

Calendar No. 526

117TH CONGRESS }
2d Session }

SENATE

{ REPORT
117-176 }

TO REQUIRE THE COMMISSIONER OF
U.S. CUSTOMS AND BORDER PROTECTION
TO ESTABLISH PROCEDURES FOR
CONDUCTING MAINTENANCE PROJECTS AT
PORTS OF ENTRY AT WHICH THE OFFICE
OF FIELD OPERATIONS CONDUCTS CERTAIN
ENFORCEMENT AND FACILITATION
ACTIVITIES

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 3903



OCTOBER 18, 2022.—Ordered to be printed
Filed, under the authority of the order of the Senate of October 14, 2022

U.S. GOVERNMENT PUBLISHING OFFICE

39-010

WASHINGTON : 2022

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

GARY C. PETERS, Michigan, *Chairman*

THOMAS R. CARPER, Delaware	ROB PORTMAN, Ohio
MAGGIE HASSAN, New Hampshire	RON JOHNSON, Wisconsin
KYRSTEN SINEMA, Arizona	RAND PAUL, Kentucky
JACKY ROSEN, Nevada	JAMES LANKFORD, Oklahoma
ALEX PADILLA, California	MITT ROMNEY, Utah
JON OSSOFF, Georgia	RICK SCOTT, Florida
	JOSH HAWLEY, Missouri

DAVID M. WEINBERG, *Staff Director*

ZACHARY I. SCHRAM, *Chief Counsel*

CHRISTOPHER J. MULKINS, *Director of Homeland Security*

KATIE A. CONLEY, *Professional Staff Member*

PAMELA THIESSEN, *Minority Staff Director*

SAM J. MULOPULOS, *Minority Deputy Staff Director*

CLYDE E. HICKS JR., *Minority Director of Homeland Security*

JEREMY H. HAYES, *Minority Senior Professional Staff Member*

LAURA W. KILBRIDE, *Chief Clerk*

Calendar No. 526

117TH CONGRESS }
2nd Session }

SENATE

{ REPORT
{ 117-176

TO REQUIRE THE COMMISSIONER OF U.S. CUSTOMS AND BORDER PROTECTION TO ESTABLISH PROCEDURES FOR CONDUCTING MAINTENANCE PROJECTS AT PORTS OF ENTRY AT WHICH THE OFFICE OF FIELD OPERATIONS CONDUCTS CERTAIN ENFORCEMENT AND FACILITATION ACTIVITIES

OCTOBER 18, 2022.—Ordered to be printed

Filed, under authority of the order of the Senate of October 14, 2022

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

R E P O R T

[To accompany S. 3903]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 3903), to require the Commissioner of U.S. Customs and Border Protection to establish procedures for conducting maintenance projects at ports of entry at which the Office of Field Operations conducts certain enforcement and facilitation activities, having considered the same, reports favorably thereon with an amendment, in the nature of a substitute, and recommends that the bill, as amended, do pass.

CONTENTS

	Page
I. Purpose and Summary	1
II. Background and Need for the Legislation	2
III. Legislative History	3
IV. Section-by-Section Analysis of the Bill, as Reported	4
V. Evaluation of Regulatory Impact	4
VI. Congressional Budget Office Cost Estimate	4
VII. Changes in Existing Law Made by the Bill, as Reported	5

I. PURPOSE AND SUMMARY

S. 3903, a bill to require the Commissioner of U.S. Customs and Border Protection (CBP) to establish procedures for maintenance projects at ports of entry at which the Office of Field Operations conducts certain enforcement and facilitation activities. This bill

codifies and enhances CBP's ability to complete maintenance and repair projects at certain ports of entry.

This bill grants the Commissioner of CBP authority to undertake maintenance and repair projects costing up to \$300,000 at federally-owned ports of entry where an Office of Field Operations operates. The bill requires the Commissioner of CBP, in consultation with the Administrator of the General Services Administration (GSA), to establish procedures for undertaking such projects. The bill also directs the Commissioner to annually adjust the \$300,000 threshold by the percentage change of a relevant consumer price index to account for increases in project costs. It also requires a report to Congress that includes a summary of projects, costs of projects, identification of the account that funding the projects, and budgetary transfers utilized, if applicable.

II. BACKGROUND AND THE NEED FOR LEGISLATION

GSA is the primary property holder for the U.S. government and as such has control of over more than 1,600 buildings, including 102 land ports of entry. GSA was established by the Federal Property and Administrative Services Act of 1949 and is authorized to acquire, operate, and dispose of real property for other federal agencies that do not hold their own authority.¹ CBP facilitates trade and travel at ports of entry and depends on the condition of these facilities to carry out their mission. As the facility owner, GSA has primary responsibility for the maintenance of ports of entry.

However, the GSA Administrator may delegate or assign authorities and functions to other federal agencies and has utilized this authority to grant the Secretary of Homeland Security the ability to perform maintenance at ports of entry.² These projects are subject to specific terms and conditions outlined within the Delegation of Authority and Interagency Agreement, including guidelines and request procedures.³ Specifically, DHS is able to perform limited operation, maintenance, and alteration of space occupied by CBP Field Operations at federally-owned facilities under GSA's custody.⁴ The existing delegation limits individual projects to only \$100,000.⁵ Eligible projects could include cleaning or replacing existing carpeting, flooring, window treatments, blinds, or wall coverings and millwork; repainting interior walls, doors and associated trim; repairing doors and locks, replacing ceiling tiles; or making minor space alterations at facilities.⁶

CBP and GSA work closely to design, construct, and maintain these facilities. According to CBP, several of the nation's land border crossings were built more than 70 years ago and even land border crossings constructed as recently as 15 to 20 years ago may re-

¹ Congressional Research Services, *Repairs and Alterations Backlog at the General Services Administration* (June 12, 2020) (<https://www.crs.gov/Reports/R46410?source=search&guid=b5e0bcf1d78c4cebbd8c8151b24a97fd&index=0>).

² Title 40 U.S.C. §§ 121(d) and (e), 3315(a) and (b).

³ Delegation of Authority and Interagency Agreement by and Between the U.S. General Services Administration and Department of Homeland Security for Multiple Facilities Occupied by U.S. Customs and Border Protection (Aug. 26, 2020).

⁴ *Id.*

⁵ Government Accountability Office, *Border Infrastructure: Actions Needed to Improve Information on Facilities and Capital Planning at Land Border Crossings* (GAO-19-534) (July 2019) (<https://www.gao.gov/assets/gao-19-534.pdf>).

⁶ *Id.*

quire significant investments to meet present day security standards and operational requirements to facilitate increasing trade and travel.⁷ Given the significant amount of property within its control, GSA has a growing backlog of repairs needed at its federally-owned buildings, affecting its ability to complete projects for federal partners like CBP.⁸ Ms. Diane J. Sabatino, Deputy Executive Assistant Commissioner at CBP’s Office of Field Operations stated in November of 2021: “More than two-thirds of our [Land Border Ports of Entry] have not seen any capital improvements over the past decade.”⁹

This bill is aimed at improving CBP’s ability to address cyclical maintenance and repair projects at GSA-owned ports of entry to ensure CBP’s ability to securely and efficiently facilitate the flow of trade and travel through safe and operational ports of entry. This bill authorizes CBP to complete maintenance and repair projects up to \$300,000. It also allows for an increase of the \$300,000 threshold annually after enactment by the percentage change of the Consumer Price Index for All Urban Consumers. This authority will allow CBP to more quickly address in scope projects to support operations at ports of entry.

III. LEGISLATIVE HISTORY

Senator James Lankford (R–OK) introduced S. 3903, a bill to require the Commissioner of U.S. Customs and Border Protection to establish procedures for conducting maintenance projects at ports of entry at which the Office of Field Operations conducts certain enforcement and facilitation activities, on March 22, 2022. The bill was referred to the Committee on Homeland Security and Governmental Affairs. Senator Kyrsten Sinema (D–AZ) joined as cosponsor on March 28, 2022, and Senators John Cornyn (R–TX) and Margaret Hassan (D–NH) joined as cosponsors on March 29, 2022. Chairman Gary Peters (D–MI) joined as cosponsor on April 7, 2022.

The Committee considered S. 3909 at a business meeting on March 30, 2022. During the business meeting, a substitute amendment, as modified, was offered by Senators Lankford and Sinema and adopted by voice vote *en bloc*. This amendment requires CBP to consult with GSA in the development of procedures for carrying out the projects. It also explicitly grants CBP authority to conduct the maintenance and repair projects, supplementing language directing the Commissioner to develop procedures. The amendment also more clearly describes the procedures the bill requires the CBP Commissioner to develop, including a description of the types of projects that may be carried out and procedures for identifying and addressing impacts on other tenants of facilities where projects will be carried out. Lastly, the amendment requires publication of the procedures in the Federal Register. Senators present for the

⁷ *Id.*

⁸ Government Accountability Office, *Federal Real Property: GSA Should Fully Assess Its Prospective Process and Communicate Results to Its Authorizing Committees*, (Jan. 2022) (<https://www.gao.gov/assets/gao-22-104639.pdf>).

⁹ Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Government Operations and Border Management, Testimony Submitted for the Record of Secretary Diane Sabatino, U.S. Customs and Border Protection, *Hearing on Federal Government Perspective: Improving Security, Trade, Travel Flows at the Southwest Border Ports of Entry*, 117th Cong. (Nov. 11, 2021) (S. Hrg. 117–281).

vote were: Peters, Carper, Hassan, Sinema, Rosen, Padilla, Ossoff, Paul, Lankford, Romney, Scott, and Hawley.

The bill, as amended, was ordered reported favorably by voice vote *en bloc*, with Senators Peters, Carper, Hassan, Sinema, Rosen, Padilla, Ossoff, Paul, Lankford, Romney, Scott, and Hawley present.

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

Section 1. Port maintenance

Subsection (a) amends 6 U.S.C. § 211(o) by authorizing the Commissioner of CBP, in consultation with the Administrator of GSA to conduct maintenance and repair projects up to \$300,000 at any federal government-owned port of entry where the Office of Field Operations performs its duties. It requires the Commissioner of CBP to establish procedures for undertaking such projects that include a description of the types of projects, procedures for identifying and addressing issues that may impact other tenants at facilities where projects will be carried out, and requires the publication of these procedures in the Federal Register. This subsection also directs the Commissioner to annually increase the \$300,000 threshold by the percentage change of the Consumer Price Index for All Urban Consumers, if there is one, to account for increases in costs.

Subsection (b) requires CBP to report to Congressional committees on projects funded under the authority provided in subsection (a), including a summary of projects, costs of projects, account that funded the projects, and budgetary transfers. This subsection also requires publication of the procedures in the Federal Register.

Subsection (c) makes a technical amendment to section 422(a) of the Homeland Security Act of 2002 (6 U.S.C. § 232(a)).

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, June 7, 2022.

Hon. GARY PETERS,
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. 3903, a bill to require the Commissioner of U.S. Customs and Border Protection to establish procedures for conducting maintenance projects at ports of entry at

which the Office of Field Operations conducts certain enforcement and facilitation activities.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

S. 3903, a bill to require the Commissioner of U.S. Customs and Border Protection to establish procedures for conducting maintenance projects at ports of entry at which the Office of Field Operations conducts certain enforcement and facilitation activities			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on March 30, 2022			
By Fiscal Year, Millions of Dollars	2022	2022-2027	2022-2032
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	1	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2033?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

S. 3903 would direct Customs and Border Protection (CBP) to consult with the General Services Administration (GSA) to establish procedures that would allow CBP to carry out maintenance and repair projects costing less than \$300,000 at federally owned ports of entry without direct involvement of the GSA; the cost threshold would be adjusted annually for inflation. The bill also would require CBP to publish those procedures in the Federal Register and to report annually on completed maintenance projects and their costs.

Using information from CBP about the cost of establishing the new procedures and publishing similar reports, CBO estimates that implementing the requirements in the bill would cost \$1 million over the 2022–2027 period; any spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Madeleine Fox. The estimate was reviewed by Leo Lex, Deputy Director of 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):

HOMELAND SECURITY ACT OF 2002

* * * * *

TITLE IV—BORDER, MARITIME, AND TRANSPORTATION SECURITY

* * * * *

Subtitle B—U.S. Customs and Border Protection

* * * * *

SEC. 411. ESTABLISHMENT OF U.S. CUSTOMS AND BORDER PROTECTION; COMMISSIONER, DEPUTY COMMISSIONER, AND OPERATIONAL OFFICES.

(a) * * *

* * * * *

(o) OTHER AUTHORITIES

(1) * * *

(2) * * *

(3) PORT MAINTENANCE.—

(A) PROCEDURES.—

(i) *IN GENERAL.*—Subject to subparagraphs (B) and (C), the Commissioner, in consultation with the Administrator of the General Services Administration—

(I) shall establish procedures by which U.S. Customs and Border Protection may conduct maintenance and repair projects costing not more than \$300,000 at any Federal Government-owned port of entry where the Office of Field Operations performs any of the activities described in subparagraphs (A) through (G) of subsection (g)(3); and

(II) is authorized to perform such maintenance and repair projects, subject to the procedures described in clause (ii).

(ii) *PROCEDURES DESCRIBED.*—The procedures established pursuant to clause (i) shall include—

(I) a description of the types of projects that may be carried out pursuant to clause (i); and

(II) the procedures for identifying and addressing any impacts on other tenants of facilities where such projects will be carried out.

(iii) *PUBLICATION OF PROCEDURES.*—All of the procedures established pursuant to clause (i) shall be published in the Federal Register.

(iv) *RULE OF CONSTRUCTION.*—The publication of procedures under clause (iii) shall not impact the authority of the Commissioner to update such procedures, in consultation with the Administrator, as appropriate.

(B) *LIMITATION.*—The authority under subparagraph (A) shall only be available for maintenance and repair projects involving existing infrastructure, property, and capital at any port of entry described in subparagraph (A).

(C) *ANNUAL ADJUSTMENTS.*—*The Commissioner shall annually adjust the amount described in subparagraph (A) by the percentage (if any) by which the Consumer Price Index for All Urban Consumers for the month of June preceding the date on which such adjustment takes effect exceeds the Consumer Price Index for All Urban Consumers for the same month of the preceding calendar year.*

(D) *RULE OF CONSTRUCTION.*—*Nothing in this paragraph may be construed to affect the availability of funding from—*

(i) the Federal Buildings Fund established under section 592 of title 40, United States Code;

(ii) the Donation Acceptance Program established under section 482; or

(iii) any other statutory authority or appropriation for projects described in subparagraph (A).

[(3)](4) RESCUE BEACONS.—Beginning in fiscal year 2019, in carrying out subsection (c)(8), the Commissioner shall purchase, deploy, and maintain not more than 250 self-powering, 9–1–1 cellular relay rescue beacons along the southern border of the United States at locations determined appropriate by the Commissioner to mitigate migrant deaths.

* * * * *

SEC. 422. FUNCTIONS OF ADMINISTRATOR OF GENERAL SERVICES.

(a) **OPERATIONS, MAINTENANCE, AND PROTECTION OF FEDERAL BUILDINGS AND GROUNDS.**—Nothing in this Act may be construed to affect the functions or authorities of the Administrator of General Services with respect to the operation, maintenance, and protection of buildings and grounds owned or occupied by the Federal Government and under the jurisdiction, custody, or control of the Administrator. Except for the law enforcement and related security functions transferred under section 403(3), the Administrator shall retain all powers, functions, and authorities vested in the Administrator under *section 411(o)(3) of this Act and chapter 10 of title 40, United States Code, and other provisions of law that are necessary for the operation, maintenance, and protection of such buildings and grounds.*