

Calendar No. 559114TH CONGRESS
2^D 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, Ms. KLOBUCHAR, Mr. JOHNSON, Mr. HELLER, and Mr. FLAKE) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

JULY 12, 2016

Reported by Mr. JOHNSON, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “~~Cross-Border Trade~~
3 ~~Enhancement Act of 2015~~”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) ~~ADMINISTRATOR; ADMINISTRATION.~~—The
7 terms “~~Administrator~~” and “~~Administration~~” mean
8 the ~~Administrator of General Services and the Gen-~~
9 ~~eral Services Administration, respectively.~~

10 (2) ~~COMMISSIONER.~~—The term “~~Commis-~~
11 ~~sioner~~” means the ~~Commissioner of U.S. Customs~~
12 ~~and Border Protection.~~

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

14 (A) ~~an individual; or~~

15 (B) ~~a corporation, partnership, trust, asso-~~
16 ~~ciation, or any other public or private entity, in-~~
17 ~~cluding a State or local government.~~

18 (4) ~~RELEVANT COMMITTEES OF CONGRESS.~~—

19 The term “~~relevant committees of Congress~~”
20 means—

21 (A) ~~the Committee on Environment and~~
22 ~~Public Works of the Senate;~~

23 (B) ~~the Committee on Finance of the Sen-~~
24 ~~ate;~~

25 (C) ~~the Committee on Homeland Security~~
26 ~~and Governmental Affairs of the Senate;~~

1 (~~D~~) the Committee on the Judiciary of the
2 Senate;

3 (~~E~~) the Committee on Homeland Security
4 of the House of Representatives;

5 (~~F~~) the Committee on the Judiciary of the
6 House of Representatives; and

7 (~~G~~) the Committee on Transportation and
8 Infrastructure of the House of Representatives.

9 **SEC. 3. AUTHORITY TO ENTER INTO AGREEMENTS FOR THE**
10 **PROVISION OF CERTAIN SERVICES AT LAND**
11 **BORDER PORTS OF ENTRY.**

12 (a) **AUTHORITY TO ENTER INTO AGREEMENTS.**—

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

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

4 (B) that person will pay the fee described
5 in subsection (b) to reimburse U.S. Customs
6 and Border Protection for the costs incurred in
7 providing such services.

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

14 ~~(3) LIMITATION.—~~The Commissioner may not
15 modify existing requirements or reimbursement fee
16 agreements in effect as of the date of the enactment
17 of this Act unless the relevant person requests a
18 modification to include services described in this sec-
19 tion.

20 ~~(4) SAVINGS PROVISION.—~~Nothing in this para-
21 graph may be construed to reduce the responsibil-
22 ities or duties of U.S. Customs and Border Protec-
23 tion to provide services at land border ports of entry
24 that have been authorized or mandated by law and
25 are funded in any appropriation Act or from any ac-

1 counts in the Treasury of the United States derived
2 by the collection of fees.

3 (b) FEE.—

4 (1) IN GENERAL.—A person requesting U.S.
5 Customs and Border Protection services shall pay a
6 fee pursuant to an agreement under subsection (a)
7 in an amount equal to the sum of—

8 (A) a proportionate share of the salaries
9 and expenses of the individuals employed by
10 U.S. Customs and Border Protection who pro-
11 vided such services; and

12 (B) other costs incurred by U.S. Customs
13 and Border Protection relating to such services,
14 such as temporary placement or permanent re-
15 location of such individuals.

16 (2) OVERSIGHT OF FEES.—The Commissioner
17 shall develop a process to oversee the activities reim-
18 bursed by the fees authorized under paragraph (1)
19 that includes—

20 (A) a determination and report on the full
21 cost of providing services, including direct and
22 indirect costs;

23 (B) a process for increasing such fees, as
24 necessary;

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

3 (D) the identification of overtime costs to
4 be reimbursed by such fees.

5 (3) DEPOSIT OF FUNDS.—Amounts collected in
6 fees under paragraph (1)—

7 (A) shall be deposited as an offsetting col-
8 lection;

9 (B) shall remain available until expended,
10 without fiscal year limitation; and

11 (C) shall directly reimburse each appro-
12 priation account for the amount paid out of
13 such account for—

14 (i) any expenses incurred for pro-
15 viding U.S. Customs and Border Protec-
16 tion services to the person paying such fee;
17 and

18 (ii) any other costs incurred by the
19 U.S. Customs and Border Protection relat-
20 ing to such services.

21 (4) TERMINATION.—

22 (A) IN GENERAL.—The Commissioner
23 shall terminate the services provided pursuant
24 to an agreement with a private sector or gov-
25 ernment entity under subsection (a) upon re-

1 ceiving notice from the Commissioner that such
2 entity failed to pay the fee imposed under para-
3 graph (1) in a timely manner.

4 (B) EFFECT OF TERMINATION.—At the
5 time services are terminated pursuant to sub-
6 paragraph (A), all costs incurred by U.S. Cus-
7 toms and Border Protection to provide services
8 to the entity described in subparagraph (A),
9 which have not been reimbursed by the entity,
10 will become immediately due and payable.

11 (C) INTEREST.—Interest on unpaid fees
12 will accrue from the date of termination based
13 on current Treasury borrowing rates.

14 (D) PENALTIES.—Any private sector or
15 government entity that fails to pay any fee in-
16 curred under paragraph (1) in a timely manner,
17 after notice and demand for payment, shall be
18 liable for a penalty or liquidated damage equal
19 to 2 times the amount of such fee.

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

23 (A) the relevant committees of Congress;
24 and

1 (B) the members of Congress who rep-
 2 resent the State or district in which the facility
 3 at which services will be provided under the
 4 agreement.

5 **SEC. 4. EVALUATION OF ALTERNATIVE FINANCING AR-**
 6 **RANGEMENTS FOR CONSTRUCTION AND**
 7 **MAINTENANCE OF INFRASTRUCTURE AT**
 8 **LAND BORDER PORTS OF ENTRY.**

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

19 (1) enter into cost-sharing or reimbursement
 20 agreements with any person; or

21 (2) accept donations from any person of—

22 (A) real or personal property (including
 23 monetary donations); or

24 (B) nonpersonal services.

1 ~~(b) ALLOWABLE USES OF AGREEMENTS.—~~The Com-
 2 missioner and the Administrator, with respect to an agree-
 3 ment authorized under subsection (a), may—

4 ~~(1) use such agreements for activities related to~~
 5 ~~an existing or new port of entry, including expenses~~
 6 ~~related to—~~

7 ~~(A) land acquisition, design, construction,~~
 8 ~~repair, or alternation;~~

9 ~~(B) furniture, fixtures, or equipment;~~

10 ~~(C) the deployment of technology or equip-~~
 11 ~~ment; or~~

12 ~~(D) operations and maintenance; or~~

13 ~~(2) subject to chapter 33 of title 40, United~~
 14 ~~States Code, transfer such property or services be-~~
 15 ~~tween the Commissioner and the Administrator for~~
 16 ~~activities described in paragraph (1) that are related~~
 17 ~~to a new or existing port of entry under the jurisdic-~~
 18 ~~tion, custody, and control of the relevant agency.~~

19 ~~(c) EVALUATION PROCEDURES.—~~

20 ~~(1) IN GENERAL.—~~

21 ~~(A) REQUIREMENTS FOR PROCEDURES.—~~

22 ~~The Commissioner, in consultation with the Ad-~~
 23 ~~ministrator and consistent with section 559 of~~
 24 ~~the Department of Homeland Security Appro-~~
 25 ~~riations Act, 2014 (division F of Public Law~~

1 ~~113-76; 6 U.S.C. 211 note~~); shall issue proce-
 2 dures for evaluating a proposal submitted by a
 3 person for an agreement authorized under sub-
 4 section (a).

5 (B) ~~AVAILABILITY.~~—The procedures
 6 issued under subparagraph (A) shall be made
 7 available to the public through the Department
 8 of Homeland Security website.

9 ~~(2) SPECIFICATION.~~—In making a donation
 10 under subsection (a)~~(2)~~, a person may—

11 (A) designate the land port of entry facility
 12 or facilities that the donation is intended to
 13 support; and

14 (B) specify the period during which the
 15 contributed property or nonpersonal services
 16 shall be used.

17 ~~(3) SUPPLEMENTAL FUNDING.~~—Any property,
 18 including monetary donations and nonpersonal serv-
 19 ices donated pursuant to subsection (a) may be used
 20 in addition to any other funds, including appro-
 21 priated funds, property, or services made available
 22 for the same purpose.

23 (4) ~~RETURN OF DONATION.~~—

24 (A) ~~RETURN REQUIRED.~~—If the Commis-
 25 sioner or the Administrator does not use the

1 property or services donated pursuant to sub-
 2 section (a) for the specific facility or facilities
 3 designated under paragraph (2)(A) or during
 4 the period specified under paragraph (2)(B);
 5 such donated property or services shall be re-
 6 turned to the person that made the donation.

7 (B) INTEREST PROHIBITED.—No interest
 8 may be owed on any donation returned to a
 9 person pursuant to subparagraph (A).

10 (5) DETERMINATION AND NOTIFICATION.—

11 (A) IN GENERAL.—Not later than 90 days
 12 after receiving a proposal pursuant to sub-
 13 section (a) with respect to the construction or
 14 maintenance of a facility or other infrastructure
 15 at a land border port of entry, the Commis-
 16 sioner or the Administrator shall—

17 (i) make a determination with respect
 18 to whether or not to approve the proposal;
 19 and

20 (ii) notify the person that submitted
 21 the proposal of—

22 (I) the determination; and

23 (II) if the Administrator did not
 24 approve the proposal, the reasons for
 25 such determination.

1 ~~(B) CONSIDERATIONS.—~~In making the de-
 2 termination under subparagraph (A)(i), the
 3 Commissioner or the Administrator shall con-
 4 sider—

5 (i) the impact of the proposal on re-
 6 ducing wait times at that port of entry and
 7 other ports of entry on the same border;

8 (ii) the potential of the proposal to in-
 9 crease trade and travel efficiency through
 10 added capacity; and

11 (iii) the potential of the proposal to
 12 enhance the security of the port of entry.

13 ~~(d) ANNUAL REPORT AND NOTICE TO CONGRESS.—~~

14 The Commissioner, in collaboration with the Adminis-
 15 trator, shall—

16 (1) submit an annual report to the relevant
 17 committees of Congress on the agreements entered
 18 into under subsection (a); and

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

23 **SECTION 1. SHORT TITLE.**

24 *This Act may be cited as the “Cross-Border Trade En-*
 25 *hancement Act of 2016”.*

1 **SEC. 2. REPEAL AND TRANSITION PROVISION.**

2 (a) *REPEAL.*—Subject to subsections (b) and (c), sec-
3 tion 560 of the Department of Homeland Security Appro-
4 priations Act, 2013 (division D of Public Law 113–6; 127
5 Stat. 378) and section 559 of the Department of Homeland
6 Security Appropriations Act, 2014 (division F of Public
7 Law 113–76; 6 U.S.C. 211 note) are repealed.

8 (b) *AGREEMENTS IN EFFECT.*—Notwithstanding sub-
9 section (a), nothing in this Act may be construed as affect-
10 ing in any manner an agreement entered into pursuant to
11 section 560 of the Department of Homeland Security Ap-
12 propriations Act, 2013 (division D of Public Law 113–6;
13 127 Stat. 378) or section 559 of the Department of Home-
14 land Security Appropriations Act, 2014 (division F of Pub-
15 lic Law 113–76; 6 U.S.C. 211 note) that is in effect on the
16 day before the date of the enactment of this Act, and any
17 such agreement shall continue to have full force and effect
18 on and after such date.

19 (c) *PROPOSED AGREEMENTS.*—Notwithstanding sub-
20 section (a), nothing in this Act may be construed as affect-
21 ing in any manner a proposal accepted for consideration
22 and further development by U.S. Customs and Border Pro-
23 tection or the General Services Administration pursuant to
24 section 559 of the Department of Homeland Security Ap-
25 propriations Act, 2014 (division F of Public Law 113–76;

1 6 U.S.C. 211 note) that was accepted prior to the date of
2 the enactment of this Act.

3 **SEC. 3. DEFINITIONS.**

4 *In this Act:*

5 (1) *ADMINISTRATION.*—The term “Administra-
6 tion” mean the General Services Administration.

7 (2) *ADMINISTRATOR.*—The term “Adminis-
8 trator” mean the Administrator of the Administra-
9 tion.

10 (3) *COMMISSIONER.*—The term “Commissioner”
11 means the Commissioner of U.S. Customs and Border
12 Protection.

13 (4) *DONATION AGREEMENT.*—The term “dona-
14 tion agreement” means an agreement made under sec-
15 tion 5(a).

16 (5) *FEE AGREEMENT.*—The term “fee agree-
17 ment” means an agreement made by the Commis-
18 sioner under section 4(a)(1).

19 (6) *PERSON.*—The term “person” means—

20 (A) *an individual;*

21 (B) *a corporation, partnership, trust, estate,*
22 *association, or any other private or public enti-*
23 *ty;*

24 (C) *a Federal, State, or local government;*

1 (D) any subdivision, agency, or instrumen-
2 tality of a Federal, State, or local government; or

3 (E) any other governmental entity.

4 (7) *RELEVANT COMMITTEES OF CONGRESS.*—The
5 term “relevant committees of Congress” means—

6 (A) the Committee on Appropriations, the
7 Committee on Environment and Public Works,
8 the Committee on Finance, the Committee on
9 Homeland Security and Governmental Affairs,
10 and the Committee on the Judiciary of the Sen-
11 ate; and

12 (B) the Committee on Appropriations, the
13 Committee on Homeland Security, the Com-
14 mittee on the Judiciary, and the Committee on
15 Transportation and Infrastructure of the House
16 of Representatives.

17 **SEC. 4. AUTHORITY TO ENTER INTO FEE AGREEMENTS FOR**
18 **THE PROVISION OF CERTAIN SERVICES OF**
19 **U.S. CUSTOMS AND BORDER PROTECTION.**

20 (a) *FEE AGREEMENTS.*—

21 (1) *AUTHORITY FOR FEE AGREEMENTS.*—Not-
22 withstanding section 13031(e) of the Consolidated
23 Omnibus Budget Reconciliation Act of 1985 (19
24 U.S.C. 58c(e)) and section 451 of the Tariff Act of
25 1930 (19 U.S.C. 1451), the Commissioner may, upon

1 *the request of any person, enter into an agreement*
2 *with that person under which—*

3 *(A) U.S. Customs and Border Protection*
4 *will provide the services described in paragraph*
5 *(4) at a port of entry or any other facility where*
6 *U.S. Customs and Border Protection provides or*
7 *will provide services;*

8 *(B) such person will remit a fee imposed*
9 *under subsection (b) to U.S. Customs and Border*
10 *Protection in an amount equal to the full costs*
11 *incurred or that will be incurred in providing*
12 *such services; and*

13 *(C) any additional facilities at which U.S.*
14 *Customs and Border Protection services are per-*
15 *formed or deemed necessary for the provision of*
16 *services under an agreement entered into under*
17 *this section shall be provided, maintained, and*
18 *equipped by such person, without additional cost*
19 *to the Federal Government, in accordance with*
20 *U.S. Customs and Border Protection specifica-*
21 *tions.*

22 *(2) CRITERIA.—The Commissioner shall establish*
23 *criteria for entering into a partnership under para-*
24 *graph (1) that include the following:*

1 (A) *Selection and evaluation of potential*
2 *partners.*

3 (B) *Identification and documentation of*
4 *roles and responsibilities between U.S. Customs*
5 *and Border Protection, the Administration, and*
6 *private and government partners.*

7 (C) *Identification, allocation, and manage-*
8 *ment of explicit and implicit risks of partnering*
9 *between U.S. Customs and Border Protection, the*
10 *Administration, and private and government*
11 *partners.*

12 (D) *Decision-making and dispute resolution*
13 *processes in partnering arrangements.*

14 (E) *Criteria and processes for U.S. Customs*
15 *and Border Protection to terminate agreements*
16 *if private or government partners are not meet-*
17 *ing the terms of such a partnership, including*
18 *the security standards established by U.S. Cus-*
19 *toms and Border Protection.*

20 (3) *PUBLICATION.—The Commissioner shall*
21 *make publicly available the criteria established under*
22 *paragraph (2), and shall notify the relevant commit-*
23 *tees of Congress not less than 15 days prior to the*
24 *publication of the criteria and any subsequent*
25 *changes to such criteria.*

1 (4) *SERVICES DESCRIBED.*—*Services described in*
2 *this paragraph are any services related to, or in sup-*
3 *port of, customs, agricultural processing, border secu-*
4 *rity, or inspection-related immigration matters pro-*
5 *vided by an employee or contractor of U.S. Customs*
6 *and Border Protection at ports of entry or any other*
7 *facility where U.S. Customs and Border Protection*
8 *provides or will provide services.*

9 (5) *MODIFICATION OF PRIOR AGREEMENTS.*—*The*
10 *Commissioner, at the request of a person who has pre-*
11 *viously entered into an agreement with U.S. Customs*
12 *and Border Protection for the reimbursement of fees*
13 *in effect on the date of enactment of this Act, may*
14 *modify such agreement to implement any provisions*
15 *of this Act.*

16 (6) *LIMITATION.*—*The Commissioner may not*
17 *enter into a reimbursable fee agreement under this*
18 *subsection if such agreement would unduly and per-*
19 *manently impact services funded in this Act or any*
20 *appropriations Act, or provided from any account in*
21 *the Treasury of the United States derived by the col-*
22 *lection of fees.*

23 (7) *NUMERICAL LIMITATIONS.*—*Except as pro-*
24 *vided in paragraphs (8) and (9), there shall be no*

1 *limit to the number of fee agreements that may be en-*
2 *tered into by the Commissioner.*

3 (8) *AUTHORITY FOR NUMERICAL LIMITATIONS.—*

4 (A) *RESOURCE AVAILABILITY.—If the Com-*
5 *missioner finds that resource or allocation con-*
6 *straints would prevent U.S. Customs and Border*
7 *Protection from fulfilling, in whole or in part,*
8 *requests for services under the terms of existing*
9 *or proposed fee agreements, the Commissioner*
10 *shall impose annual limits on the number of new*
11 *fee agreements.*

12 (B) *ANNUAL REVIEW.—If the Commissioner*
13 *limits the number of new fee agreements under*
14 *this paragraph, the Commissioner shall annually*
15 *evaluate and reassess such limits and publish the*
16 *results of such evaluation and affirm any such*
17 *limits that shall remain in effect in a publicly*
18 *available format.*

19 (9) *AIR PORTS OF ENTRY.—*

20 (A) *CERTAIN COSTS.—A fee agreement for*
21 *U.S. Customs and Border Protection services at*
22 *an air port of entry may only provide for the re-*
23 *imbursement of—*

1 (i) salaries and expenses of not more
2 than 5 full-time equivalent U.S. Customs
3 and Border Protection officers;

4 (ii) costs incurred by U.S. Customs
5 and Border Protection for the payment of
6 overtime to employee;

7 (iii) the salaries and expenses of em-
8 ployees of U.S. Customs and Border Protec-
9 tion (other than officers specified in clause
10 (i)) to support U.S. customs and Border
11 Protection officers in performing law en-
12 forcement functions at air ports of entry,
13 including primary and secondary proc-
14 essing of passengers; and

15 (iv) other costs incurred by U.S. Cus-
16 toms and Border Protection relating to serv-
17 ices described in paragraph (4), such as
18 temporary placement or permanent reloca-
19 tion of such employees, including incentive
20 pay for relocation where appropriate.

21 (B) *PRECLEARANCE*.—The authority in the
22 section may not be used to enter into new
23 preclearance agreements or initiate the provision
24 of U.S. Customs and Border Protection services
25 outside of the United States.

1 (C) *PERMANENT RELOCATION.*—Any fee
2 agreement under this Act to provide for the reim-
3 bursement of the permanent relocation of an em-
4 ployee of the U.S. Customs and Border Protec-
5 tion shall certify that the terms of the agree-
6 ment—

7 (i) cannot otherwise be sufficiently met
8 by the person and the U.S. Customs and
9 Border Protection;

10 (ii) would not unduly impact U.S.
11 Customs and Border Protection services at
12 the port of entry from which the relocation
13 of the employee is proposed;

14 (iii) would be consistent with other ap-
15 plicable laws and regulations regarding the
16 relocation of employees of the U.S. Customs
17 and Border Protection; and

18 (iv) all costs of the relocation have been
19 approved by the person.

20 (10) *PORT OF ENTRY SIZE CONSIDERATION.*—

21 The Commissioner shall—

22 (A) ensure that each fee agreement proposal
23 is given equal consideration regardless of the size
24 of the port of entry; and

1 (B) report to the relevant committees of
2 Congress on the number of fee agreement pro-
3 posals that the Commissioner did not enter into
4 due to numerical limits on the number of fee
5 agreements, if the Commissioner adopts such
6 limits.

7 (11) DENIED APPLICATION.—If the Commis-
8 sioner denies a proposal for a fee agreement, the Com-
9 mission shall provide the person who submitted the
10 proposal the reason for the denial, unless the reason
11 for the denial involves a law enforcement matter or
12 national security interest.

13 (12) CONSTRUCTION.—Nothing in this section
14 may be construed—

15 (A) to require a person entering into a fee
16 agreement to cover costs that are otherwise the
17 responsibility of the U.S. Customs and Border
18 Protection or any other agency of the Federal
19 Government and are not incurred, or expected to
20 be incurred, to cover services specifically covered
21 by an agreement entered into under authorities
22 provided by this Act; or

23 (B) to unduly and permanently reduce the
24 responsibilities or duties of U.S. Customs and
25 Border Protection to provide services at ports of

1 *entry that have been authorized or mandated by*
2 *law and are funded in any appropriation Act or*
3 *from any accounts in the Treasury of the United*
4 *States derived by the collection of fees.*

5 (13) *JUDICIAL REVIEW.*—*Decisions of the Com-*
6 *missioner under this subsection are in the discretion*
7 *of the Commissioner and not subject to judicial re-*
8 *view.*

9 (b) *FEE.*—

10 (1) *IN GENERAL.*—*A person who enters into a fee*
11 *agreement shall pay a fee pursuant to such agreement*
12 *in an amount equal to the full cost of U.S. Customs*
13 *and Border Protection—*

14 (A) *of the salaries and expenses of individ-*
15 *uals employed or contracted by U.S. Customs*
16 *and Border Protection to provide such services;*
17 *and*

18 (B) *of other costs incurred by U.S. Customs*
19 *and Border Protection related to providing such*
20 *services, such as temporary placement or perma-*
21 *nent relocation of employees, including incentive*
22 *pay for relocation where appropriate.*

23 (2) *ADVANCE PAYMENT.*—*The Commissioner,*
24 *with approval from a person requesting services of*
25 *U.S. Customs and Border Protection services pursu-*

1 *ant to a fee agreement, may accept the fee for services*
2 *prior to providing such services.*

3 (3) *OVERSIGHT OF FEES.—The Commissioner*
4 *shall develop a process to oversee the activities for*
5 *which fees are charged pursuant to a fee agreement*
6 *that includes the following:*

7 (A) *A determination and report on the full*
8 *cost of providing services, including direct and*
9 *indirect costs, as well as a process, through con-*
10 *sultation with affected parties and other inter-*
11 *ested stakeholders, for increasing such fees as*
12 *necessary.*

13 (B) *The establishment of a periodic remit-*
14 *tance schedule to replenish appropriations, ac-*
15 *counts or funds, as necessary.*

16 (C) *The identification of costs paid by such*
17 *fees.*

18 (4) *DEPOSIT OF FUNDS.—Amounts collected pur-*
19 *suant to a fee agreement shall—*

20 (A) *be deposited as an offsetting collection;*

21 (B) *remain available until expended, with-*
22 *out fiscal year limitation; and*

23 (C) *be credited to the applicable appropria-*
24 *tion, account, or fund for the amount paid out*
25 *of that appropriation, account, or fund for—*

1 (i) any expenses incurred or to be in-
2 curred by U.S. Customs and Border Protec-
3 tion in providing such services; and

4 (ii) any other costs incurred by U.S.
5 Customs and Border Protection relating to
6 such services.

7 (5) *TERMINATION BY THE COMMISSIONER.*—

8 (A) *IN GENERAL.*—*The Commissioner shall*
9 *terminate the services provided pursuant to a fee*
10 *agreement with a person that, after receiving no-*
11 *tice from the Commissioner that a fee imposed*
12 *under the fee agreement is due, fails to pay such*
13 *fee in a timely manner.*

14 (B) *EFFECT OF TERMINATION.*—*At the time*
15 *services are terminated pursuant to subpara-*
16 *graph (A), all costs incurred by U.S. Customs*
17 *and Border Protection which have not been paid,*
18 *will become immediately due and payable.*

19 (C) *INTEREST.*—*Interest on unpaid fees*
20 *will accrue based on the quarterly rate(s) estab-*
21 *lished under sections 6621 and 6622 of the Inter-*
22 *nal Revenue Code of 1986.*

23 (D) *PENALTIES.*—*Any person that fails to*
24 *pay any fee incurred under a fee agreement in*
25 *a timely manner, after notice and demand for*

1 *payment, shall be liable for a penalty or liq-*
2 *uidated damage equal to 2 times the amount of*
3 *such fee.*

4 *(E) AMOUNT COLLECTED.—Any amount*
5 *collected pursuant to a fee agreement shall be de-*
6 *posited into the account specified under para-*
7 *graph (4) and shall be available as described*
8 *therein.*

9 *(F) RETURN OF UNUSED FUNDS.—The*
10 *Commissioner shall return any unused funds col-*
11 *lected under a fee agreement that is terminated*
12 *for any reason, or in the event that the terms of*
13 *such agreement change by mutual agreement to*
14 *cause a reduction of U.S. Customs and Border*
15 *Protections services. No interest shall be owed*
16 *upon the return of any unused funds.*

17 *(6) TERMINATION BY THE SPONSOR.—Any per-*
18 *son who has previously entered into an agreement*
19 *with U.S. Customs and Border Protection for the re-*
20 *imbursement of fees in effect on the date of enactment*
21 *of this Act, or under the provisions of this Act, may*
22 *request that such agreement make provision for termi-*
23 *nation at the request of such person upon advance no-*
24 *tice, the length and terms of which shall be negotiated*

1 *between such person and U.S. Customs and Border*
2 *Protection.*

3 (c) *ANNUAL REPORT AND NOTICE TO CONGRESS.—The*
4 *Commissioner shall—*

5 (1) *submit to the relevant committees of Congress*
6 *an annual report that identifies each fee agreement*
7 *made during the previous year; and*

8 (2) *not less than 15 days before entering into a*
9 *fee agreement, notify the members of Congress that*
10 *represent the State or district in which the affected*
11 *port or facility is located.*

12 (d) *MODIFICATION OF EXISTING REPORTS TO CON-*
13 *GRESS.—Section 907(b) of the Trade Facilitation and*
14 *Trade Enforcement Act of 2015 (Public Law 114–125) is*
15 *amended—*

16 (1) *in paragraph (3), by striking “or” at the*
17 *end;*

18 (2) *in paragraph (4), by striking the period at*
19 *the end and inserting “; or”; and*

20 (3) *by adding at the end the following:*

21 “(5) *the program for entering into reimbursable*
22 *fee agreements for the provision of U.S. Customs and*
23 *Border Protection services established by the Cross-*
24 *Border Trade Enhancement Act of 2016.”.*

1 **SEC. 5. AUTHORITY TO ENTER INTO AGREEMENTS TO AC-**
2 **CEPT DONATIONS FOR PORTS OF ENTRY.**

3 (a) *AGREEMENTS AUTHORIZED.*—

4 (1) *COMMISSIONER.*—*The Commissioner, in col-*
5 *laboration with the Administrator as provided under*
6 *subsection (e), may enter into an agreement with any*
7 *person to accept a donation of real or personal prop-*
8 *erty, including monetary donations, or nonpersonal*
9 *services, for activities in subsection (b) at a new or*
10 *existing land, sea, or air port of entry, or any facility*
11 *or other infrastructure at a location where U.S. Cus-*
12 *oms and Border Protection performs or will be per-*
13 *forming services within the United States.*

14 (2) *ADMINISTRATOR.*—*Where the Administrator*
15 *has custody or control of a new or existing land port*
16 *of entry, facility, or other infrastructure at a location*
17 *where U.S. Customs and Border Protection performs*
18 *or will be performing inspection services, the Admin-*
19 *istrator, in collaboration with the Commissioner, may*
20 *enter into an agreement with any person to accept a*
21 *donation of real or personal property, including mon-*
22 *etary donations, or nonpersonal services, at that loca-*
23 *tion for activities set forth in subsection (b).*

24 (b) *USE.*—*A donation made under a donation agree-*
25 *ment may be used for activities related to construction, al-*

1 *teration, operation or maintenance, including expenses re-*
 2 *lated to—*

3 *(1) land acquisition, design, construction, repair,*
 4 *and alteration;*

5 *(2) furniture, fixtures, equipment, and tech-*
 6 *nology, including installation and the deployment*
 7 *thereof; and*

8 *(3) operation and maintenance of the facility,*
 9 *infrastructure, equipment, and technology.*

10 *(c) LIMITATION ON MONETARY DONATIONS.—Any*
 11 *monetary donation accepted pursuant to a donation agree-*
 12 *ment may not be used to pay the salaries of employees of*
 13 *U.S. Customs and Border Protection who perform inspec-*
 14 *tion services.*

15 *(d) TERM OF DONATION AGREEMENT.—The term of a*
 16 *donation agreement may be as long as is required to meet*
 17 *the terms of the agreement.*

18 *(e) ROLE OF ADMINISTRATOR.—The Administrator’s*
 19 *role, involvement, and authority under this section is lim-*
 20 *ited with respect to donations made at new or existing land*
 21 *ports of entry, facilities, or other infrastructure owned or*
 22 *leased by the Administration.*

23 *(f) EVALUATION PROCEDURES.—*

24 *(1) REQUIREMENTS FOR PROCEDURES.—Not*
 25 *later than 180 days after the date of enactment, the*

1 *Commissioner, in consultation with the Adminis-*
2 *trator as appropriate, shall issue procedures for eval-*
3 *uating proposals for donation agreements on a year-*
4 *round basis and otherwise consistent with the require-*
5 *ments of this section.*

6 (2) *AVAILABILITY.—The procedures issued under*
7 *paragraph (1) shall be made available to the public.*

8 (3) *COST-SHARING ARRANGEMENTS.—In issuing*
9 *the procedures under paragraph (1), the Commis-*
10 *sioner, in consultation with the Administrator, shall*
11 *evaluate the use of authorities provided under this*
12 *section to enter into cost-sharing or reimbursement*
13 *agreements with eligible persons and determine*
14 *whether such agreements may improve facility condi-*
15 *tions or inspection services at new or existing land,*
16 *sea, or air ports of entry.*

17 (g) *DETERMINATION AND NOTIFICATION.—*

18 (1) *IN GENERAL.—Not later than 60 days after*
19 *receiving a proposal for a donation agreement, the*
20 *Commissioner, and Administrator if applicable, shall*
21 *notify the person that submitted the proposal as to*
22 *whether it is complete or incomplete.*

23 (2) *INCOMPLETE PROPOSALS.—If the Commis-*
24 *sioner, and Administrator if applicable, determines*
25 *that a proposal is incomplete, the person that sub-*

1 *mitted the proposal shall be notified and provided*
2 *with—*

3 *(A) a detailed description of all specific in-*
4 *formation or material that is needed to complete*
5 *review of the proposal; and*

6 *(B) allow the person to resubmit the pro-*
7 *posal with additional information and material*
8 *described under subparagraph (A) to complete*
9 *the proposal.*

10 *(3) COMPLETE APPLICATIONS.—Not later than*
11 *180 days after receiving a completed and final pro-*
12 *posal for a donation agreement, the Commissioner,*
13 *and Administrator if applicable, shall—*

14 *(A) make a determination whether to deny*
15 *or approve the proposal; and*

16 *(B) notify the person that submitted the*
17 *proposal of the determination.*

18 *(4) CONSIDERATIONS.—In making the deter-*
19 *mination under paragraph (3)(A), the Commissioner,*
20 *and Administrator if applicable, shall consider—*

21 *(A) the impact of the proposal on reducing*
22 *wait times at that port of entry or facility and*
23 *other ports of entry on the same border;*

1 (B) the potential of the proposal to increase
2 trade and travel efficiency through added capac-
3 ity;

4 (C) the potential of the proposal to enhance
5 the security of the port of entry or facility;

6 (D) the funding available to complete the
7 intended use of a donation under this section;

8 (E) the costs of maintaining and operating
9 such donation;

10 (F) whether such donation, if real property,
11 satisfies the requirements of such proposal, or
12 whether additional real property would be re-
13 quired;

14 (G) an explanation of how such donation, if
15 real property, was secured;

16 (H) the impact of such proposal on staffing
17 requirements; and

18 (I) other factors that the Commissioner or
19 Administrator determines to be relevant.

20 (h) SUPPLEMENTAL FUNDING.—Any property, includ-
21 ing monetary donations and nonpersonal services, donated
22 pursuant to a donation agreement may be used in addition
23 to any other funds, including appropriated funds, property,
24 or services made available for the same purpose.

1 (i) *RETURN OF DONATION.*—If the Commissioner or
 2 the Administrator does not use the property or services do-
 3 nated pursuant to a donation agreement, such donated
 4 property or services shall be returned to the person that
 5 made the donation.

6 (j) *INTEREST PROHIBITED.*—No interest may be owed
 7 on any donation returned to a person under this subsection.

8 (k) *PROHIBITION ON CERTAIN FUNDING.*—The Com-
 9 missioner, in collaboration with the Administrator if appli-
 10 cable, with respect to an agreement authorized under this
 11 section, may not obligate or expend amounts in excess of
 12 the value of the donations.

13 (l) *ANNUAL REPORT AND NOTICE TO CONGRESS.*—The
 14 Commissioner, in collaboration with the Administrator if
 15 applicable, shall—

16 (1) submit to the relevant committees of Congress
 17 an annual report that identifies each donation agree-
 18 ment made during the previous year; and

19 (2) not less than 15 days before entering into a
 20 donation agreement, notify the members of Congress
 21 that represent the State or district in which the af-
 22 fected port or facility is located.

23 (m) *CONSTRUCTION.*—Except as otherwise provided in
 24 this section, nothing in this section may be construed—

1 (1) *as affecting in any manner the responsibil-*
 2 *ities, duties, or authorities of U.S. Customs and Bor-*
 3 *der Protection or the Administration;*

4 (2) *to create any right or liability of the parties*
 5 *referred to in this section, except as otherwise set forth*
 6 *in any donation acceptance agreement entered into*
 7 *under this section; or*

8 (3) *as affecting any consultation requirement*
 9 *under any other law.*

10 **SEC. 6. WAIVER OF POLYGRAPH EXAMINATION REQUIRE-**
 11 **MENT FOR CERTAIN LAW ENFORCEMENT AP-**
 12 **PLICANTS.**

13 *Section 3 of the Anti-Border Corruption Act of 2010*
 14 *(Public Law 111–376; 6 U.S.C. 221) is amended—*

15 (1) *in the matter preceding paragraph (1), by*
 16 *striking “The Secretary” and inserting the following:*
 17 *“(a) IN GENERAL.—The Secretary”;*

18 (2) *in subsection (a)(1), as redesignated, by in-*
 19 *serting “(except as provided in subsection (b))” after*
 20 *“Border Protection”; and*

21 (3) *by adding at the end the following:*

22 *“(b) WAIVER.—The Commissioner of U.S. Customs*
 23 *and Border Protection may waive the polygraph examina-*
 24 *tion requirement under subsection (a)(1) for any applicant*
 25 *who—*

1 “(1) is deemed suitable for employment;

2 “(2) holds a current, active Top Secret/Sensitive
3 Compartmented Information Clearance;

4 “(3) has a current Single Scope Background In-
5 vestigation;

6 “(4) was not granted any waivers to obtain his
7 or her clearance; and

8 “(5) is a veteran (as such term is defined in sec-
9 tion 2108 of title 5, United States Code).”.

10 **SEC. 7. EFFECTIVE PERIOD.**

11 (a) *IN GENERAL.*—Except as provided in subsection
12 (c), this Act and the amendments made by this Act shall
13 be in effect during the 10-year period beginning on the date
14 of the enactment of this Act.

15 (b) *AGREEMENTS IN EFFECT.*—Any agreement made
16 pursuant to this Act that is in effect on the date that is
17 10 years after the date of the enactment of this Act shall
18 continue to have full force and effect on and after such date
19 and remain in effect under the terms of such agreement.

20 (c) *PERMANENT PROVISIONS.*—Section 2, the amend-
21 ments made by section 2, and the amendments made by
22 section 6 shall take effect on the date of the enactment of
23 this Act.

Calendar No. 559

114TH CONGRESS
2^D SESSION

S. 461

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.

JULY 12, 2016

Reported with an amendment