



H.J. Res. 46 - Relating to a national emergency declared by the President on February 15, 2019 (Rep. Castro, D-TX)

FLOOR SCHEDULE:

Expected to be considered on February 26, 2019 under a closed [rule](#).

Among other things, the rule provides that the provisions of [section 202 of the National Emergencies Act](#) shall not apply during the remainder of the One Hundred Sixteenth Congress to a joint resolution terminating the national emergency declared by the President on February 15, 2019. Section 202 sets forth the legislative procedure for terminating a national emergency declaration.

TOPLINE SUMMARY:

[H.J. Res. 46](#) is a joint resolution to terminate the national emergency declared by President Trump on February 15, 2019, pertaining to the immigration crisis on the southern border. This resolution must be passed by both chambers of Congress and signed by the President to go into effect. If the President vetoes the legislation, a 2/3 majority of voting members of both chambers would be required to override the veto.

COST:

A Congressional Budget Office (CBO) cost estimate is not necessary for joint resolutions.

CONSERVATIVE VIEWS:

Some conservatives may feel that negotiations to fund the government and secure the border were unreasonably obstructed by Democrats, and therefore, the President had to use other tools available to him to ensure the safety of American citizens. Some conservatives may feel that the President is acting in accordance with the will of Congress, as Congress authorized the construction of a southern border wall through the enactment of [the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and subsequent amending legislation](#) that enhanced that authority. Some conservatives may feel that the construction of the border wall is paramount, regardless of the mechanism used to fund its construction.

Some conservatives may also feel that while the President has broad authority to declare a national emergency under the National Emergencies Act (NEA), the NEA itself is a flawed legislative apparatus that abdicates Congress's power of the purse in violation of Article I of the United States

Constitution. Even if they do not agree with the outcome of the appropriations negotiations, they may still believe that the border barrier appropriations approved by Congress in the most recent spending bill represent the will of Congress, which has sole authority over appropriations. They may believe that the situation at the border, even if rising to the level of a national emergency, does not warrant usage of the military construction authorities provided by [10 U.S.C. 2808](#) pursuant to the terms of that section.

Some conservatives may also worry that declaring a national emergency pursuant to the broad terms of the NEA to use funds not appropriated by Congress for that purpose would set a precedent for the declaration of other emergencies by a future liberal President, perhaps on topics such as gun control or climate change.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** This legislation does not, though some conservatives may feel that the national emergency declaration infringes on Congress' power of the purse.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

Under the National Emergencies Act (NEA) ([50 U.S.C. 1622](#)), Congress has the authority to pass a joint resolution to terminate a presidentially declared national emergency declared pursuant to the NEA. Under the NEA, once introduced, the resolution shall be referred to the appropriate committee, then reported by the committee within fifteen (15) days, and then voted on within three (3) calendar days. The resolution then shall be referred to the appropriate committee of the other chamber where it follows the same procedures. Notably, in the Senate, this resolution is not subject to the filibuster. The joint resolution would then go to the President's desk where it would presumably be vetoed. The vetoed resolution can still become law if two-thirds of the Members voting in the House and the Senate each agree to pass it over the President's objection.

On February 15, 2019, President Trump signed [H.J. Res. 31](#) to prevent another partial government shutdown. The bill provided \$1.375 billion for "the construction of primary pedestrian fencing, including levee pedestrian fencing, in the Rio Grande Valley Sector" – a deal falling short of providing the \$5.7 billion the President requested to build over 200 miles of border wall.

On February 15, 2019, the President [declared a national emergency](#) pertaining to the immigration crisis at the southern border, to address the high number of illegal border crossings, infiltration of drugs and weapons into the United States, and halt increased gang activity. According to a [fact sheet](#) from the White House, the funds diverted for border wall construction are planned to include \$601 million from the Treasury Forfeiture Fund, \$2.5 billion under the Department of Defense counter-drug activities account, and \$3.6 billion from the Department of Defense's military construction funds. The funds pertaining to the Treasury Forfeiture Fund and the Department of Defense counter-drug activities account are not subject to the national emergency declaration, and therefore would be unaffected by this disapproval resolution. The military construction authority is derived by [10 U.S.C. 2808](#), and provides, in pertinent part, as follows:

(a) In the event of a declaration of war or the declaration by the President of a national emergency in accordance with the National Emergencies Act (50 U.S.C. 1601 et seq.) that requires use of the armed forces, the Secretary of Defense, without regard to any other provision of law, may undertake military construction projects, and may authorize the Secretaries of the military departments to undertake military construction projects, not otherwise authorized by law that are necessary to support such use of the armed forces. Such projects may be undertaken only within the total amount of funds that have been appropriated for military construction, including funds appropriated for family housing, that have not been obligated.

January of 2019 saw a [surge in illegal](#) border crossings, with 22,000 more crossings than in the same month of the year prior - an 84% increase in crossings, from 25,975 in January of 2018 to 47,893 crossings in January of 2019. These figures indicate that total apprehensions for 2019 are estimated to top 600,000 illegal crossings. [Fiscal Year 2018](#) saw an increased surge of family apprehensions that were 42% higher than the previous recorded year. Unaccompanied minor apprehensions in [FY 2018](#) hit 58,660, about a 20% increase from FY 2017. According to [Doctors Without Borders](#), over 2/3 of individuals that attempt to cross the border become victims of violence on their journey. Moreover, in January, U.S. Customs and Border Patrol in a single action, [seized](#) 254 pounds of fentanyl at the Nogales border crossing – representing the largest fentanyl seizure made by USCBP. [Finally](#), over the past two years, “approximately 4,000 criminal aliens have been arrested for homicide, 30,000 for sex crimes, over a 100,000 for violent assaults.”

The National Emergency Act broadly authorizes the President to declare a national emergency and provides for termination procedures of the declared emergency. It also requires the President to enumerate specific provisions of law that he will use upon declaring the national emergency. Enactment of the NEA in 1976 effectively eliminated or modified a number of statutory grants of emergency authority, required the President to declare formally the existence of a national emergency, mandated that he or she specify what statutory authority activated by the declaration would be used, and provided Congress a means to countermand the President’s declaration and the activated authority being sought. However, it also had the overall effect of statutorily endowing the president with relatively broad authority to declare a national emergency.

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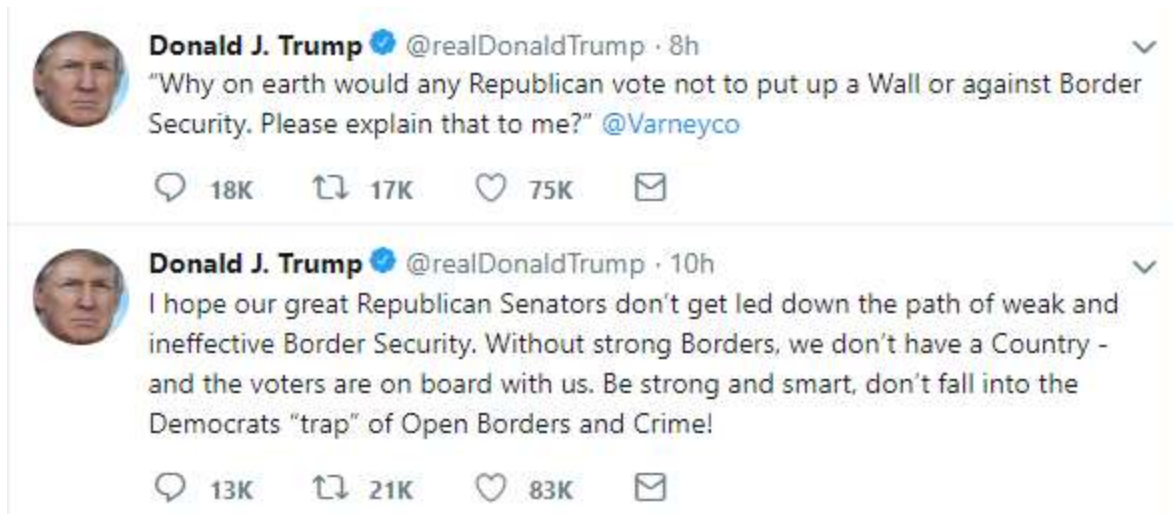
COMMITTEE ACTION:

H.J. Res. 46 was introduced on February 22, 2019 and was referred to the House Committee on Transportation and Infrastructure.

ADMINISTRATION POSITION:

A Statement of Administration Policy is not available at this time.

However, President Trump would presumably veto the resolution disapproving of his emergency declaration. Additionally, the President stated the following on Monday on the issue:



CONSTITUTIONAL AUTHORITY:

According to the bill's sponsor, "Congress has the power to enact this legislation pursuant to the following: Constitutional Authority--Necessary and Proper Clause (Art. I, Sec. 8, Clause 18) The Congress shall have power . . . To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."