

Calendar No. 63

118TH CONGRESS }
1st Session }

SENATE

{ REPORT
118-23

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. 243



MAY 11, 2023.—Ordered to be printed

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MAY 11, 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. 243]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs,
to which was referred the bill (S. 243) 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 Of-
fice of Field Operations conducts certain enforcement and facilita-
tion activities, having considered the same, reports favorably there-
on without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

S. 243 is a bill that would 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 such projects, identification of the account that provides funding for the projects, and any budgetary transfers utilized, if applicable.¹

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 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.² 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.³ These projects are subject to specific terms and conditions outlined within the Delegation of Authority and Interagency Agreement, including guidelines and request procedures. 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. The existing delegation limits individual projects to only \$100,000. Eligible projects could include cleaning or replacing existing carpeting, flooring, window treatments, blinds, or wall coverings and

¹On March 30, 2022, the Committee approved S. 3903, to require the Commissioner of U.S. Customs and Border Protection to establish procedures for undertaking maintenance projects at ports of entry at which the Office of Field Operations conducts certain enforcement and facilitation activities, with a substitute amendment that requires CBP to consult with GSA in the development of procedures for carrying out the projects and explicitly grants CBP authority to conduct the maintenance and repair projects. The amendment also more clearly describes the procedures, 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. That bill, as amended, is the same as S. 243. Accordingly, this committee report is, in many respects, similar to the committee report for S. 3903. See S. Rept. 117–176.

²Congressional Research Service, *Repairs and Alterations Backlog at the General Services Administration* (June 12, 2020) (www.crs.gov/Reports/R46410?source=search&guid=b5e0bcf1d78c4cebbd8c8151b24a97fd&index=0).

³Title 40 U.S.C. §§ 121(d) and (e), 3315(a) and (b).

millwork; repainting interior walls, doors and associated trim; repairing doors and locks, replacing ceiling tiles; or making minor space alterations at facilities.⁴

CBP and GSA work closely to design, construct, and maintain these facilities. According to a Government Accountability Office report, CBP noted that 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 require significant investments to meet present day security standards and operational requirements to facilitate increasing trade and travel.⁵ 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.⁶ 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."⁷

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. 243, 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 February 2, 2023, along with Senators Kyrsten Sinema (I-AZ), John Cornyn (R-TX), Margaret Wood Hassan (D-NH), and Gary Peters (D-MI).

The bill was referred to the Committee on Homeland Security and Governmental Affairs. The Committee considered S. 243 at a business meeting on March 29, 2023. The Committee ordered the bill to be reported favorably by a roll call vote of 11 yeas and 0 nays, with Senators Peters, Hassan, Rosen, Padilla, Ossoff, Blumenthal, Paul, Lankford, Romney, Scott, and Hawley voting in

⁴Delegation 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).

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

⁶Government Accountability Office, *Federal Real Property: GSA Should Fully Assess Its Prospectus Process and Communicate Results to Its Authorizing Committees*, (Jan. 2022) (<https://www.gao.gov/assets/gao-22-104639.pdf>).

⁷Senate 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).

the affirmative, and with Senators Carper, Sinema, Johnson, and Marshall voting yea by proxy, for the record only.

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 the Senate Committee on Homeland Security and Governmental Affairs, the Senate Committee on Appropriations, the House Committee on Homeland Security, and the House Committee on Appropriations 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

| S. 243, 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 29, 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 | 1 | 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 |

S. 243 would direct Customs and Border Protection (CBP) to establish procedures to allow the agency to carry out maintenance and repair projects that cost less than \$300,000 at federally owned ports of entry without the direct involvement of the General Services Administration (GSA); that threshold would be adjusted annually for inflation. The bill would require CBP to consult with GSA before creating those procedures. S. 243 also would require CBP to report annually to the Congress on completed maintenance projects and their costs.

Based on information from CBP regarding the costs of creating the procedures and publishing similar reports, CBO estimates that implementing S. 243 would cost \$1 million over the 2023–2028 period. Such spending would be subject to the availability of appropriated funds.

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

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

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 *italics*, 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.

* * * * *