

Calendar No. 576

117TH CONGRESS }
2d Session }

SENATE

{ REPORT
117-220 }

NON-INTRUSIVE INSPECTION EXPANSION
ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 4572

TO REQUIRE U.S. CUSTOMS AND BORDER PROTECTION
TO EXPAND THE USE OF NON-INTRUSIVE INSPECTION
SYSTEMS AT LAND PORTS OF ENTRY



DECEMBER 5, 2022.—Ordered to be printed

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NON-INTRUSIVE INSPECTION EXPANSION ACT

DECEMBER 5, 2022.—Ordered to be printed

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

R E P O R T

[To accompany S. 4572]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 4572) to require U.S. Customs and Border Protection to expand the use of non-intrusive inspection systems at land ports of entry, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

S. 4572, the *Non-Intrusive Inspection Expansion Act*, requires the increased utilization of non-intrusive inspection (NII) systems at land ports of entry into the United States. It directs the Department of Homeland Security’s (DHS) U.S. Customs and Border Protection (CBP) to utilize NII acquired from previous Congressional appropriations to scan not fewer than 40% of passenger vehicles and 90% of commercial vehicles, cumulatively, at land ports of entry by the end of fiscal year 2024. It further requires CBP to increase the scanning rate in subsequent fiscal years according to CBP’s projected benchmarks. The bill also directs CBP to brief Con-

gressional committees after the first half of fiscal year 2024 on progress towards meeting the required benchmarks. If the required scanning levels are not met, the bill also requires CBP to submit a report to Congressional committees analyzing the causes for not meeting them, identifying resource gaps and challenges, and detailing steps that will be taken to reach compliance for the subsequent fiscal year.

Additionally, the bill includes a Sense of Congress emphasizing Congressional intent on the importance of using NII to support CBP's detection and interdiction efforts and to use past and future appropriations expeditiously to develop the capacity to reach 100% scanning rate for passenger and commercial vehicles at land ports of entry. The bill requires the U.S. Government Accountability Office (GAO) to conduct a review of CBP's use of NII for border security, including how CBP assesses the effectiveness of its systems, and to submit this report to Congressional committees. The bill also requires the Commissioner of CBP to report to Congress on the feasibility of CBP using NII to scan 10% of all southbound vehicles exiting the U.S. at land ports of entry by the end of fiscal year 2024.

II. BACKGROUND AND NEED FOR THE LEGISLATION

CBP uses NII to scan vehicles and cargo entering the U.S. at land ports of entry to detect the presence of contraband or unclaimed goods without physically opening or unloading them, increasing CBP's ability to efficiently and effectively facilitate trade and travel.¹ In fiscal year 2021, using over 350 large-scale NII systems at land and sea ports of entry, CBP performed approximately 7.8 million examinations of vehicles and cargo using NII, which led to the interdiction of more than 189,000 pounds of narcotics.² In addition to enhancing CBP's ability to interdict illicit goods, NII utilization results in operational efficiencies and saves both CBP and industry money. According to CBP, examinations conducted using NII systems can be done in 8 minutes, compared to 120 minutes for physical examinations. Additionally, using NII has contributed to \$1 billion in savings in annual operational costs and has saved industry \$5.8 billion to \$17.5 billion in costs from delays.³

In support of CBP's utilization of NII, Congress appropriated over \$500 million for NII at land ports of entry in fiscal year 2019.⁴ According to CBP's fiscal year 2023 budget request, CBP will continue to deploy NII acquired with funds from fiscal year 2019 and subsequent appropriations through fiscal year 2023.⁵ Prior to the full deployment of these systems, CBP reported a 1% scanning rate of passenger vehicles and a 15% scanning rate of commercial vehicles.⁶ When this NII is fully deployed and operational, CBP has

¹Department of Homeland Security, U.S. Customs and Border Protection, *CBP Trade and Travel Report Fiscal Year 2021* (April 2022) (www.cbp.gov/sites/default/files/assets/documents/2022-Apr/FINAL%20FY2021_%20Trade%20and%20Travel%20Report%20%28508%20Compliant%29%20%28April%202022%29_0.pdf).

²*Id.* at 23.

³*Id.* at 22.

⁴Pub. L. No. 116-6 (2019).

⁵Department of Homeland Security, U.S. Customs and Border Protection, *Budget Overview Fiscal Year 2023 Congressional Justification* (March, 27, 2022) (www.dhs.gov/sites/default/files/2022-03/U.S.%20Customs%20and%20Border%20Protection%20Remediated.pdf).

⁶Department of Homeland Security, U.S. Customs and Border Protection, *CBP Trade and Travel Report Fiscal Year 2021* (April 2022) (www.cbp.gov/sites/default/files/assets/documents/

publicly reported it projects to achieve 40% scanning for passenger vehicles and 90% scanning of commercial vehicles.⁷

The *Securing America's Ports Act* in 2021 required DHS to submit to Congress a plan for achieving 100% scanning rates at land ports of entry.⁸ Similarly, the *SAFE Ports Act of 2006* required 100% of containers entering the United States at sea ports of entry be screened and 100% of high-risk containers be scanned or searched before leaving the sea port. While the *Securing America's Ports Act* encourages DHS to increase scanning rates, the Act does not contain requirements that DHS achieve a certain percentage of vehicle and cargo scanning at land ports of entry.⁹

S. 4572 addresses this gap by setting forth a benchmark to ensure accountability for the timely deployment and full utilization of NII funded in fiscal year 2019 and after. In addition to establishing initial benchmarks to achieve by the end of fiscal year 2024, the bill requires CBP to continue to work to achieve incremental benchmarks beyond 2024, such as those identified in the plan developed in accordance with the *Securing America's Ports Act*. The bill also requires that CBP brief Congressional committees on its progress toward meeting the required benchmarks and submit a report. To ensure further accountability for NII utilization, the bill also requires GAO to conduct a review of CBP's use of the NII systems, including how CBP assesses their effectiveness. Finally, the bill also requires CBP to report to Congressional committees on the feasibility of scanning 10% of all southbound vehicles exiting the U.S. at land ports of entry along the southwest border.

III. LEGISLATIVE HISTORY

Senator Peters (D–MI) introduced S. 4572, the Non-Intrusive Inspection Expansion Act, on July 20, 2022, with Senator Cornyn (R–TX). The bill was referred to the Senate Committee on Homeland Security and Governmental Affairs. Senator Hassan (D–NH) later joined as a cosponsor on August 2, 2022.

The Committee considered S. 4572 at a business meeting on August 3, 2022. During the business meeting, Senator Hassan offered an amendment that would express the Sense of Congress that NII systems be used for outbound detection and require CBP to report to Congressional committees on the feasibility of using NII systems to scan 10% of all southbound vehicles exiting through land ports of entry by the end of fiscal year 2024. Senator Scott also offered a modified amendment that would require GAO to conduct a review and report to Congressional committees on CBP's use of NII systems, including how CBP assesses their effectiveness. The Committee ordered the bill reported favorably with amendments *en bloc* by voice vote. Senators present for the vote were: Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Lankford, Romney, Scott, and Hawley.

2022-Apr/FINAL%20FY2021 %20Trade%20and%20Travel%20Report%20%28508%20Compliant %29%20%28April%202022%29_0.pdf).

⁷*Id.*

⁸Pub. L. No. 109–347 (2006).

⁹Senate Committee on Homeland Security and Governmental Affairs, *Report of the Committee on Homeland Security and Governmental Affairs United States Senate to accompany H.R. 5273*, (September 9, 2020) (S. Rept. 116–267).

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

Section 1. Short title

This section designates the name of the bill as the “Non-Intrusive Inspection Expansion Act.”

Section 2. Sense of Congress

This section expresses the Sense of Congress on the importance of NII as a tool to increase CBP’s ability to detect and interdict illicit and unclaimed goods, while securely and efficiently facilitating the flow of trade and travel into the United States and land ports of entry. It expresses that it is in the interest of U.S. trade and border security to develop the capacity to increase the NII scanning rate to 100%. This section also emphasizes the Congressional intent that CBP should work to actively implement existing plans and past and future Congressional appropriations to increase the rate of scanning.

Section 3. Use of Non-Intrusive Inspection systems at land ports of entry

Subsection (a) requires that, not later than September 30, 2024, using systems acquired through previous appropriations, CBP use NII to scan not fewer than 40%, cumulatively, of passenger vehicles and 90%, cumulatively, of commercial vehicles, entering the U.S. through land ports of entry.

Subsection (b) requires that following fiscal year 2024, CBP use NII to reach its next projected benchmarks for incremental scanning to increase scanning beyond 40% of passenger and 90% of commercial vehicles entering the United States at land ports of entry.

Subsection (c) requires GAO to conduct a review of CBP’s use of NII for border security. The review is required to include an identification of the number, types, and location of systems deployed by CBP, examination of how CBP assesses the effectiveness of NII, and examination of how CBP uses the systems in conjunction with other border security resources and assets to detect and interdict drug smuggling and trafficking at the southwest border of the United States. It also requires GAO to report the review’s findings to the Committee on Homeland Security and Governmental Affairs in the Senate and the Committee on Homeland Security in the House of Representatives within 2 years of the enactment of the bill.

Section 4. Briefing

This section requires CBP to brief the Committee on Homeland Security and Governmental Affairs in the Senate and the Committee on Homeland Security in the House of Representatives not later than May 30, 2024 on progress made during the first half of fiscal year 2024 toward achieving the 40% and 90% scanning benchmarks.

Section 5. Report

This section requires CBP to submit a report to the Committee on Homeland Security and Governmental Affairs in the Senate and the Committee on Homeland Security in the House of Representa-

tives, not later than 120 days after the end of fiscal year 2024, if the requirements described in section 3(a) are not met. The report is required to analyze the causes for not meeting the requirements, identify any resource gaps and challenges, and detail steps that will be taken to ensure compliance with requirements in the subsequent fiscal year.

Section 6. Report on feasibility of using Non-Intrusive Inspection systems for southbound inspections

Subsection (a) expresses the Sense of Congress that NII should be used to detect and interdict illicit and dangerous goods and unclaimed money that flow out of the United States to supply and fund transnational drug cartels.

Subsection (b) requires CBP submit a report to the Committee on Homeland Security and Governmental Affairs in the Senate and the Committee on Homeland Security in the House of Representatives, not later than 270 days after enactment of the bill, on the feasibility of using NII to scan 10% of all southbound vehicles exiting the United States through land ports of entry at the southwest border by the end of fiscal year 2024.

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, November 9, 2022.

Hon. GARY C. 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. 4572, the Non-Intrusive Inspection Expansion Act.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

S. 4572, Non-Intrusive Inspection Expansion Act			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on August 3, 2022			
By Fiscal Year, Millions of Dollars	2023	2023-2027	2023-2032
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	3	462	888
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. 4572 would require U.S. Customs and Border Protection (CBP) to increase its use of non-intrusive inspection (NII) systems at land ports of entry. Beginning in 2024, the bill would require CBP to use NII systems to inspect 40 percent of passenger vehicles and 90 percent of commercial vehicles entering the United States. NII systems, such as large-scale X-ray and Gamma-ray systems and handheld scanners, are used to quickly examine vehicles for weapons, narcotics, and other materials that pose nuclear and radiological threats.

The bill also would require CBP and the Government Accountability Office to submit various reports to the Congress about the use of NII at the U.S. border.

CBP indicated that many land ports of entry would require capital improvements, such as roadwork and new facilities, before large-scale NII could be installed. Based on the costs and timelines of similar projects, CBO estimates that such improvements would take two years to complete and cost \$98 million over the 2023–2027 period.

In addition to those improvements, CBP would need to install new large-scale NII systems. CBP indicated that it would install additional NII systems at the locations with the largest vehicle volume if S. 4572 was enacted, with multiple systems per site. Based on feedback from CBP, CBO expects that the agency would need to install an additional 70 large-scale NII systems to comply with the bill's requirements.

Using information from CBP, CBO estimates that the agency would install an average of 14 systems annually, beginning in 2025, and that each large-scale NII system would cost roughly \$9 million, including procurement, installation, and system integration. In addition, CBO estimates that it would cost \$1 million annually to maintain each system. Thus, CBO estimates that through 2027, the procurement and maintenance costs would total \$363 million. Additional systems would continue to be installed and maintained after 2027 at a cost of \$373 million.

In total, CBO estimates that enacting S. 4572 would cost \$462 million over the 2023–2027 period and an additional \$426 million over the 2028–2032 period (\$53 million for facility capital improve-

ments and \$373 million for system installation and maintenance). Such spending would be subject to the availability of appropriated funds.

The costs of the legislation, detailed in Table 1, fall within budget function 750 (administration of justice).

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER S. 4572

	By fiscal year, millions of dollars—					
	2023	2024	2025	2026	2027	2023–2027
Estimated Authorization	50	51	119	155	170	544
Estimated Outlays	3	13	91	176	179	462

S. 4572 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Jeremy Crimm. The estimate was reviewed by Leo Lex, Deputy Director of Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation would make no change in existing law, within the meaning of clauses (a) and (b) of subparagraph 12 of rule XXVI of the Standing Rules of the Senate, because this legislation would not repeal or amend any provision of current law.