

OPEN THE GOVERNMENT

AMERICANS FOR LESS SECRECY, MORE DEMOCRACY

The Building America's Trust Act (S.1757)

Threats to privacy, the right to know, and government accountability

We urge Members of Congress to oppose the *Building America's Trust Act* ([S.1757](#)). The bill contains unnecessary provisions that are fundamentally at odds with government accountability, and would authorize the implementation of massive federal border security, immigration enforcement, and surveillance programs in secret and without privacy protections.

- **The bill would keep the public in the dark about its implementation:** Sections 702 and 703 of the bill contain exemptions to the Administrative Procedure Act (APA) and the Paperwork Reduction Act (PRA) that would prevent the public from being informed of the bill's implementation via the *Federal Register*, and from offering comments and receiving feedback from implementing agencies. These exemptions are explained as necessary to ease "the expeditious implementation of this Act," but the APA and PRA already contain adequate exemptions, and a fast-track process for the PRA is already available.
- **An exemption from FOIA would severely undermine the public's right to know:** Section 702 would exempt the bill from the Freedom of Information Act (FOIA), which is part of the APA. This exemption could deprive the public of their right to government information about use of taxpayer money to build border infrastructure, use of drones to conduct surveillance, designation of criminal gangs, or any of the other important government activities authorized by the legislation.
- **The bill would threaten privacy rights:** Section 702 would also exempt the bill from the Privacy Act, meaning that the public would lose crucial privacy and right to know protections including the right to review and correct government records about themselves. This is particularly concerning given the surveillance and biometric data collection provisions in the bill. If an agency believes it's necessary to exempt a certain system of records from Privacy Act protections, it can already do so by publishing a notice in the *Federal Register* and receiving public comments.
- **The bill significantly expands DHS authority and undermines Congress.** Section 102 of S.1757 gives the Secretary of Homeland Security the authority to "waive all legal requirements...necessary to ensure the expeditious construction, installation, operation, and maintenance of the tactical infrastructure and technology under this section." This provision is a major expansion of the authority granted in the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA), which allowed waivers only for construction of barriers and roads. This bill expands the authority well beyond IIRIRA to include operation and maintenance, meaning the waivers could remain in place indefinitely, well after construction is completed. In addition to "barriers and roads," S.1757 includes "tactical infrastructure and technology," which would allow the Secretary to waive every law that would safeguard against civil liberties violations, misuse of taxpayer dollars, and avenues for accountability and Congressional oversight. In 2008, DHS [used the much narrower authority](#) it had (pursuant to IIRIRA) to waive the APA and a number of other laws protecting the environment, farmland, religious freedom, and historical sites.

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