

Calendar No. 559

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
114-303 }

CROSS-BORDER TRADE ENHANCEMENT
ACT OF 2015

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 461

TO PROVIDE FOR ALTERNATIVE FINANCING ARRANGEMENTS FOR
THE PROVISION OF CERTAIN SERVICES AND THE CONSTRUCTION
AND MAINTENANCE OF INFRASTRUCTURE AT LAND BORDER
PORTS OF ENTRY, AND FOR OTHER PURPOSES



AUGUST 30, 2016.—Ordered to be printed

Filed, under authority of the order of the Senate of July 14, 2016

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

R E P O R T

[To accompany S. 461]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 461) to provide for alternative financing arrangements for the provision of certain services and the construction and maintenance of infrastructure at land border ports of entry, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 461, the Cross-Border Trade Enhancement Act of 2016, is to reauthorize and expand the pilot programs that permit United States Customs and Border Protection (CBP) to enter into agreements with private or state or local government entities for reimbursable services or property donations at CBP ports of entry. The authorization of public-private partnerships under this

bill will allow private sector and state and local government entities to fund improvements at CBP ports of entry that will increase trade and travel efficiencies at no cost to the taxpayer.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Travel and trade into the United States has been steadily increasing since 2008.¹ CBP is the Federal law enforcement agency responsible for facilitating international travel and trade at our Nation's ports of entry.² In fiscal year (FY) 2015, CBP processed more than 382 million passengers at the Nation's 328 land, sea, and air ports of entry.³ CBP processed over \$2.4 trillion worth of goods at ports of entry during the same year, "while enforcing U.S. trade laws that protect the nation's economy and the health and safety of the American public."⁴ CBP estimates that the magnitude of passengers and inbound trade in FY 2016 will exceed the previous year's volume.⁵

Despite the growing volume, "CBP officer staffing levels have remained relatively the same."⁶ In its budget request for FY 2014, the Department of Homeland Security (DHS) stated that "[s]taffing needs . . . continue to increase as CBP takes on expanded mission requirements, capacity at [ports of entry] grows, and travel to the U.S. increases."⁷ In 2014, Congress authorized over \$255 million in funding "to increase the [CBP officer] workforce by not fewer than 2,000 new officers by the end of fiscal year 2015."⁸ According to CBP, these additional 2,000 CBP officers will result in 66,000 new jobs and a \$4 billion increase in the United States' Gross Domestic Product because of reduced wait times and expedited flow of trade and tourism at ports of entry.⁹

However, despite the significant funding for more CBP officers, CBP only realized a net gain of 818 officers as of June 2, 2015, due to attrition and the amount of time it takes to bring on new officers.¹⁰ CBP estimated it would need an additional 2,107 CBP officers through FY 2017 to meet optimal staffing.¹¹ One reason CBP has been unable to meet its staffing goals is that many applicants

¹ U.S. Customs and Border Protection, Resource Optimization at Ports of Entry: Fiscal Year 2015 Report to Congress 1 (2015), available at <https://www.cbp.gov/sites/default/files/documents/Resource%20Optimization%20Model-%20FY%202015%20Public%2005-13-15.pdf> [hereinafter FY 2015 Report to Congress].

² U.S. Customs and Border Protection, *About Us*, <https://www.cbp.gov/about>.

³ U.S. Dep't of Homeland Sec., Fiscal Year 2017 Budget-in-Brief 27 (2016), available at https://www.dhs.gov/sites/default/files/publications/FY2017___BIB-MASTER.pdf.

⁴ *Id.*

⁵ FY 2015 Report to Congress at 1.

⁶ U.S. Customs and Border Protection, *Resource Optimization Strategy*, <https://www.cbp.gov/border-security/ports-entry/resource-opt-strategy>.

⁷ U.S. Dep't of Homeland Sec., Fiscal Year 2014 Budget-in-Brief 115 (2013), available at <https://www.dhs.gov/sites/default/files/publications/FY%202014%20BIB%20-%20FINAL%20-508%20Formatted%20%284%29.pdf>.

⁸ 160 Cong. Rec. H475, 929 (daily ed. Jan. 15, 2014) (statement of Rep. Rogers). See also Consolidated Appropriations Act, Pub. L. No. 113-76 (2014).

⁹ *Fiscal Year 2015 Budget Request: Hearing Before the Subcomm. on Homeland Sec. of the H. Comm. on Appropriations*, 113th Cong. (2014) (statement of R. Gil Kerlikowske, Commissioner, U.S. Customs and Border Protection).

¹⁰ S. Rep. No. 114-116, at 12 (2015).

¹¹ *Keeping Pace with Trade, Travel, and Security: How Does CBP Prioritize and Improve Staffing and Infrastructure?: Hearing Before the Subcomm. on Border and Maritime Sec. of the H. Comm. on Homeland Sec.*, 114th Cong. (2016) (joint statement of Eugene Schied, Assistant Commissioner, Office of Admin., U.S. Customs and Border Protection, Linda Jacksta, Assistant Commissioner, Office of Human Resources Mgmt., U.S. Customs and Border Protection, and John Wagner, Deputy Assistant Commissioner, Office of Field Operations, U.S. Customs and Border Protection).

are unable to pass the requirements of the CBP hiring process.¹² The hiring process for CBP frontline personnel is “intentionally rigorous,” requiring an entrance exam, qualifications review, interview, medical exam, drug screening, physical fitness test, polygraph examination, and a background investigation.¹³ CBP is the only Federal law enforcement agency with a statutory requirement that all frontline law enforcement applicants undergo a polygraph examination, which is serving as a deterrent for some applicants.¹⁴

To address the staffing and funding needs at ports of entry, Congress created pilot programs in 2013 and 2014 to provide alternative funding sources for CBP at ports of entry. Section 560 of the Consolidated and Further Continuing Appropriations Act of 2013 authorized CBP to enter into agreements with private sector and state and local government entities that would reimburse CBP for customs-related personnel services at ports of entry.¹⁵ This allowed non-Federal entities that operate CBP ports of entry to pay for additional officers beyond what CBP normally would have allocated. Section 559 of the Consolidated Appropriations Act of 2014 authorized an additional five agreements per year with air ports of entry, for a total cap of 10 per year.¹⁶ Section 559 also expanded the applicable services for reimbursable service agreements to include border security services and agricultural processing.¹⁷ Both pilot programs were authorized for five years.¹⁸

Since 2013, CBP has entered into reimbursable service agreements with 29 stakeholders at land, sea, and air ports of entry.¹⁹ These agreements have contributed to more than 125,000 additional processing hours to meet stakeholder demand during which 3 million travelers and almost 460,000 vehicles were processed.²⁰ These agreements with air ports of entry contributed to decreased wait times by an average of nearly 30 percent at ports where they were implemented.²¹ CBP may have been able to approve more of these agreements had the agency not been limited in statute to executing only 10 agreements per year at air ports of entry.²² CBP identified expanding its Section 559 program public-private partnership authority as a way “to fund enhanced CBP services and implement new funding streams for current programs.”²³

Section 559 of the Consolidated Appropriations Act of 2014 also expanded this public-private partnership authority to allow CBP, in consultation with the General Services Administration (GSA), to enter into agreements to receive donations of property or non-personal services at ports of entry.²⁴ GSA manages 124 of the 167 land ports of entry along United States borders, and the Federal

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* (statement of Linda Jacksta, Assistant Commissioner, Office of Human Resources Mgmt., U.S. Customs and Border Protection).

¹⁵ Consolidated and Further Continuing Appropriations Act, Pub. L. No. 113–6, § 560, 127 Stat. 198, 378–80 (2013).

¹⁶ Consolidated Appropriations Act, Pub. L. No. 113–76, 559, 128 Stat. 5, 279–285 (2014).

¹⁷ *Id.*

¹⁸ *Id.* See also Consolidated and Further Continuing Appropriations Act at § 560(a).

¹⁹ U.S. Customs and Border Protection, *Program and Partners*, <https://www.cbp.gov/border-security/ports-entry/resource-opt-strategy/public-private-partnerships/reimbursable-services-program-program-and-partners>.

²⁰ *Id.*

²¹ *Id.*

²² Consolidated Appropriations Act, Pub. L. No. 114–113, § 550, 129 Stat. 2242, 2519 (2015).

²³ FY 2015 Report to Congress at 29.

²⁴ Consolidated Appropriations Act, *supra* note 13.

Government owns or partially owns 102.²⁵ For the past five years, Congress appropriated \$300 million less than what GSA requested from the Federal Buildings Fund to make upgrades and modernizations at land ports of entry.²⁶ These projects would serve to enhance border security and improve the flow of commerce.²⁷ As a result, GSA is receiving “intense interest” in alternative funding sources for these projects at land ports of entry.²⁸ Under Section 559, GSA and CBP developed Donation Acceptance Procedures Framework to evaluate received proposals. CBP, with agreement from GSA, selected three proposals of which CBP, GSA, and the project sponsor are collaboratively planning and developing to realize CBP’s operational needs at an appropriate cost, schedule, and risk.²⁹

The Cross-Border Trade Enhancement Act of 2016 will expand the CBP’s public-private partnership authority by removing the limitations for reimbursable service agreements at air ports of entry and by improving the application process to be more efficient and practical for private sector and state and local government entities submitting proposals. The bill will remove the limit on the number of reimbursable service agreements CBP may enter into with air ports of entry and allow air ports of entry to reimburse CBP for the salaries and expenses of up to five officers per agreement, not just overtime costs as currently allowed. This will permit more United States airports to enter into these public-private partnerships, including smaller regional airports with a limited number of CBP personnel. CBP will be required to develop procedures to institute year-round review of proposals for agreements for donations to ports of entry. The bill would also set a deadline for CBP to decide on proposals and require it to provide a reason for denials. The bill would also allow CBP to accept advance payments from these agreements. This bill authorizes CBP to enter into these public-private partnerships for 10 years.

This bill also works to alleviate challenges in the hiring process of CBP law enforcement officers by allowing CBP to waive the polygraph requirement for certain eligible veterans of the Armed Forces.

III. LEGISLATIVE HISTORY

S. 461, the Cross-Border Trade Enhancement Act of 2016, was introduced on February 11, 2015, by Senators John Cornyn and Amy Klobuchar. Senators Ron Johnson and Dean Heller joined as co-sponsors on May 18, 2016, and May 19, 2016, respectively. The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 461 at a business meeting on May 25, 2016. During the business meeting, Chairman Johnson and Ranking Member Tom Carper offered a modified substitute amendment that made several changes to the base bill, including lifting

²⁵ *A New Approach to Increase Trade and Security: An Examination of CBP’s Public Private Partnerships: Hearing Before the Subcomm. on Border and Maritime Security of the H. Comm. on Homeland Sec.*, 114th Cong. (2015) (statement of Michael Gelber, Deputy Commissioner, Public Buildings Service, U.S. Gen. Serv. Administration).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

the cap on the number of reimbursable service agreements allowed at air ports of entry and allowing reimbursable service agreements to compensate for the salaries and expenses of up to five CBP officers, as well as overtime expenses.

Ranking Member Carper also offered an amendment that would permit CBP to waive the polygraph requirement for Armed Forces veterans that meet certain requirements.

Both amendments were adopted *en bloc* by voice vote, and the legislation, as modified by the two amendments, was then passed by voice vote with Senators Johnson, Portman, Paul, Lankford, Ayotte, Ernst, Sasse, Carper, McCaskill, Tester, Baldwin, Heitkamp, Booker, and Peters present.

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

Section 1. Short title

This section establishes the short title of the bill as the “Cross-Border Trade Enhancement Act of 2016.”

Section 2. Repeal and transition provision

This section repeals the pilot programs established under section 560 of the Department of Homeland Security Appropriations Act of 2013 and section 559 of the Department of Homeland Security Appropriations Act of 2014. It specifies that the repeal has no effect on any agreements entered into or accepted for consideration by CBP or the General Services Administration (GSA) under these pilot programs.

Section 3. Definitions

This section defines key terms in the bill.

Section 4. Authority to enter into fee agreements for the provision of certain services of U.S. Customs and Border Protection

Subsection (a) allows CBP to enter into an agreement with a private or government entity for the services of CBP personnel at CBP-serviced ports of entry or facilities. There is no limit on the number of these agreements for which CBP may enter into, but the Commissioner is provided the authority to impose such a limit should these agreements cause resource or allocation constraints. Under this section, CBP is authorized to enter into an agreement for the reimbursement of the salaries and expenses for up to five full-time equivalent CBP officers at an applicant air port of entry. CBP is required to provide equal consideration to all sizes of ports of entry applicants and must provide a reason to the applicant for any denied fee agreement proposal.

Subsection (b) delineates the fee payments under the agreements entered into under this section and the parties’ rights to terminate the agreements.

Subsection (c) requires CBP to provide an annual report to Congress on each fee agreement entered into during the previous year.

Subsection (d) adds the program created by this section to the list of programs with required reporting requirements to Congress under the Trade Facilitation and Trade Enforcement Act of 2015.

Section 5. Authority to enter into agreements to accept donations for ports of entry

Subsection (a) authorizes CBP, in collaboration with GSA, to enter into agreements for CBP to receive donations of property or non-personal services at CBP-serviced ports of entry. If GSA has custody or control of the port of entry in the agreement, GSA may enter into the agreement, in collaboration with CBP.

Subsection (b) describes the acceptable uses of a donation under an agreement authorized by this section.

Subsection (c) prohibits CBP from using any monetary donations to pay for the salaries of CBP employees.

Subsection (d) allows the term of an agreement under this section to be as long as required to meet the terms of the agreement.

Subsection (e) outlines the role of GSA for donation agreements.

Subsection (f) requires CBP, in consultation with GSA, to issue procedures for CBP to evaluate proposals for donation agreements on a year-round basis. The procedures will also evaluate the possibility of engaging in cost-sharing or reimbursement agreements and whether such agreements would improve facility conditions and services provided at CBP ports of entry.

Under subsection (g), CBP, or, in some cases, GSA, is required to notify an applicant for a donation agreement if the submitted proposal is complete or incomplete. If the proposal is deemed incomplete, CBP will provide a detailed description of all specific information needed for a complete proposal. The applicant will then be permitted to resubmit the proposal for a donation agreement with the additional information for a complete proposal. After reviewing a complete and final proposal for a donation agreement, CBP will make a determination of denial or approval within 180 days and notify the applicant of the determination. This section also lists factors for CBP and GSA to consider in its determination of a proposal for a donation agreement.

Subsection (h) allows CBP to use supplemental funding for property donated pursuant to an agreement under this section, including appropriated funds made available for the same purpose of the donation.

Subsection (i) requires CBP or GSA to return any unused property or services donated pursuant to an agreement under this section.

Subsection (j) prohibits CBP or GSA from owing any interest for any donation returned under subsection (i).

Subsection (k) prohibits CBP or GSA from making expenditures for the receipt of a donation pursuant to an agreement under this section that would be an amount exceeding the value of the donation. This section does not prohibit CBP or GSA from using appropriated funds to utilize the donation during the course of its lifetime.

Subsection (l) requires CBP, in collaboration with GSA, to report annually to Congress on each donation agreement entered into during the previous year.

Subsection (m) clarifies that nothing in this section affects the responsibilities, duties, or authorities of CBP or GSA, nor does it create any rights or liabilities of the parties entering into agreements under this section.

Section 6

This section authorizes the Commissioner of CBP to waive the polygraph requirement for applicants for CBP law enforcement positions provided that the applicants are veterans, have been deemed suitable for employment, hold a current security clearance that was granted without any waivers, and has a current Single Scope Background investigation.

Section 7

This section authorizes CBP to enter into reimbursable service or donation acceptance agreements for ten years.

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, July 12, 2016.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 461, the Cross-Border Trade Enhancement Act of 2016.

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

Sincerely,

KEITH HALL.

Enclosure.

S. 461—Cross-Border Trade Enhancement Act of 2016

S. 461 would extend the current authority for Customs and Border Protection (CBP) to accept donations of real and personal property, including monetary donations, from federal or nonfederal entities to establish or improve CBP facilities at ports of entry. The bill also would extend the current authority for CBP to enter into agreements to provide customs, agricultural processing, border security, or inspection-related immigration services for a fee that would cover the agency's costs. The authority to accept donations and enter into fee agreements expires in 2019 under current law; S. 461 would extend those authorities for 10 years after the date of enactment.

Enacting S. 461 could affect direct spending by increasing offsetting receipts from donations and fee agreements as well as the as-

sociated direct spending of those funds; therefore, pay-as-you-go procedures apply. However, CBO estimates that the net effect on direct spending would be insignificant. Enacting the bill would not affect revenues.

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

S. 461 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. Any costs to state, local, and tribal governments from engaging CBP to provide certain services would result from voluntary agreements.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for 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):

UNITED STATES CODE

* * * * *

TITLE 6—DOMESTIC SECURITY

* * * * *

CHAPTER 1—HOMELAND SECURITY ORGANIZATION

* * * * *

Subchapter IV—Border, Maritime, and Transportation Security

* * * * *

PART B—U.S. CUSTOMS AND BORDER PROTECTION

* * * * *

SEC. 221. REQUIREMENTS WITH RESPECT TO ADMINISTERING POLYGRAPH EXAMINATIONS TO LAW ENFORCEMENT PERSONNEL OF U.S. CUSTOMS AND BORDER PROTECTION

(a) *IN GENERAL.*—*The Secretary* [The Secretary] of Homeland Security shall ensure that—

(1) by not later than 2 years after January 4, 2011, all applicants for law enforcement positions with U.S. Customs and Border Protection (*except as provided in subsection (b)*) receive polygraph examinations before being hired for such a position; and

(2) * * *

(b) *WAIVER.*—*The Commissioner of U.S. Customs and Border Protection may waive the polygraph examination requirement under subsection (a)(1) for any applicant who—*

- (1) *is deemed suitable for employment;*
 (2) *holds a current, active Top Secret/Sensitive Compartmented Information Clearance;*
 (3) *has a current Single Scope Background Investigation;*
 (4) *was not granted any waivers to obtain his or her clearance; and*
 (5) *is a veteran (as such term is defined in section 2108 or 2109(a) of title 5, United States Code).*

* * * * *

CONSOLIDATED APPROPRIATIONS ACT, 2013

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DIVISION D—DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS, 2013

* * * * *

TITLE V—GENERAL PROVISIONS

[SEC. 560.

[(a) Notwithstanding sections 58c(e) and 1451 of title 19, United States Code, upon the request of any persons, the Commissioner of U.S. Customs and Border Protection may enter into reimbursable fee agreements for a period of up to 5 years with such persons for the provision of U.S. Customs and Border Protection services and any other costs incurred by U.S. Customs and Border Protection relating to such services. Such requests may include additional U.S. Customs and Border Protection services at existing U.S. Customs and Border Protection-serviced facilities (including but not limited to payment for overtime), the provision of U.S. Customs and Border Protection services at new facilities, and expanded U.S. Customs and Border Protection services at land border facilities.

[(1) By December 31, 2013, the Commissioner may enter into not more than 5 agreements under this section.

[(2) The Commissioner shall not enter into such an agreement if it would unduly and permanently impact services funded in this or any other appropriations Acts, or provided from any accounts in the Treasury of the United States derived by the collection of fees.

[(b) Funds collected pursuant to any agreement entered into under this section shall be deposited in a newly established account as offsetting collections and remain available until expended, without fiscal year limitation, and shall directly reimburse each appropriation for the amount paid out of that appropriation for any expenses incurred by U.S. Customs and Border Protection in providing U.S. Customs and Border Protection services and any other costs incurred by U.S. Customs and Border Protection relating to such services.

[(c) The amount of the fee to be charged pursuant to an agreement authorized under subsection (a) of this section shall be paid by each person requesting U.S. Customs and Border Protection services and shall include, but shall not be limited to, the salaries

and expenses of individuals employed by U.S. Customs and Border Protection to provide such U.S. Customs and Border Protection services and other costs incurred by U.S. Customs and Border Protection relating to those services, such as temporary placement or permanent relocation of those individuals.

[(d) U.S. Customs and Border Protection shall terminate the provision of services pursuant to an agreement entered into under subsection (a) with a person that, after receiving notice from the Commissioner that a fee imposed under subsection (a) is due, fails to pay the fee in a timely manner. In the event of such termination, all costs incurred by U.S. Customs and Border Protection, which have not been reimbursed, will become immediately due and payable. Interest on unpaid fees will accrue based on current U.S. Treasury borrowing rates. Additionally, any person who, after notice and demand for payment of any fee charged under subsection (a) of this section, fails to pay such fee in a timely manner shall be liable for a penalty or liquidated damage equal to two times the amount of the fee. Any amount collected pursuant to any agreement entered into under this subsection shall be deposited into the account specified under subsection (b) of this section and shall be available as described therein.

[(e) Each facility at which such U.S. Customs and Border Protection services are performed shall provide, maintain, and equip, without cost to the Government, facilities in accordance with U.S. Customs and Border Protection specifications.

[(f) The authority found in this section may not be used to enter into agreements to expand or begin to provide U.S. Customs and Border Protection services outside of the United States.

[(g) The authority found in this section may not be used at existing U.S. Customs and Border Protection-serviced air facilities to enter into agreements for costs other than payment of overtime.

[(h) The Commissioner shall notify the appropriate Committees of Congress 15 days prior to entering into any agreement under the authority of this section and shall provide a copy of the agreement to the appropriate Committees of Congress.

[(i) For purposes of this section the terms:

[(1) U.S. Customs and Border Protection “services” means any activities of any employee or contractor of U.S. Customs and Border Protection pertaining to customs and immigration inspection-related matters.

[(2) “Person” means any natural person or any corporation, partnership, trust, association, or any other public or private entity, or any officer, employee, or agent thereof.

[(3) “Appropriate Committees of Congress” means the Committees on Appropriations; Finance; Judiciary; and Homeland Security and Governmental Affairs of the Senate and the Committees on Appropriations; Judiciary; Ways and Means; and Homeland Security of the House of Representatives.]

* * * * *

CONSOLIDATED APPROPRIATIONS ACT, 2014

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**DIVISION F—DEPARTMENT OF HOMELAND
SECURITY APPROPRIATIONS ACT, 2014**

* * * * *

TITLE V—GENERAL PROVISIONS

SEC. 559.

[(a) IN GENERAL.—In addition to existing authorities, the Commissioner of U.S. Customs and Border Protection, in collaboration with the Administrator of General Services, is authorized to conduct a pilot program in accordance with this section to permit U.S. Customs and Border Protection to enter into partnerships with private sector and government entities at ports of entry for certain services and to accept certain donations.

[(b) RULE OF CONSTRUCTION.—Except as otherwise provided in this section, nothing in this section may be construed as affecting in any manner the responsibilities, duties, or authorities of U.S. Customs and Border Protection or the General Services Administration.

[(c) DURATION.—The pilot program described in subsection (a) shall be for five years. A partnership entered into during such pilot program may last as long as required to meet the terms of such partnership. At the end of such five year period, the Commissioner may request that such pilot program be made permanent.

[(d) COORDINATION.—

[(1) IN GENERAL.—The Commissioner, in consultation with participating private sector and government entities in a partnership under subsection (a), shall provide the Administrator with information relating to U.S. Customs and Border Protection's requirements for new facilities or upgrades to existing facilities at land ports of entry.

[(2) CRITERIA.—The Commissioner and the Administrator shall establish criteria for entering into a partnership under subsection (a) that include the following:

[(A) Selection and evaluation of potential partners.

[(B) Identification and documentation of roles and responsibilities between U.S. Customs and Border Protection, General Services Administration, and private and government partners.

[(C) Identification, allocation, and management of explicit and implicit risks of partnering between U.S. Customs and Border Protection, General Services Administration, and private and government partners.

[(D) Decision-making and dispute resolution processes in partnering arrangements.

[(E) Criteria and processes for U.S. Customs and Border Protection and General Services Administration to terminate agreements if private or government partners are not meeting the terms of such a partnership, including the security standards established by U.S. Customs and Border Protection.

[(3) EVALUATION PLAN.—The Commissioner, in collaboration with the Administrator, shall submit to the Committee on

Homeland Security, the Committee on Transportation and Infrastructure, and the Committee on Appropriations of the House of Representatives and the Committee on Homeland Security and Governmental Affairs, the Committee on Environment and Public Works, and the Committee on Appropriations of the Senate, an evaluation plan for the pilot program described in subsection (a) that includes the following:

[(A) Well-defined, clear, and measurable objectives.

[(B) Performance criteria or standards for determining the performance of such pilot program.

[(C) Clearly articulated evaluation methodology, including—

[(i) sound sampling methods;

[(ii) a determination of appropriate sample size for the evaluation design;

[(iii) a strategy for tracking such pilot program's performance; and

[(iv) an evaluation of the final results.

[(D) A plan detailing the type and source of data necessary to evaluate such pilot program, methods for data collection, and the timing and frequency of data collection.

[(e) AUTHORITY TO ENTER INTO AGREEMENTS FOR THE PROVISION OF CERTAIN SERVICES AT PORTS OF ENTRY.—

[(1) IN GENERAL.—Notwithstanding section 13031(e) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)) and section 451 of the Tariff Act of 1930 (19 U.S.C. 1451), the Commissioner may, during the pilot program described in subsection (a) and upon the request of a private sector or government entity with which U.S. Customs and Border Protection has entered into a partnership, enter into a reimbursable fee agreement with such entity under which—

[(A) U.S. Customs and Border Protection will provide services described in paragraph (2) at a port of entry;

[(B) such entity will pay a fee imposed under paragraph (4) to reimburse U.S. Customs and Border Protection for the costs incurred in providing such services; and

[(C) each facility at which U.S. Customs and Border Protection services are performed shall be provided, maintained, and equipped by such entity, without cost to the Federal Government, in accordance with U.S. Customs and Border Protection specifications.

[(2) SERVICES DESCRIBED.—Services described in this paragraph are any activities of any employee or contractor of U.S. Customs and Border Protection pertaining to customs, agricultural processing, border security, and immigration inspection-related matters at ports of entry.

[(3) LIMITATIONS.—

[(A) IMPACTS OF SERVICES.—The Commissioner may not enter into a reimbursable fee agreement under this subsection if such agreement would unduly and permanently impact services funded in this or any other appropriations Act, or provided from any account in the Treasury of the United States derived by the collection of fees.

[(B) FOR CERTAIN COSTS.—The authority found in this subsection may not be used at U.S. Customs and Border

Protection-serviced air ports of entry to enter into reimbursable fee agreements for costs other than payment of overtime.

[(C) The authority found in this subsection may not be used to enter into new preclearance agreements or begin to provide U.S. Customs and Border Protection services outside of the United States.

[(D) The authority found in this subsection shall be limited with respect to U.S. Customs and Border Protection-serviced air ports of entry to five pilots per year.

[(4) FEE.—

[(A) IN GENERAL.—The amount of the fee to be charged pursuant to an agreement authorized under paragraph (1) shall be paid by each private sector and government entity requesting U.S. Customs and Border Protection services, and shall include the salaries and expenses of individuals employed by U.S. Customs and Border Protection to provide such services and other costs incurred by U.S. Customs and Border Protection relating to such services, such as temporary placement or permanent relocation of such individuals.

[(B) OVERSIGHT OF FEES.—The Commissioner shall develop a process to oversee the activities reimbursed by the fees charged pursuant to an agreement authorized under paragraph (1) that includes the following:

[(i) A determination and report on the full costs of providing services, including direct and indirect costs, including a process for increasing such fees as necessary.

[(ii) Establishment of a monthly remittance schedule to reimburse appropriations.

[(iii) Identification of overtime costs to be reimbursed by such fees.

[(5) DEPOSIT OF FUNDS.—Funds collected pursuant to any agreement entered into under paragraph (1) shall be deposited as offsetting collections and remain available until expended, without fiscal year limitation, and shall directly reimburse each appropriation for the amount paid out of that appropriation for any expenses incurred by U.S. Customs and Border Protection in providing U.S. Customs and Border Protection services and any other costs incurred by U.S. Customs and Border Protection relating to such services.

[(6) TERMINATION.—The Commissioner shall terminate the provision of services pursuant to an agreement entered into under paragraph (1) with a private sector or government entity that, after receiving notice from the Commissioner that a fee imposed under paragraph (4) is due, fails to pay such fee in a timely manner. In the event of such termination, all costs incurred by U.S. Customs and Border Protection, which have not been reimbursed, will become immediately due and payable. Interest on unpaid fees will accrue based on current Treasury borrowing rates. Additionally, any private sector or government entity that, after notice and demand for payment of any fee charged under paragraph (4), fails to pay such fee in a timely manner shall be liable for a penalty or liquidated dam-

age equal to two times the amount of such fee. Any amount collected pursuant to any agreement entered into under paragraph (1) shall be deposited into the account specified under paragraph (5) and shall be available as described therein.

[(7) NOTIFICATION.—The Commissioner shall notify the Congress 15 days prior to entering into any agreement under paragraph (1) and shall provide a copy of such agreement.

[(f) DONATIONS.—

(1) IN GENERAL.—Subject to paragraph (2), the Commissioner and the Administrator may, during the pilot program described in subsection (a), accept a donation of real or personal property (including monetary donations) or nonpersonal services from any private sector or government entity with which U.S. Customs and Border Protection has entered into a partnership.

[(2) ALLOWABLE USES OF DONATIONS.—The Commissioner and the Administrator, with respect to any donation provided pursuant to paragraph (1), may—

[(A) use such donation for necessary activities related to the construction, alteration, operation, or maintenance of an existing port of entry facility under the jurisdiction, custody, and control of the Commissioner, including expenses related to—

[(i) land acquisition, design, construction, repair and alteration;

[(ii) furniture, fixtures, and equipment;

[(iii) the deployment of technology and equipment; and

[(iv) operations and maintenance; or

[(B) transfer such property or services to the Administrator for necessary activities described in subparagraph (A) related to a new or existing port of entry under the jurisdiction, custody, and control of the Administrator, subject to chapter 33 of title 40, United States Code.

[(3) CONSULTATION AND BUDGET.—

[(A) WITH THE PRIVATE SECTOR OR GOVERNMENT ENTITY.—To accept a donation described in paragraph (1), the Commissioner and the Administrator shall—

[(i) consult with the appropriate stakeholders and the private sector or government entity that is providing the donation and provide such entity with a description of the intended use of such donation; and

[(ii) submit to the Committee on Appropriations, the Committee on Homeland Security, and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Appropriations, the Committee on Homeland Security and Governmental Affairs, and the Committee on Environment and Public Works of the Senate a report not later than one year after the date of enactment of this Act, and annually thereafter, that describes—

[(I) the accepted donations received under this subsection;

[(II) the ports of entry that received such donations; and

[(III) how each donation helped facilitate the construction, alternation, operation, or maintenance of a new or existing land port of entry.

[(B) SAVINGS PROVISION.—Nothing in this paragraph may be construed to—

[(i) create any right or liability of the parties referred to in subparagraph (A); or

[(ii) affect any consultation requirement under any other law.

[(4) EVALUATION PROCEDURES.—Not later than 180 days after the date of the enactment of this Act, the Commissioner, in consultation with the Administrator, shall establish procedures for evaluating a proposal submitted by a private sector or government entity to make a donation of real or personal property (including monetary donations) or nonpersonal services under paragraph (1) relating to a port of entry under the jurisdiction, custody and control of the Commissioner or the Administrator and make any such evaluation criteria publicly available.

[(5) CONSIDERATIONS.—In determining whether or not to approve a proposal referred to in paragraph (4), the Commissioner or the Administrator shall consider—

[(A) the impact of such proposal on the port of entry at issue and other ports of entry on the same border;

[(B) the potential of such proposal to increase trade and travel efficiency through added capacity;

[(C) the potential of such proposal to enhance the security of the port of entry at issue;

[(D) the funding available to complete the intended use of a donation under this subsection, if such donation is real property;

[(E) the costs of maintaining and operating such donation;

[(F) whether such donation, if real property, satisfies the requirements of such proposal, or whether additional real property would be required;

[(G) an explanation of how such donation, if real property, was secured, including if eminent domain was used;

[(H) the impact of such proposal on staffing requirements; and

[(I) other factors that the Commissioner or Administrator determines to be relevant.

[(6) UNCONDITIONAL MONETARY DONATIONS.—A monetary donation shall be made unconditionally, although the donor may specify—

[(A) the port of entry facility or facilities to be benefitted from such donation; and

[(B) the timeframe during which such donation shall be used.

[(7) SUPPLEMENTAL FUNDING.—Real or personal property (including monetary donations) or nonpersonal services donated pursuant to paragraph (1) may be used in addition to any other funding (including appropriated funds), property, or services made available for the same purpose.

[(8) RETURN OF DONATIONS.—If the Commissioner or the Administrator does not use the real property or monetary donation donated pursuant to paragraph (1) for the specific port of entry facility or facilities designated by the donor or within the timeframe specified by the donor, such donated real property or money may be returned to the donor. No interest shall be owed to the donor with respect to any donation of funding provided under such paragraph (1) that is returned pursuant to this paragraph.

[(9) SAVINGS PROVISIONS.—Nothing in this subsection may be construed to affect or alter the existing authority of the Commissioner or the Administrator to construct, alter, operate, and maintain port of entry facilities.

[(g) ANNUAL REPORTS.—The Commissioner, in collaboration with the Administrator, shall annually submit to the Committee on Homeland Security and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Environment and Public Works of the Senate a report on the pilot program and activities undertaken pursuant thereto in accordance with this Act.

[(h) DEFINITIONS.—In this section—

[(1) the term “private sector entity” means any corporation, partnership, trust, association, or any other private entity, or any officer, employee, or agent thereof;

[(2) the term “Commissioner” means the Commissioner of U.S. Customs and Border Protection; and (3) the term “Administrator” means the Administrator of General Services.

[(i) ROLE OF GENERAL SERVICES ADMINISTRATION.—Under this section, collaboration with the Administrator of General Services is required only with respect to partnerships at land ports of entry.]

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TRADE FACILITATION AND TRADE ENFORCEMENT ACT OF 2015

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TITLE IX—MISCELLANEOUS PROVISIONS

* * * * *

SEC. 907. REPORT ON CERTAIN U.S. CUSTOMS AND BORDER PROTECTION AGREEMENTS.

(a) * * *

(b)

(1) * * *

(2) * * *

(3) the program under which U.S. Customs and Border Protection collects a fee for the use of customs services at designated facilities under section 236 of the Trade and Tariff Act of 1984 (19 U.S.C. 58b); [or]

(4) the program established by subtitle B of title VIII of this Act authorizing U.S. Customs and Border Protection to establish preclearance operations in foreign countries[.]; or

(5) the program for entering into reimbursable fee agreements for the provision of U.S. Customs and Border Protection services established by the Cross-Border Trade Enhancement Act of 2016.

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