Border apprehensions wildly exaggerated in formula behind Senate bill, say critics

By: Maxim Lott – June 5, 2013

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The 90 percent apprehension goal set by Senate and House bills seeking to rein in illegal immigration while establishing a path to citizenship for those crossing into the U.S. from Mexico is based on fuzzy math, according to critics.

The goal, which is supposed to give teeth to legislation some view as amnesty, would depend on a Department of Homeland Security formula for determining the success rate of catching illegal border crossers. That formula requires visual or physical evidence for determining someone got past the border patrol, evidence that simply isn't left behind in most cases. The result, say critics, is a wildly exaggerated success rate for catching illegal border crossers.

"To calculate it, border patrol officers go out and look for physical evidence of crossings... you know, 'I saw this person cross and I didn't get him.' Or, 'I saw footprints in the sand,'" John Whitley, an economist who analyzed such statistics while he served as the director of the DHS's Program Analysis & Evaluation department under President Bush, told FoxNews.com.

The problem is that, no matter how hard border patrol officers try to find physical evidence of successful illegal crossings, they can't find everything.

"We know that this method of calculation understates the number of successful crossings, because you're excluding anyone you don't have physical evidence for," Whitley said. Using that method, Department of Homeland Security data already indicate a border security effectiveness rate of 84 percent -- close to the 90 percent target.

Some congressmen are concerned about the numbers.

"To just look for footprints and have a guesstimate – that would be outrageous," Rep. Louie Gohmert, R-Texas, told FoxNews.com.

"We can't go along with a bill that says, 'Hey, we have a 90 percent requirement for security' – when there is no way to verify whether or not the 90 percent is accurate."

In addition to not being accurate, the DHS methodology presents other problems, according to critics. For instance, an administration looking to artificially inflate the border effectiveness rate could simply call Border Patrol officers off from looking for signs of successful crossings and assign them to other tasks.

"There is no way we could trust this Department of Homeland Security to verify," Gohmert said. "And there are independent sources that we could trust. We could have drones and other monitoring where we can find out exactly how many make it across without being apprehended."

Other methods of estimating border crossings show a much lower apprehension rate. "Survey data, recidivism data, and press reports about the Vader radar system all put it in the 50 percent range," Whitley said, referring to the DHS's new airborne Vader radar system which, during a test last winter in the Sonora Desert, indicated that the Border Patrol caught 1,874 people but missed 1,962 who successfully crossed.

The Department of Homeland Security did not respond to a request for comment on Monday.

But groups that support more immigration said that border enforcement should not be a priority in the first place.

"Government obsession with the particulars of border enforcement metrics misses the point," said Alex Nowrasteh, an immigration analyst at the CATO institute. "We know from experience that increasing legal immigration opportunities, especially for lower-skilled guest workers, is the best way to eliminate unlawful immigration. Border Patrol should operate as a funnel to channel would-be unlawful immigrants into the legal market rather than an agency that separates willing workers from willing employers."

Policy questions aside, the formula some say is flawed makes the pending Senate bill being touted by Marco Rubio R-Fla., and others problematic, according to sources on Capitol Hill.

"It doesn't make sense if you're allowing the Department of Homeland Security to judge themselves," a GOP Senate staffer told FoxNews.com. "They can game the system, game the statistics, and then end up meeting the requirements."

Sen. Rand Paul, R-Ky., announced Tuesday that he would introduce an amendment that would put Congress, not the DHS, in charge of making the determination about whether the border is 90 percent secure.

"My amendment requires Congress to vote every year on border security. If Congress votes that the border is not secure, elements of immigration reform will cease to go forward and visa programs will be slowed," Paul said in a press release.

As of now, the 90 percent goal remains only that, a goal – and the path to citizenship provisions for illegal aliens would be implemented even if the 90 percent target were not met. The only consequence of not meeting the target is the creation of a government committee that would issue a report with recommendations for meeting the target. Gohmert says he does not want the bills to pass.

"Let's secure the border. And then we can get a deal worked out very, very quickly after that. But not until the border is secure."