

Calendar No. 221

118TH CONGRESS }
1st Session }

SENATE

{ REPORT
118-105

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. 1822

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



OCTOBER 3, 2023.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

49-010

WASHINGTON : 2023

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NON-INTRUSIVE INSPECTION EXPANSION ACT

OCTOBER 3, 2023.—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. 1822]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1822), 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 an amendment, in the nature of a substitute, and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

S. 1822, 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 systems acquired from previous Congressional appropriations to scan not fewer than 40% of passenger vehicles and 90% of commercial vehicles, cumulatively, at ports of entry where systems are deployed, by the end of fiscal year 2026. The bill 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 Congressional committees after the first half of fiscal year 2026 on progress towards meeting the required benchmarks. If the required scanning levels are not met, the bill requires CBP to submit a report to Congressional committees that analyzes the causes of not meeting the requirements, identifies resource gaps and challenges, and details steps that will be taken to reach compliance for the subsequent fiscal year.

Additionally, the bill requires the Commissioner of CBP to provide a strategy to Congress for increasing outbound inspection operations at land ports of entry. The strategy will detail the number of existing and planned outbound inspection lanes, the infrastructure limitations preventing implementation of outbound vehicle scanning, the quantity of NII systems needed to enhance scanning capacity, and plans for funding and acquiring these systems. The bill requires that CBP use NII systems to scan 10% of all outbound vehicles exiting the U.S. at land ports of entry by the end of fiscal year 2026. The bill also requires the Government Accountability Office (GAO) to conduct a review of CBP's use of NII systems for border security, including how CBP assesses the effectiveness of its systems, and to submit this report to Congressional committees.¹

II. BACKGROUND AND NEED FOR THE LEGISLATION

CBP uses NII systems 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.² In fiscal year 2022, using large-scale NII systems, CBP scanned over 7.6 million conveyances, which led to the interdiction of more than 100,000 pounds of narcotics. In addition to enhancing CBP's ability to interdict illicit goods, NII system 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 systems and other technology 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

The trafficking of firearms, narcotics, currency, and other contraband from the United States to Mexico and Canada facilitates the illegal drug trade, human trafficking, and other crimes. The same transnational criminal organizations (TCO) that traffic drugs into the U.S. also smuggle drug sale proceeds and weapons out of the country.⁴ Outbound interdiction is a component of the National Drug Control Strategy's Southwest Border and Northern Border Counternarcotics Strategies, including interdiction of bulk cur-

¹ On August 3, 2022, the Committee approved S. 4572, the *Non-Intrusive Inspection Expansion Act*. That bill is substantially similar to S. 1822. Accordingly, this committee report is, in many respects, similar to the committee report for S. 4572. See S. Rept. 117–220.

² Department of Homeland Security, U.S. Customs and Border Protection, *CBP Trade and Travel Report Fiscal Year 2021* (Apr. 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).

³ Department of Homeland Security, U.S. Customs and Border Protection, *CBP Trade and Travel Report Fiscal Year 2022* (June 2023) (www.cbp.gov/sites/default/files/assets/documents/2023-Jun/fy-2022-cbp-trade-and-travel-report.pdf).

⁴ Government Accountability Office, *Firearms Trafficking: U.S. Efforts to Disrupt Gun Smuggling into Mexico Would Benefit from Additional Data and Analysis* (GAO–21–322) (Feb. 2021).

rency, weapons, and illicit drugs.⁵ The U.S. has identified the smuggling and trafficking of U.S. weapons to Mexico as a threat to the security of both countries.⁶ While not all necessarily attributable to NII systems, in fiscal year 2022, CBP made 227 weapons and ammunition seizures in the outbound land environment along the southern border and 184 such seizures along the northern border.⁷ Increasing the number of vehicles receiving outbound inspections will result in the seizure of more narcotics, currency, illegal weapons, and illicit contraband. Like inbound inspections, increased utilization of NII systems for outbound inspections will enable CBP to more efficiently and effectively conduct inspections and identify contraband and reduce the impact on trade and travel moving out of the country.

In support of CBP's utilization of NII systems, Congress appropriated over \$500 million for NII systems at land ports of entry in fiscal year 2019.⁸ According to CBP's fiscal year 2024 budget request, CBP will continue to deploy NII systems acquired with funds from fiscal year 2019 and subsequent appropriations through fiscal year 2024.⁹ 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.¹⁰ When NII systems are fully deployed and operational, CBP has publicly reported it projects to achieve 40% scanning for passenger vehicles and 90% scanning of commercial vehicles.¹¹

The *Securing America's Ports Act* enacted in 2021 required DHS to submit to Congress a plan for achieving 100% scanning rates at land ports of entry.¹² 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.¹³ While the *Securing America's Ports Act* encourages DHS to increase scanning rates, the Act did not contain requirements that DHS achieve a certain percentage of vehicle and cargo scanning at land ports of entry.¹⁴

S. 1822 addresses this gap by establishing a benchmark to ensure accountability for the timely deployment and full utilization of NII systems funded in fiscal year 2019 and subsequent fiscal years. In addition to establishing initial benchmarks to achieve by the end

⁵The White House, Executive Office of the President, Office of National Drug Control Policy, *National Drug Control Strategy Southwest Border Counternarcotics Strategy* (Apr. 2022) (www.whitehouse.gov/wp-content/uploads/2022/04/National-Southwest-Border-Counter-Narcotics-2022Strategy.pdf); The White House, Executive Office of the President, Office of National Drug Control Policy, *National Drug Control Strategy Northern Border Counternarcotics Strategy* (Apr. 2022) (www.whitehouse.gov/wp-content/uploads/2022/04/National-Northern-Border-Counter-Narcotics-2022Strategy.pdf).

⁶*National Drug Control Strategy Southwest Border Counternarcotics Strategy*, *supra* note 5.

⁷U.S. Customs and Border Protection, Newsroom, Stats and Summaries, Weapons and Ammunitions Seizures (www.cbp.gov/newsroom/stats/weapons-and-ammunition-seizures) (accessed July 10, 2023).

⁸Pub. L. No. 116-6 (2019).

⁹Department of Homeland Security, U.S. Customs and Border Protection, Budget Overview Fiscal Year 2024 Congressional Justification (Mar. 2023) (www.dhs.gov/sites/default/files/2023-03/U.S.%20CUSTOMS%20AND%20BORDER%20PROTECTION_Remediated.pdf).

¹⁰Department of Homeland Security, U.S. Customs and Border Protection, CBP Trade and Travel Report Fiscal Year 2021 (Apr. 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).

¹¹*Id.*

¹²Pub. L. No. 116-267 (2021).

¹³Pub. L. No. 109-347 (2006).

¹⁴Senate Committee on Homeland Security and Governmental Affairs, *Securing America's Ports Act* (Sept. 9, 2020) (S. Rept. 116-267).

of fiscal year 2026, the bill requires CBP to continue to work to achieve incremental benchmarks beyond 2026, such as those identified in the plan developed in accordance with the *Securing America's Ports Act*.¹⁵ After the first half of fiscal year 2026, CBP must brief Congressional committees on its progress toward meeting the required benchmarks and submit a report. The bill also requires that CBP report to Congressional committees a strategy for increasing inspections of outbound vehicles using NII systems at land ports of entry, and to scan at least 10% of all outbound vehicles by September 30, 2026. Finally, to ensure further accountability for NII systems utilization, the bill requires GAO to conduct a review of CBP's use of the NII systems, including how CBP assesses their effectiveness.

III. LEGISLATIVE HISTORY

Senator Gary Peters (D–MI) introduced S. 1822, the *Non-Intrusive Inspection Expansion Act*, on June 6, 2023, with original cosponsor Senator John Cornyn (R–TX). The bill was referred to the Committee on Homeland Security and Governmental Affairs. Senator Margaret Wood Hassan (D–NH) joined as a cosponsor on June 15, 2023.

The Committee considered S. 1822 at a business meeting on June 14, 2023. At the business meeting, Senator Peters offered a substitute amendment to the bill, as well as a modification to the substitute amendment. The substitute amendment changed the deadline for CBP to report to Congress a feasibility study of outbound vehicle inspections to 180 days following enactment of this bill. The modification to the substitute amendment changed the feasibility study to a strategy for increasing outbound inspection operations at land ports of entry. This strategy must detail the number of NII systems needed to increase scanning capacity and plans for funding and acquiring these systems. The Committee adopted the modification to the Peters substitute amendment, and the Peters substitute as modified, by voice vote, with Senators Peters, Carper, Hassan, Sinema, Rosen, Padilla, Ossoff, Blumenthal, Paul, Lankford, Romney, Scott, Hawley, and Marshall present. The bill, as amended by the Peters amendment as modified, was ordered reported favorably by roll call vote of 13 yeas to 1 nay, with Senators Peters, Carper, Hassan, Sinema, Rosen, Padilla, Ossoff, Blumenthal, Lankford, Romney, Scott, Hawley, and Marshall voting in the affirmative, and Senator Paul voting in the negative. Senator Johnson voted yea by proxy, for the record only.

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

Subsection (a) requires that, not later than September 30, 2026, using systems acquired through previous appropriations, CBP use

¹⁵Pub. L. No. 116–267 (2021).

NII systems to scan not fewer than 40% of passenger vehicles and 90% of commercial vehicles entering at land ports of entry, cumulatively, where systems are deployed.

Subsection (b) requires that beginning in fiscal year 2027, CBP use NII systems to reach its next projected benchmarks for incremental scanning and increase scanning beyond 40% of passenger and 90% of commercial vehicles entering the United States at land ports of entry.

Subsection (c) requires CBP to brief Congressional committees not later than May 30, 2026 on progress made during the first half of fiscal year 2026 towards achieving the 40% of passenger vehicles and 90% of commercial vehicles scanning benchmarks.

Subsection (d) requires CBP to submit a report to Congressional committees, not later than 120 days after the end of fiscal year 2026, if the requirements described in subsection (2)(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 3. Non-Intrusive Inspection systems for outbound inspections

Subsection (a) requires CBP to submit a strategy to Congressional committees, no later than 180 days after enactment of this bill, for funding, acquiring, and implementing NII systems to scan outbound vehicles.

Subsection (b) requires CBP to scan no less than 10% of all vehicles exiting the United States through land ports of entry by September 30, 2026.

Section 4. GAO review and report

Subsection (a) directs GAO to conduct a review of CBP's use of NII systems for border security. The review must detail the number, types, and location of NII systems deployed by CBP, examine how CBP assesses the effectiveness of NII systems, and examine 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.

Subsection (b) requires GAO to report the review's findings to Congressional committees within 2 years of the enactment of this bill.

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

At a Glance			
S. 1822, Non-Intrusive Inspection Expansion Act			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on June 14, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
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	982	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply?	No
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

The bill would:

- Require U.S. Customs and Border Protection (CBP) to use nonintrusive inspection (NII) systems to inspect 40 percent of passenger vehicles and 90 percent of commercial vehicles entering the United States by the end of fiscal year 2026
- Require CBP, beginning in fiscal year 2027, to use NII systems to inspect 10 percent of all vehicles exiting the United States
- Impose various reporting requirements on CBP and the Government Accountability Office

Estimated budgetary effects would mainly stem from:

- Construction, procurement, and maintenance costs associated with additional NII systems
- Additional CBP personnel

Areas of significant uncertainty include:

- Future volume of vehicles entering and exiting the United States
- Configuration of land ports of entry

Bill summary: S. 1822 would require U.S. Customs and Border Protection (CBP) to increase its use of nonintrusive inspection (NII) systems at land ports of entry. By the end of fiscal year 2026, 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.

S. 1822 also would require CBP, by the end of fiscal year 2026, to use NII systems to scan 10 percent of all vehicles exiting the United States at land ports of entry. Finally, the bill would impose various reporting requirements on CBP and the Government Accountability Office regarding the use of NII at the U.S. border.

Estimated Federal cost: In total, CBO estimates that enacting S. 1822 would cost \$982 million over the 2024–2028 period, with additional spending occurring after 2028. Such spending would be subject to the availability of appropriated funds.

The estimated budgetary effect of S. 1822 is shown in Table 1. The costs of the legislation fall within budget function 750 (administration of justice).

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER S. 1822

	By fiscal year, millions of dollars—						
	2023	2024	2025	2026	2027	2028	2023– 2028
Estimated Authorization	0	210	221	317	446	453	1,647
Estimated Outlays	0	11	53	188	347	383	982

Basis of estimate: CBO assumes that the bill will be enacted late in fiscal year 2023 and that the estimated amounts will be available each year. CBO assumes that CBP would purchase mostly large-scale NII systems, which can scan vehicles more quickly than small-scale systems, to comply with the bill’s requirements.

Spending subject to appropriation: For scanning both inbound and outbound vehicles, CBP indicated that many land ports of entry would require capital improvements, such as roadwork and new facilities, before large-scale NII systems could be installed. Based on the costs and timelines of similar projects, CBO estimates that it would take several years to complete such improvements and would cost \$467 million over the 2024–2028 period.

In addition to those improvements, CBP would need to purchase and install additional NII systems. Under the bill, CBO expects that the agency would install additional NII systems at the locations with the largest vehicle volume. However, CBP indicated that space and other logistical constraints would limit how many systems could be deployed at each land port of entry. Using information about annual vehicle volume across land ports of entry, CBO expects that CBP would need an additional 70 NII systems to comply with the bill’s requirements.

Using information from CBP about procurement timelines, CBO estimates that the agency could deploy up to 10 systems annually, beginning in 2026, and each system would cost an average of \$7 million, including costs for procurement, installation, and system integration. In addition, CBO estimates that it would cost \$1 million annually to maintain each system. In total, CBO estimates that procurement and maintenance costs would total \$434 million over the 2024–2028 period.

In addition, CBO expects that increasing the use of NII technology would require additional Border Patrol Officers to conduct more secondary physical inspections of vehicles, which are more time and labor intensive. Using information from CBP, CBO estimates that, starting in 2026, the agency would need roughly 230 additional personnel each year to review images generated by the NII systems and conduct additional physical inspections. In total, CBO estimates that personnel costs would total \$80 million over the 2024–2028 period.

Based on the costs of similar activities, CBO estimates that the bill's reporting requirements would cost \$1 million over the 2024–2028 period.

Uncertainty: CBO's estimate for S. 1822 is subject to significant uncertainty. The largest area of uncertainty is the future volume of commercial and personal vehicles entering and exiting the United States. If the actual volume differs from CBO's estimates, the costs could be larger or smaller than those estimated. In addition, variation in the configurations of land ports of entry could affect the costs of capital improvements and the number of NII systems required to implement the bill. CBO could not model each land port of entry individually or identify which locations would receive additional NII systems. The costs could be larger or smaller than those estimated depending on where CBP deploys the NII systems.

Pay-As-You-Go considerations: None.

Increase in long-term net direct spending and deficits: None.

Mandates: None.

Estimate prepared by: Federal Costs: Jeremy Crimm; Mandates: Rachel Austin.

Estimate reviewed by: Justin Humphrey, Chief, Finance, Housing, and Education Cost Estimates Unit; Kathleen FitzGerald, Chief, Public and Private Mandates Unit; H. Samuel Papenfuss, Deputy Director of Budget Analysis.

Estimate approved by: Phillip L. Swagel, Director, Congressional Budget Office.

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.