13 ceived property under this section for which 100 per-
14 cent of the equipment was not accounted for during
15 an inventory described in paragraph (2) or (3), as
16 applicable, to receive property transferred under this
17 section has been suspended or terminated;

18 “(5) each State Coordinator has certified, for
19 each non-Federal agency located in the State for
20 which the State Coordinator is responsible that—

21 “(A) the agency has complied with all re-
22 quirements under this section; or

23 “(B) the eligibility of the agency to receive
24 property transferred under this section has been
25 suspended or terminated; and

1 “(6) the Secretary of Defense has certified, for
2 each Federal agency that has received property
3 under this section that—

4 “(A) the agency has complied with all re-
5 quirements under this section; or

6 “(B) the eligibility of the agency to receive
7 property transferred under this section has been
8 suspended or terminated.

9 “(h) WEBSITE.—The Defense Logistics Agency shall
10 maintain, and update on a quarterly basis, an Internet
11 website on which the following information shall be made
12 publicly available in a searchable format:

13 “(1) A description of each transfer made under
14 this section, including transfers made before the
15 date of the enactment of the Stop Militarizing Law
16 Enforcement Act, set forth by State, county, and re-
17 cipient agency, and including item name, item type,
18 item model, and quantity.

19 “(2) A list of all property transferred under
20 this section that is not accounted for by the Defense
21 Logistics Agency, including—

22 “(A) the name of the State, county, and
23 recipient agency;

24 “(B) the item name, item type, and item
25 model;

1 “(C) the date on which such property be-
2 came unaccounted for by the Defense Logistics
3 Agency; and

4 “(D) the current status of such item.

5 “(3) A list of each agency suspended or termi-
6 nated from further receipt of property under this
7 section, including State, county, and agency, and the
8 reason for and duration of such suspension or termi-
9 nation.

10 “(i) DEFINITIONS.—In this section:

11 “(1) The term ‘appropriate committees of Con-
12 gress’ means—

13 “(A) the Committee on Armed Services
14 and the Committee on Homeland Security and
15 Governmental Affairs of the Senate; and

16 “(B) the Committee on Armed Services
17 and the Committee on Oversight and Govern-
18 ment Reform of the House of Representatives.

19 “(2) The term ‘agent of a State Coordinator’
20 means any individual to whom a State Coordinator
21 formally delegates responsibilities for the duties of
22 the State Coordinator to conduct inventories de-
23 scribed in subsection (g)(2).

24 “(3) The term ‘State Coordinator’, with respect
25 to a State, means the individual appointed by the

1 governor of the State to maintain property account-
2 ability records and oversee property use by the
3 State.”.

4 (2) EFFECTIVE DATE.—The amendments made
5 by this subsection shall take effect on the date of the
6 enactment of this Act.

7 (b) RETURN OF PROPERTY TO DEPARTMENT OF DE-
8 FENSE.—Not later than one year after the date of the en-
9 actment of this Act, each Federal or State agency to which
10 property described by subsection (d) of section 2576a of
11 title 10, United States Code (as added by subsection
12 (a)(1) of this section), was transferred before the date of
13 the enactment of this Act shall return such property to
14 the Defense Logistics Agency on behalf of the Department
15 of Defense.

16 **SEC. 3. USE OF DEPARTMENT OF HOMELAND SECURITY**
17 **PREPAREDNESS GRANT FUNDS.**

18 (a) DEFINITIONS.—In this section—

19 (1) the term “Agency” means the Federal
20 Emergency Management Agency; and

21 (2) the term “preparedness grant program” in-
22 cludes—

23 (A) the Urban Area Security Initiative au-
24 thorized under section 2003 of the Homeland
25 Security Act of 2002 (6 U.S.C. 604);

1 (B) the State Homeland Security Grant
2 Program authorized under section 2004 of the
3 Homeland Security Act of 2002 (6 U.S.C. 605);

4 (C) the Port Security Grant Program au-
5 thorized under section 70107 of title 46, United
6 States Code; and

7 (D) any other non-disaster preparedness
8 grant program of the Agency.

9 (b) LIMITATION.—The Agency may not permit
10 awards under a preparedness grant program—

11 (1) to be used to buy, maintain, or alter—

12 (A) explosive entry equipment;

13 (B) head and face protection equipment,
14 other than those to be used by certified bomb
15 technicians;

16 (C) canines (other than bomb-sniffing ca-
17 nines for agencies with certified bomb techni-
18 cians or for use in search and rescue oper-
19 ations);

20 (D) tactical or armored vehicles;

21 (E) long-range hailing and warning de-
22 vices;

23 (F) tactical entry equipment (other than
24 for use by specialized teams such as Accredited

1 Bomb Squads, Tactical Entry, or Special Weap-
2 ons and Tactics (SWAT) Teams); or

3 (G) firearms of .50 caliber or higher, am-
4 munition of .50 caliber or higher, grenade
5 launchers, flash grenades, or bayonets; or

6 (2) to be used to buy, maintain, or alter body
7 armor or ballistic helmets and shields unless the
8 grantee certifies to the Agency that the equipment
9 will not be used for riot suppression.

10 (c) REVIEW OF PRIOR RECEIPT OF PROPERTY BE-
11 FORE AWARD.—In making an award under a prepared-
12 ness grant program, the Agency shall—

13 (1) determine whether the awardee has already
14 received, and still retains, property from the Depart-
15 ment of Defense pursuant to section 2576a of title
16 10, United States Code, including through review of
17 the website maintained by the Defense Logistics
18 Agency pursuant to subsection (h) of such section
19 (as added by section 2(a)(1) of this Act);

20 (2) require that the award may not be used by
21 the awardee to procure or obtain property deter-
22 mined to be retained by the awardee pursuant to
23 paragraph (1); and

24 (3) require that the award only be used to pro-
25 cure or obtain property in accordance with use re-

1 restrictions contained within the Agency’s State and
2 Local Preparedness Grant Programs’ Authorized
3 Equipment List.

4 (d) USE OF GRANT PROGRAM FUNDS FOR REQUIRED
5 RETURN OF PROPERTY TO DOD.—Notwithstanding any
6 other provision of law, the use of funds by a State or local
7 agency to return to the Department of Defense property
8 transferred to such State or local agency pursuant to sec-
9 tion 2676a of title 10, United States Code, as such return
10 is required by section 2(b) of this Act, shall be an allow-
11 able use of preparedness grant program funds by such
12 agency.

13 (e) ACCOUNTABILITY MEASURES.—

14 (1) AUDIT OF USE OF PREPAREDNESS GRANT
15 FUNDS.—Not later than one year after the date of
16 the enactment of this Act, the Comptroller General
17 of the United States shall conduct an audit covering
18 the period of fiscal year 2010 through the current
19 fiscal year on the use of preparedness grant program
20 funds. The audit shall assess how funds have been
21 used to procure equipment, how the equipment has
22 been used, and whether the grant awards have
23 furthered the Agency’s goal of improving the pre-
24 paredness of State and local communities.

1 (2) ANNUAL ACCOUNTING OF USE OF AWARD
2 FUNDS.—Not later than one year after the date of
3 the enactment of this Act, the Agency shall develop
4 and implement a system of accounting on an annual
5 basis how preparedness grant program funds have
6 been used to procure equipment, how the equipment
7 has been used, whether grantees have complied with
8 restrictions on the use of equipment contained with
9 the Authorized Equipment List, and whether the
10 awards have furthered the Agency’s goal of enhanc-
11 ing the capabilities of State agencies to prevent,
12 deter, respond to, and recover from terrorist attacks,
13 major disasters, and other emergencies.

14 **SEC. 4. USE OF EDWARD BYRNE MEMORIAL JUSTICE AS-**
15 **SISTANCE GRANT FUNDS.**

16 (a) LIMITATION.—Section 501(d) of title I of the
17 Omnibus Crime Control and Safe Streets Act of 1968 (42
18 U.S.C. 3751(d)) is amended by adding at the end the fol-
19 lowing:

20 “(3) The purchase, maintenance, alteration, or
21 operation of—

22 “(A) lethal weapons; or

23 “(B) less-lethal weapons.”.

24 (b) USE OF GRANT FUNDS FOR REQUIRED RETURN
25 OF PROPERTY TO DOD.—Notwithstanding any other pro-

1 vision of law, the use of funds by a State agency or unit
2 of local government to return to the Department of De-
3 fense property transferred to such agency or unit of local
4 government pursuant to section 2676a of title 10, United
5 States Code, as such return is required by section 2(b)
6 of this Act, shall be an allowable use of grant amounts
7 under the Edward Byrne Memorial Justice Assistance
8 Grant Program.

9 **SEC. 5. COMPTROLLER GENERAL REPORT.**

10 (a) IN GENERAL.—Not later than 90 days after the
11 date of the enactment of this Act, and annually thereafter,
12 the Comptroller General of the United States shall submit
13 to Congress a report on Federal agencies, including offices
14 of Inspector General for Federal agencies, that have spe-
15 cialized units that receive special tactical or military-style
16 training or use hard-plated body armor, shields, or hel-
17 mets and that respond to high-risk situations that fall out-
18 side the capabilities of regular law enforcement officers,
19 including any special weapons and tactics (SWAT) team,
20 tactical response teams, special events teams, special re-
21 sponse teams, or active shooter teams.

22 (b) ELEMENTS.—The report required under sub-
23 section (a) shall include the following elements:

24 (1) A description of each specialized unit de-
25 scribed under such subsection.

1 (2) A description of the training and weapons
2 of each such unit.

3 (3) The criteria for activating each such unit
4 and how often each such unit was activated for each
5 year of the previous ten years.

6 (4) An estimate of the annual cost of equipping
7 and operating each such unit.

8 (5) Any other information that is relevant to
9 understanding the usefulness and justification for
10 the units.

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