

114TH CONGRESS
1ST SESSION

S. 461

To provide for alternative financing arrangements for the provision of certain services and the construction and maintenance of infrastructure at land border ports of entry, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 11, 2015

Mr. CORNYN (for himself and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To provide for alternative financing arrangements for the provision of certain services and the construction and maintenance of infrastructure at land border ports of entry, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Cross-Border Trade
5 Enhancement Act of 2015”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) ADMINISTRATOR; ADMINISTRATION.—The
2 terms “Administrator” and “Administration” mean
3 the Administrator of General Services and the Gen-
4 eral Services Administration, respectively.

5 (2) COMMISSIONER.—The term “Commis-
6 sioner” means the Commissioner of U.S. Customs
7 and Border Protection.

8 (3) PERSON.—The term “person” means—

9 (A) an individual; or

10 (B) a corporation, partnership, trust, asso-
11 ciation, or any other public or private entity, in-
12 cluding a State or local government.

13 (4) RELEVANT COMMITTEES OF CONGRESS.—
14 The term “relevant committees of Congress”
15 means—

16 (A) the Committee on Environment and
17 Public Works of the Senate;

18 (B) the Committee on Finance of the Sen-
19 ate;

20 (C) the Committee on Homeland Security
21 and Governmental Affairs of the Senate;

22 (D) the Committee on the Judiciary of the
23 Senate;

24 (E) the Committee on Homeland Security
25 of the House of Representatives;

1 (F) the Committee on the Judiciary of the
2 House of Representatives; and

3 (G) the Committee on Transportation and
4 Infrastructure of the House of Representatives.

5 **SEC. 3. AUTHORITY TO ENTER INTO AGREEMENTS FOR THE**
6 **PROVISION OF CERTAIN SERVICES AT LAND**
7 **BORDER PORTS OF ENTRY.**

8 (a) AUTHORITY TO ENTER INTO AGREEMENTS.—

9 (1) IN GENERAL.—Notwithstanding section 451
10 of the Tariff Act of 1930 (19 U.S.C. 1451), and
11 consistent with section 560 of the Department of
12 Homeland Security Appropriations Act, 2013 (divi-
13 sion D of Public Law 113–6; 127 Stat. 378) and
14 section 559 of the Department of Homeland Secu-
15 rity Appropriations Act, 2014 (division F of Public
16 Law 113–76; 6 U.S.C. 211 note) the Commissioner
17 may, during the 10-year period beginning on the
18 date of the enactment of this Act and upon the re-
19 quest of any person, enter into an agreement with
20 that person under which—

21 (A) U.S. Customs and Border Protection
22 will provide the services described in paragraph
23 (2) at a land border port of entry; and

24 (B) that person will pay the fee described
25 in subsection (b) to reimburse U.S. Customs

1 and Border Protection for the costs incurred in
2 providing such services.

3 (2) SERVICES DESCRIBED.—Services described
4 in this paragraph are any services related to cus-
5 toms, agricultural processing, border security, or in-
6 spection-related immigration matters provided by an
7 employee or contractor of U.S. Customs and Border
8 Protection at land border ports of entry.

9 (3) LIMITATION.—The Commissioner may not
10 modify existing requirements or reimbursement fee
11 agreements in effect as of the date of the enactment
12 of this Act unless the relevant person requests a
13 modification to include services described in this sec-
14 tion.

15 (4) SAVINGS PROVISION.—Nothing in this para-
16 graph may be construed to reduce the responsibil-
17 ities or duties of U.S. Customs and Border Protec-
18 tion to provide services at land border ports of entry
19 that have been authorized or mandated by law and
20 are funded in any appropriation Act or from any ac-
21 counts in the Treasury of the United States derived
22 by the collection of fees.

23 (b) FEE.—

24 (1) IN GENERAL.—A person requesting U.S.
25 Customs and Border Protection services shall pay a

1 fee pursuant to an agreement under subsection (a)
2 in an amount equal to the sum of—

3 (A) a proportionate share of the salaries
4 and expenses of the individuals employed by
5 U.S. Customs and Border Protection who pro-
6 vided such services; and

7 (B) other costs incurred by U.S. Customs
8 and Border Protection relating to such services,
9 such as temporary placement or permanent re-
10 location of such individuals.

11 (2) OVERSIGHT OF FEES.—The Commissioner
12 shall develop a process to oversee the activities reim-
13 bursed by the fees authorized under paragraph (1)
14 that includes—

15 (A) a determination and report on the full
16 cost of providing services, including direct and
17 indirect costs;

18 (B) a process for increasing such fees, as
19 necessary;

20 (C) the establishment of a monthly remit-
21 tance schedule to reimburse appropriations; and

22 (D) the identification of overtime costs to
23 be reimbursed by such fees.

24 (3) DEPOSIT OF FUNDS.—Amounts collected in
25 fees under paragraph (1)—

1 (A) shall be deposited as an offsetting col-
2 lection;

3 (B) shall remain available until expended,
4 without fiscal year limitation; and

5 (C) shall directly reimburse each appro-
6 priation account for the amount paid out of
7 such account for—

8 (i) any expenses incurred for pro-
9 viding U.S. Customs and Border Protec-
10 tion services to the person paying such fee;
11 and

12 (ii) any other costs incurred by the
13 U.S. Customs and Border Protection relat-
14 ing to such services.

15 (4) TERMINATION.—

16 (A) IN GENERAL.—The Commissioner
17 shall terminate the services provided pursuant
18 to an agreement with a private sector or gov-
19 ernment entity under subsection (a) upon re-
20 ceiving notice from the Commissioner that such
21 entity failed to pay the fee imposed under para-
22 graph (1) in a timely manner.

23 (B) EFFECT OF TERMINATION.—At the
24 time services are terminated pursuant to sub-
25 paragraph (A), all costs incurred by U.S. Cus-

1 toms and Border Protection to provide services
2 to the entity described in subparagraph (A),
3 which have not been reimbursed by the entity,
4 will become immediately due and payable.

5 (C) INTEREST.—Interest on unpaid fees
6 will accrue from the date of termination based
7 on current Treasury borrowing rates.

8 (D) PENALTIES.—Any private sector or
9 government entity that fails to pay any fee in-
10 curred under paragraph (1) in a timely manner,
11 after notice and demand for payment, shall be
12 liable for a penalty or liquidated damage equal
13 to 2 times the amount of such fee.

14 (5) NOTIFICATION.—Not later than 3 days be-
15 fore entering into an agreement under this section,
16 the Commissioner shall notify—

17 (A) the relevant committees of Congress;
18 and

19 (B) the members of Congress who rep-
20 resent the State or district in which the facility
21 at which services will be provided under the
22 agreement.

1 **SEC. 4. EVALUATION OF ALTERNATIVE FINANCING AR-**
2 **RANGEMENTS FOR CONSTRUCTION AND**
3 **MAINTENANCE OF INFRASTRUCTURE AT**
4 **LAND BORDER PORTS OF ENTRY.**

5 (a) **AGREEMENTS AUTHORIZED.**—Consistent with
6 section 559 of the Department of Homeland Security Ap-
7 propriations Act, 2014 (division F of Public Law 113–
8 76; 6 U.S.C. 211 note), during the 10-year period begin-
9 ning on the date of the enactment of this Act, the Commis-
10 sioner and the Administrator may, for purposes of facili-
11 tating the construction, alteration, operation, or mainte-
12 nance of a new or existing facility or other infrastructure
13 at a port of entry under the jurisdiction, custody, and con-
14 trol of the Commissioner or the Administrator—

15 (1) enter into cost-sharing or reimbursement
16 agreements with any person; or

17 (2) accept donations from any person of—

18 (A) real or personal property (including
19 monetary donations); or

20 (B) nonpersonal services.

21 (b) **ALLOWABLE USES OF AGREEMENTS.**—The Com-
22 missioner and the Administrator, with respect to an agree-
23 ment authorized under subsection (a), may—

24 (1) use such agreements for activities related to
25 an existing or new port of entry, including expenses
26 related to—

1 (A) land acquisition, design, construction,
2 repair, or alternation;

3 (B) furniture, fixtures, or equipment;

4 (C) the deployment of technology or equip-
5 ment; or

6 (D) operations and maintenance; or

7 (2) subject to chapter 33 of title 40, United
8 States Code, transfer such property or services be-
9 tween the Commissioner and the Administrator for
10 activities described in paragraph (1) that are related
11 to a new or existing port of entry under the jurisdic-
12 tion, custody, and control of the relevant agency.

13 (c) EVALUATION PROCEDURES.—

14 (1) IN GENERAL.—

15 (A) REQUIREMENTS FOR PROCEDURES.—

16 The Commissioner, in consultation with the Ad-
17 ministrator and consistent with section 559 of
18 the Department of Homeland Security Appro-
19 priations Act, 2014 (division F of Public Law
20 113–76; 6 U.S.C. 211 note), shall issue proce-
21 dures for evaluating a proposal submitted by a
22 person for an agreement authorized under sub-
23 section (a).

24 (B) AVAILABILITY.—The procedures
25 issued under subparagraph (A) shall be made

1 available to the public through the Department
2 of Homeland Security website.

3 (2) SPECIFICATION.—In making a donation
4 under subsection (a)(2), a person may—

5 (A) designate the land port of entry facility
6 or facilities that the donation is intended to
7 support; and

8 (B) specify the period during which the
9 contributed property or nonpersonal services
10 shall be used.

11 (3) SUPPLEMENTAL FUNDING.—Any property,
12 including monetary donations and nonpersonal serv-
13 ices donated pursuant to subsection (a) may be used
14 in addition to any other funds, including appro-
15 priated funds, property, or services made available
16 for the same purpose.

17 (4) RETURN OF DONATION.—

18 (A) RETURN REQUIRED.—If the Commis-
19 sioner or the Administrator does not use the
20 property or services donated pursuant to sub-
21 section (a) for the specific facility or facilities
22 designated under paragraph (2)(A) or during
23 the period specified under paragraph (2)(B),
24 such donated property or services shall be re-
25 turned to the person that made the donation.

1 (B) INTEREST PROHIBITED.—No interest
2 may be owed on any donation returned to a
3 person pursuant to subparagraph (A).

4 (5) DETERMINATION AND NOTIFICATION.—

5 (A) IN GENERAL.—Not later than 90 days
6 after receiving a proposal pursuant to sub-
7 section (a) with respect to the construction or
8 maintenance of a facility or other infrastructure
9 at a land border port of entry, the Commis-
10 sioner or the Administrator shall—

11 (i) make a determination with respect
12 to whether or not to approve the proposal;
13 and

14 (ii) notify the person that submitted
15 the proposal of—

16 (I) the determination; and

17 (II) if the Administrator did not
18 approve the proposal, the reasons for
19 such determination.

20 (B) CONSIDERATIONS.—In making the de-
21 termination under subparagraph (A)(i), the
22 Commissioner or the Administrator shall con-
23 sider—

1 (i) the impact of the proposal on re-
2 ducing wait times at that port of entry and
3 other ports of entry on the same border;

4 (ii) the potential of the proposal to in-
5 crease trade and travel efficiency through
6 added capacity; and

7 (iii) the potential of the proposal to
8 enhance the security of the port of entry.

9 (d) ANNUAL REPORT AND NOTICE TO CONGRESS.—

10 The Commissioner, in collaboration with the Adminis-
11 trator, shall—

12 (1) submit an annual report to the relevant
13 committees of Congress on the agreements entered
14 into under subsection (a); and

15 (2) not less than 3 days before entering into an
16 agreement with a person under subsection (a), notify
17 the members of Congress that represent the State or
18 district in which the affected facility is located.

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