To provide for establishment of a Border Patrol Auxiliary.

---

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 8, 2005

Mrs. Drake (for herself, Mr. Marchant, Mr. Mica, and Mr. Burgess) introduced the following bill; which was referred to the Committee on Homeland Security

---

A BILL

To provide for establishment of a Border Patrol Auxiliary.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3
4 SECTION 1. SHORT TITLE.
5 This Act may be cited as the “Protecting America
6 Together Act of 2005”.
7
8 SEC. 2. BORDER PATROL AUXILIARY.
9 (a) Establishment.—
10 (1) In general.—The Secretary of Homeland
11 Security (in this Act referred to as the “Secretary”) shall establish a Border Patrol Auxiliary (in this Act referred to as the “Auxiliary”) as an organization
under the direction of the Secretary. For command, control, and administrative purposes, the Auxiliary shall include such organizational elements and units as are approved by the Secretary. The Auxiliary organization and its officers shall have such rights, privileges, powers, and duties as may be granted to them by the Secretary, consistent with this Act and other applicable provisions of law. The Secretary may delegate to officers of the Auxiliary the authority vested in the Secretary by this section, in the manner and to the extent the Secretary considers necessary or appropriate for the functioning, organization, and internal administration of the Auxiliary.

(2) Duties.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall specify how best to use the Auxiliary. It is the intent of Congress that the Auxiliary be used to notify the Border Patrol if members see illegal aliens attempting to cross into the United States.

(b) Exemption from Liability.—Each organizational element or unit of the Border Patrol Auxiliary organization (but excluding any corporation formed by an organizational element or unit of the Auxiliary under subsection (c)), shall, except when acting outside the scope
of its authority, at all times be deemed to be an instrumentality of the United States, for purposes of the following:

(1) Chapter 26 of title 28, United States Code (popularly known as the Federal Tort Claims Act).

(2) Other matters related to noncontractual civil liability.

(c) INCORPORATION.—The national board of the Auxiliary, and any Auxiliary district or region, may form a corporation under State law in accordance with policies established by the Secretary.

(d) LIMITATIONS.—In no case shall a member of the Auxiliary bear firearms in connection with carrying out duties as such a member.

SEC. 3. ELIGIBILITY, ENROLLMENTS.

The Auxiliary shall be composed of citizens of the United States and its territories and possessions, who by reason of their special training or experience are deemed by the Secretary to be qualified for duty in the Auxiliary, and who may be enrolled therein pursuant to applicable regulations. The Secretary shall specify, not later than 6 months after the date of the enactment of this Act, the qualifications for members in the Auxiliary, including special training or experience required.
SEC. 4. MEMBERS OF THE AUXILIARY; STATUS.

(a) General Exemption From Treatment as Federal Employee.—Except as otherwise provided in this Act, a member of the Border Patrol Auxiliary shall not be considered to be a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, Federal employee benefits, ethics, conflicts of interest, and other similar criminal or civil statutes and regulations governing the conduct of Federal employees. However, nothing in this subsection shall constrain the Secretary from prescribing standards for the conduct and behavior of members of the Auxiliary.

(b) Treatment as Federal Employee for Limited Purposes.—A member of the Auxiliary while assigned to duty shall be deemed to be a Federal employee only for the purposes of the following:

(1) The provisions referred to in section 3(b).

(2) Compensation for work injuries under chapter 81 of title 5, United States Code.

(3) The resolution of claims relating to damage to or loss of personal property of the member incident to service under the Military Personnel and Civilian Employees’ Claims Act of 1964 (31 U.S.C. 3721).
(c) REMOVAL OF ACTIONS.—A member of the Auxiliary, while assigned to duty, shall be deemed to be a person acting under an officer of the United States or an agency thereof for purposes of section 1442(a)(1) of title 28, United States Code.

SEC. 5. DISENROLLMENT.

Members of the Auxiliary may be disenrolled pursuant to applicable regulations of the Secretary.

SEC. 6. USE OF MEMBER’S FACILITIES.

The Department of Homeland Security may utilize for any purpose incident to carrying out its functions and duties as authorized by the Secretary any vehicle at its disposition for any of such purposes by any member of the Auxiliary, by any corporation, partnership, or association, or by any State or political subdivision thereof.

SEC. 7. AVAILABILITY OF APPROPRIATIONS.

(a) IN GENERAL.—Appropriations of the Border Patrol shall be available for the payment of actual necessary traveling expense and subsistence, or commutation of ration allowance in lieu of subsistence, of members of the Auxiliary assigned to authorized duties and for actual necessary expenses of operation of any vehicle when assigned to Border Patrol duty, but shall not be available for the payment of compensation for personal services, incident to such operation, other than to personnel of the Border
Patrol. The term “actual necessary expenses of operation”, as used in this section, shall include payment for fuel, oil, water, supplies, provisions, replacement or repair of equipment, repair of any damaged vehicle and for the constructive or actual loss of any vehicle where it is determined, under applicable regulations, that responsibility for the loss or damage necessitating such replacement or repair of equipment, or for the damage or loss, constructive or actual, of such vehicle rests with the Border Patrol.

(b) INTEREST.—The Secretary may pay interest on a claim under this section in any case in which a payment authorized under this section is not made within 60 days after the submission of the claim in a manner prescribed by the Secretary. The rate of interest for purposes of this section shall be the annual rate established under section 6621 of the Internal Revenue Code of 1954.

SEC. 8. ASSIGNMENT AND PERFORMANCE OF DUTIES.

No member of the Auxiliary, solely by reason of such membership, shall be vested with, or exercise, any right, privilege, power, or duty vested in or imposed upon the personnel of the Border Patrol, except that any such member may, under applicable regulations, be assigned duties, which, after appropriate training and examination, he has been found competent to perform, to effectuate the purposes of the Auxiliary. No member of the Auxiliary shall
be placed in charge of a vehicle assigned to the Border
Patrol duty unless he has been specifically designated by
authority of the Secretary to perform such duty. Members
of the Auxiliary, when assigned to duties as herein author-
ized shall, unless otherwise limited by the Secretary, be
vested with the same power and authority, in the execution
of such duties, as members of the regular Border Patrol
assigned to similar duty. When any member of the Auxil-
iary is assigned to such duty he may, pursuant to regula-
tions issued by the Secretary, be paid actual necessary
traveling expenses, including a per diem allowance in con-
formity with standardized Government travel regulations
in lieu of subsistence, while traveling and while on duty
away from his home. No per diem shall be paid for any
period during which quarters and subsistence in kind are
furnished by the Government, and no per diem shall be
paid for any period while such member is performing duty
on a vehicle.

SEC. 9. INJURY OR DEATH IN LINE OF DUTY.

When any member of the Auxiliary is physically in-
jured or dies as a result of physical injury incurred while
performing any duty to which he has been assigned by
competent Border Patrol authority, such member or his
beneficiary shall be entitled to the same benefits provided
for temporary members of the Patrol who suffer physical
injury or death resulting from physical injury incurred in-
cident to service. Members of the Auxiliary who incur
physical injury or contract sickness or disease while per-
forming any duty to which they have been assigned by
competent Border Patrol authority shall be entitled to the
same hospital treatment afforded members of the Border
Patrol. The performance of a duty as the term is used
in this section includes time engaged in traveling back and
forth between the place of assigned duty and the perma-
nent residence of a member of the Auxiliary.