

112TH CONGRESS }
2d Session }

SENATE

{ REPORT
112-202 }

SECURE FACILITIES ACT OF 2012

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 772

TO PROTECT FEDERAL EMPLOYEES AND VISITORS, IMPROVE THE
SECURITY OF FEDERAL FACILITIES AND AUTHORIZE AND MOD-
ERNIZE THE FEDERAL PROTECTIVE SERVICE



AUGUST 2, 2012.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

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Calendar No. 492

112TH CONGRESS }
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SECURE FACILITIES ACT OF 2012

AUGUST 2, 2012.—Ordered to be printed

Mr. LIEBERMAN, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 772]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 772) to protect Federal employees and visitors, improve the security of Federal facilities and authorize and modernize the Federal Protective Service, having considered the same, reports favorably thereon with an amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

The purpose of the Supporting Employee Competency and Updating Readiness Enhancements for Facilities Act of 2012—the SECURE Facilities Act of 2012—is to protect federal employees and visitors within federal facilities from threats to their safety and security by improving the security of federal facilities and modernizing the Federal Protective Service, the federal law enforcement agency charged with protecting many federal buildings and facilities. The bill does so by strengthening the training and oversight requirements for law enforcement and contract security guard personnel, modernizing the agency’s workforce, and augmenting the Federal Protective Service’s ability to detect explosives.

II. BACKGROUND AND NEED FOR THE LEGISLATION

The Federal Protective Service (FPS) traces its origins to early American history, when President George Washington recognized that government facilities in a newly designated capitol city should be protected. President Washington appointed three Commissioners to establish a site for the permanent seat of the federal government. In turn, the Commissioners hired six night watchmen to protect our first government buildings.¹

The agency as we know it today was formed in 1971 when the Administrator of the General Services Administration (GSA) signed an order establishing the Federal Protective Force, which would later be renamed the Federal Protective Service. FPS resided in GSA until 2002 when it was transferred to the newly formed Department of Homeland Security (DHS).² Today, FPS is responsible for safeguarding more than one million visitors and federal workers who enter one of more than 9,000 protected federal facilities each day.³ However, the agency's small size—it employs just over 1,200 full-time equivalent employees—means that it must use almost 15,000 contract security guards to augment security at most protected facilities.⁴

In the course of its own oversight of FPS and as a result of a series of Committee-requested Government Accountability Office (GAO) reports and reports by the DHS Inspector General, the Committee has identified a number of significant management and operational challenges facing FPS. GAO, for example, found shortcomings in the agency's management and oversight of the contract guards, who are stationed on-site to protect federal buildings. In one example, an inattentive guard allowed a baby in a carrier to pass through an X-ray machine on its conveyor belt. This guard would later win a lawsuit against FPS because the agency could not document that he had received required training on the machine.⁵

GAO also uncovered alarming security gaps that allowed covert investigators to smuggle improvised explosive devices into ten high profile federal buildings housing significant numbers of federal employees.⁶ Every single building GAO targeted was breached—a perfect record of security failure. The SECURE Facilities Act responds to these findings by making a number of changes to FPS's authority to manage its workforce and address threats to the facilities it protects.

Although the legislation thus enhances the ability of FPS to safeguard the facilities under its protection, it does not add any new

¹ FPS, "FPS 101" (Briefing Material Provided to Committee Staff).

² Lorraine H. Tong and Shawn Reese, Federal Building, Courthouse, and Facility Security (Congressional Research Service: December 9, 2011) p. 6.

³ GAO, Homeland Security: Federal Protective Service's Contract Guard Program Requires More Oversight and Reassessment of Use of Contract Guards, GAO-10-341, April 2010, p. 1.

⁴ Tong and Reese p. 7.

⁵ GAO, Homeland Security: Preliminary Results Show Federal Protective Service's Ability to Protect Federal Facilities Is Hampered By Weaknesses in Its Contract Security Guard Program, GAO-09-859T, July 8, 2009, p. 10.

⁶ GAO, Homeland Security: The Federal Protective Service Faces Several Challenges That Hamper Its Ability to Protect Federal Facilities, GAO-08-683, June 2008, passim; GAO, Homeland Security: Preliminary Results Show Federal Protective Services Ability to Protect Federal Facilities is Hampered by Weaknesses in Its Contract Security Guard Program, GAO-09-859T, July 2009, passim; GAO, Homeland Security: Greater Attention to Key Practices Would Improve the Federal Protective Service's Approach to Facility Protection, GAO-10-142, October 2009, passim; and GAO, April 2010, passim.

facilities to the agency's jurisdiction. FPS's responsibility is to protect the more than 9,000 federal facilities owned or leased by GSA. Under existing law, the U.S. Marshals are responsible for protecting federal courthouses and the people within them, while the FPS is responsible for the security of the grounds around courthouses. Also, the Departments of Defense and Energy are, and will remain, responsible for protecting most of their own facilities, though a few facilities housing administrative offices do fall under the FPS's authority. The bill does not in any way affect those existing arrangements.

Ensuring FPS has a modern workforce

S. 772 contains a number of provisions designed to strengthen FPS's workforce. First, it ensures that FPS has sufficient personnel. When FPS was transferred to DHS, the agency lost access to supplemental funding it received through its previous parent agency (GSA). This led to cuts in training and equipment, as well as proposals to cut the workforce by one-third, even after the agency assumed new responsibilities in the wake of September 11, 2001. As such, S. 772 requires that no fewer than 1,200 full-time equivalent employees (FTEs), including no fewer than 900 law enforcement officers, are maintained by the agency and if the agency plans to reduce its personnel level below the previous year's level, FPS must provide appropriate justification to Congress.

The bill also ensures that FPS officers have the authority they need to meet their professional responsibilities. Currently, the vast majority of FPS officers are not empowered to carry firearms while off duty, in contrast to most other federal law enforcement officers. As a result, FPS officers who are required to respond to incidents while officially off duty will frequently have to pick up their firearms and other equipment before responding, further delaying response. To address this problem, the legislation authorizes all FPS officers to carry their firearms while off duty, the same as other federal law enforcement officers.

Finally, S. 772 provides FPS officers with retirement benefits comparable to other federal law enforcement officials. In order to better compete in recruitment and retention with other federal, state and local law enforcement organizations, the legislation provides federal law enforcement retirement benefits to all FPS officers.

Strengthening the contract guard program

S. 772 also tackles deficiencies in the contract guard program. FPS relies on almost 15,000 contract security guards to stand post at protected federal facilities and serve as the first physical line of defense against anyone with bad intentions. In 2010, the GAO found that management of the contract guard program was poor and undermined the goals and effectiveness of the program.⁷ This legislation ensures that contract guards will be held to high standards and prepared and equipped to address the threats facing federal facilities today.

One of GAO's key findings was that a significant number of contract guards did not meet FPS's training and certification require-

⁷ GAO, April 2010, passim.

ments and that FPS did not take enforcement actions against contractors for their failure to comply with these rules.⁸ FPS recently raised training and oversight requirements, but these could be reduced in the future. To ensure they remain high, S. 772 requires FPS to set security guard training requirements at a minimum of 80 hours of initial instruction and 16 hours for annual, recurrent training. It also requires FPS to increase the portion of the training it monitors or provides from 10% to at least 25% by fiscal year 2014.

To ensure that FPS can take appropriate action against contract guard service providers who do not meet these strengthened requirements—and also to ensure that FPS can properly evaluate proposals for contracts for guard services based on the best value—S. 772 requires FPS to maintain a database of contracts for guard services that includes information related to contract performance. The Committee expects this database will be electronic and nationally accessible to all appropriate agency personnel involved in contract oversight and awards. This will give FPS contracting officers in regional offices access to contract performance information from other offices, allowing them to make better informed decisions.

S. 772 also takes steps to ensure that the responsibilities of contract guards are clear and current. In 2009 GAO reported that the assigned responsibilities of guards, known as post orders, are sometimes outdated.⁹ S. 772 requires FPS to immediately update all post orders and the Security Guard Information Manual and to then review and update them every two years thereafter.

Addressing the threat of explosives

The bill ensures that FPS focuses on and prepares to address the critical threat of explosives to federal buildings and those who visit and work in them. While the Oklahoma City bombing in 1995 drew attention to this threat, FPS has been slow to adopt methods that can detect and deter this type of attack. In 2009, GAO revealed the breadth of this shortcoming when it passed the components of an improvised explosive device (IED) through security checkpoints without detection at several facilities monitored by FPS.¹⁰

To address these deficiencies, S. 772 authorizes an increase in the number of canine detection teams available for security at federal facilities and the development of checkpoint detections technology standards. It also requires a report by the Secretary of DHS (Secretary) on methods to detect and prevent explosives from entering federal facilities, including the possible use of advanced imaging and other technologies.

Additional changes

S. 772 formally authorizes the Secretary of DHS to collect fees and security charges on behalf of FPS from agencies for the costs of providing protective services.¹¹ The legislation also clarifies that

⁸GAO, April 2010, pp. 9–11.

⁹GAO, July 2009, p. 12.

¹⁰GAO, April 2010, p. 16.

¹¹The Administrator of the General Services Administration has broad authority to impose and collect charges for “space and services” under 40 U.S.C. § 586. Section 403(3) of the Homeland Security Act of 2002 (P.L. 107–296) authorized the transfer of FPS to the Department of Homeland Security, “including the functions of the Administrator of General Services relating thereto.” This legislation clarifies that the Secretary of Homeland Security is explicitly authorized to collect both fees and security charges for the costs of providing protective services.

FPS may assess security charges to an agency in order to provide necessary countermeasures to ensure a facility is in compliance with the federal security standards S. 772 requires be established.

The legislation also codifies the establishment of the Interagency Security Committee (ISC), which President Clinton originally created via Executive Order 12977 following the 1995 attack on the Alfred P. Murrah Federal Building in Oklahoma City.¹² The ISC was established to develop standards for the security of all federal facilities nationwide, not just those protected by FPS. S. 772 codifies the duties and responsibilities of the ISC. It also requires the establishment of a new appeals board within the ISC to issue a final determination when a local Facility Security Committee and a security provider do not agree on a security level or security countermeasures recommendation. This will ensure a proper balance between security and public access when Facility Security Committees are concerned that the recommendation will unduly hinder public access to the facility. S. 772 designates FPS and the judicial branch as voting representatives on the ISC, which differs from current practice.¹³ As the primary security agency for most civilian federal facilities, it is important for FPS to have a voting representative on the ISC, and since the judicial branch shares responsibility for the safety of people in courthouses all across the nation it should have a voting representative as well.

S. 772 permits the Secretary of DHS to delegate security responsibilities for particular facilities to agencies other than FPS. However, it establishes requirements for doing so—limiting such authorizations to a two-year period, which may be renewed, and requiring that agencies receiving such delegations demonstrate security expertise and have law enforcement authority. The bill preserves existing agreements between FPS and the Department of Energy (DOE) concerning the protection of DOE facilities.

To assist the Committee in its oversight efforts, S. 772 requires several reports on workforce composition. These include a report on workforce needs, another on retention rates for the contract guard workforce, and a report on the feasibility of federalizing the contract security guard workforce.

III. LEGISLATIVE HISTORY

Senators Lieberman, Collins and Akaka introduced S. 772 on April 8, 2011. The bill was referred to the Senate Committee on Homeland Security and Governmental Affairs. As introduced, S. 772 was similar to S. 3806, which Senators Lieberman, Collins, Akaka and Voinovich introduced in the 111th Congress and which was favorably reported by the Committee at the end of that Congress. The Committee began consideration of S. 772 at a May 11, 2011 business meeting and continued its consideration of the bill on May 18, 2011.

On May 11, 2011, the Committee adopted one amendment, offered by Senators Coburn and McCain. The amendment requires

¹²Tong and Reese p. 2.

¹³According to the ISC staff, there are over 100 senior executives representing the 51 federal departments and agencies constituting the ISC. Currently, there are 21 Primary Members with voting rights, as a result of their enumeration in the Executive Order. Additional agencies and entities have been permitted to join the ISC and serve as Associate Members, but they do not possess voting rights. FPS and a judicial branch representative are currently designated as Associate Members.

the Secretary of DHS to offset the hiring of each additional full-time equivalent employee hired by the Federal Protective Service with a reduction of a full-time equivalent employment elsewhere in the Department. The Committee adopted the amendment by roll call vote of 10–5. Senators Carper, Pryor, Begich, Collins, Coburn, Brown, Johnson and Portman were present and voted for the amendment, and Senator Lieberman was present and voted against the amendment. Senators McCain and Paul voted for the amendment by proxy. Senators Levin, Akaka, Landrieu and Tester voted against the amendment by proxy.

On May 11, 2011, the Committee rejected two amendments. One amendment, offered by Senator Coburn, would have struck the section of the bill requiring a report on the feasibility of federalizing the Federal Protective Service contract guard workforce. That amendment was not adopted, by voice vote. Senators Lieberman, Carper, Pryor, Begich, Collins, Coburn, Brown, McCain, and Johnson were present. Another amendment was offered by Senator McCain, and would have prohibited the Department of Homeland Security from awarding sole-source contracts for services over \$4 million and for goods over \$6.5 million to Alaska Native Corporations, Indian Tribes, or Native Hawaiian Organizations without written justification. Senator McCain’s amendment was not adopted, by roll call vote of 7–7. Senators Collins, Coburn, Brown, McCain and Johnson were present and voted for the amendment, and Senators Lieberman, Carper, Pryor and Begich were present and voted against the amendment. Senators Portman and Paul voted for the amendment by proxy, and Senators Akaka, Landrieu and Tester voted against the amendment by proxy.

On May 18, 2011, the Committee, by voice vote, voted to report the bill. Members present for the vote on the bill were Senators Lieberman, Levin, Akaka, Pryor, Collins, Coburn, Brown, Johnson, and Moran. Senators Coburn (who was present) and Paul (by proxy) asked to be recorded as voting against the bill.

IV. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section states that the short titles of the bill are the “Supporting Employee Competency and Updating Readiness Enhancements for Facilities Act of 2012,” and the “SECURE Facilities Act of 2012.”

Section 2. Definitions

This section defines several terms used in the bill.

Section 3. Federal Protective Service

This section amends the Homeland Security Act of 2002 (P.L. 107–296; 6 U.S.C. § 121 et seq.) by adding new Subtitles E and F, which authorize the Federal Protective Service, require the agency to implement program enhancements to improve the security of federal facilities, and codify the establishment and authorities of the Interagency Security Committee.

New section 241 of the Homeland Security Act defines several terms used in Subtitle E.

New section 242 authorizes the establishment of the Federal Protective Service as an agency within the Department of Homeland Security, headed by a Director, who is a civil servant and reports to the Under Secretary of the National Protection and Programs Directorate. It codifies the agency's mission as securing federal facilities and safeguarding federal employees, officials and visitors. This section also outlines the duties and powers of the Director.

New section 243 requires the Secretary to increase the number of FTEs the FPS maintains by 146 in FY 2012, for a total of 1371 FTEs (including no fewer than 950 law enforcement officers). It states that the FPS may never maintain fewer than 1200 FTEs after FY2012 (including no fewer than 900 law enforcement officers), and requires the Secretary to submit a report to Congress in any year in which the FPS proposes decreasing its full-time equivalent staff from its then-current amount. As amended in Committee, this provision also states that the Secretary shall offset the hiring of each additional full-time equivalent employee hired by the Federal Protective Service with a reduction of a full-time equivalent employment elsewhere in the Department.

New section 244 requires the FPS to increase the minimum training requirements for armed security guards to at least 80 hours, and gradually increase the amount of training the FPS monitors, from 10 percent in FY2011 to 25 percent by FY2014. This section also requires the FPS to establish a program to assess guard training and the security of federal facilities (including a covert testing program), update the Security Guard Information Manual and all individual Post Orders, and establish a database of guard service contracts, which shall include information relating to contract performance.

New section 245 requires the FPS to increase the number of certified canine teams by up to 15 teams annually, between FY 2011 and FY2014, and directs the Secretary to use existing methods of procurement in doing so to the greatest extent practicable. It also requires the Director to establish minimum standards for training and performance of any canine units trained by non-governmental entities.

New section 246 directs the Secretary, in coordination with the Interagency Security Committee, to develop performance-based standards for checkpoint detection technology for use at federal facilities.

New section 247 authorizes the Secretary to collect security charges from an agency to cover the costs of deploying security countermeasures which FPS determines are necessary to ensure compliance with the federal security standards if the Director has provided sufficient notice to that agency. It also requires the Secretary submit a report to Congress, in a classified manner if necessary, on any facility FPS determines to be in noncompliance with federal security standards.

New section 248 explicitly provides the Secretary with the authority to collect fees and security charges for protective services, and it directs the Office of Management and Budget to adjust fees as necessary to carry out the provisions of this subtitle.

New section 261, the first section in the new Subtitle F, indicates that the terms defined in section 241 are also applicable to subtitle F.

New section 262 codifies the establishment, membership and authorities of the Interagency Security Committee (ISC). It makes the Federal Protective Service and a representative of the Judicial Branch voting members of the Committee, and establishes an appeals board with authority to reconsider a security level determination for a federal facility, an FPS recommendation for countermeasures for a federal facility, or a determination that a federal facility is in noncompliance with federal security standards. It also authorizes such sums as necessary for the operations of the ISC.

New section 263 requires the Secretary, in consultation with the ISC, to establish a process for an agency to provide protective services for its facilities, in lieu of the FPS providing that service. It states that FPS personnel shall retain the law enforcement authorities they possess at any facility exempted from FPS protection under this section, so that they may respond to an incident if necessary. It establishes certain minimum requirements for the process the Secretary may use to grant this security waiver authority. It states that waiver authority shall be provided on a biennial basis, which may be renewed, and that the Secretary shall respond to an application within 60 days of its submission. The section requires the agency seeking this authority to demonstrate security expertise, possess law enforcement authority, demonstrate that it has an ability to comply with the federal security standards established by the ISC, and submit a cost-benefit analysis demonstrating that the proposed arrangement would save the government money. It also preserves the Department of Energy's current authorization for its headquarters facilities in Washington, DC and Germantown, Maryland, and allows the Secretary of Homeland Security and the Secretary of Energy to renegotiate the terms of those authorizations, without regard for the minimum requirements in the bill, due to the Energy Department's unique role in safeguarding nuclear materials.

New section 264 requires the establishment of a Facility Security Committee (FSC) at each federal facility housing more than one federal agency. It requires that basic security training be provided by FPS (or a designated security organization) to all members on the FSC and that these Committees meet on a quarterly basis. It also outlines the FSC's responsibilities and provides the FSC the authority to appeal certain determinations by the Federal Protective Service to the ISC appeals board.

Section 4. Federal Protective Service officers off-duty carrying of firearms

This section provides FPS law enforcement officers with the authority to carry a weapon during off-duty times, as other federal law enforcement officers are permitted to do.

Section 5. Civil Service retirement system and Federal employees retirement system

This section provides federal law enforcement retirement benefits to all FPS law enforcement officers.

Section 6. Report on Federal Protective Service personnel needs

This section requires the Secretary to provide a report to Congress on the personnel needs of the FPS for the next ten years and to include in the report a workforce composition recommendation.

Section 7. Report on retention rate of Federal Protective Service contract guard workforce

This section requires the Secretary to report to Congress on the retention rate of FPS's contract guard workforce and how that retention rate affects agency operations and the security of federal facilities.

Section 8. Report on the feasibility of federalizing the Federal Protective Service contract guard workforce

This section requires the Secretary report to Congress within one year on the feasibility of converting all or part of the FPS's contract guard workforce into full-time equivalent employees, the costs associated with such a conversion, and any increase in security which could be realized. It requires the Secretary submit the report for review by a qualified consultant before giving the report to Congress.

Section 9. Report on agency funding

This section requires the Secretary to report to Congress on the alternatives for funding the Federal Protective Service, including the possibility of receiving direct appropriations for all or part of the agency's budget (currently, FPS receives all of its funding through security charges and fees assessed to tenant agencies).

Section 10. Report on preventing explosives from entering federal facilities

This section requires the Secretary to report to Congress on the Department's plans to detect or prevent explosives from entering federal facilities.

Section 11. Savings clause

This section notes that nothing in this Act shall be construed to affect the authority of the U.S. Marshals Service to protect federal judicial personnel and courthouses, as authorized under Section 566 of Title 28, U.S.C., the authority of any other federal law enforcement agency other than the FPS, or the authorities of the FPS not specifically enumerated by this Act.

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. The Committee agrees with the Congressional Budget Office's statement that the bill contains no inter-governmental 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. ESTIMATED COST OF LEGISLATION

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
 Washington, DC, July 7, 2011.

Hon. JOSEPH I. LIEBERMAN,
 Chairman, Committee on Homeland Security and Governmental Affairs,
 U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 772, the SECURE Facilities Act of 2011.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

ROBERT A. SUNSHINE,
 (For Douglas W. Elmendorf, Director).

Enclosure.

S. 772—SECURE Facilities Act of 2011

Summary: S. 772 would modify provisions of current law that govern security at federal facilities as well as activities of the Federal Protective Service (FPS) and the Interagency Security Committee (ISC). CBO estimates that implementing S. 772 would cost \$176 million over the 2012–2016 period, assuming appropriation of the necessary funds.

Because CBO estimates that the legislation would increase revenues by \$1 million over the 2012–2021 period, pay-as-you-go procedures apply. Enacting the bill would not affect direct spending until after 2021.

S. 772 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.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 772 is shown in the following table. The costs of this legislation fall within budget functions 800 (general government), 950 (undistributed offsetting receipts), and all functions that include government agencies that use the services of the FPS.

	By fiscal year, in millions of dollars—					
	2012	2013	2014	2015	2016	2012–2016
CHANGES IN SPENDING SUBJECT TO APPROPRIATION ^a						
Federal Protective Service:						
Estimated Authorization Level	33	21	25	29	30	138
Estimated Outlays	33	21	25	29	30	138
FPS Retirement Contributions (Employer Share): ^b						
Estimated Authorization Level	1	2	2	3	3	11
Estimated Outlays	1	2	2	3	3	11
Other Provisions:						
Estimated Authorization Level	6	6	5	5	5	27
Estimated Outlays	6	6	5	5	5	27
Total Changes:						
Estimated Authorization Level	40	29	32	37	38	176
Estimated Outlays	40	29	32	37	38	176

	By fiscal year, in millions of dollars—					
	2012	2013	2014	2015	2016	2012–2016
Memorandum:						
Intragovernmental Collections from Retirement Contributions (Employer Share) ^b	-1	-2	-2	-3	-3	-11

Notes: FPS = Federal Protective Service. Amounts may not sum to totals because of rounding.
^aCBO estimates that enacting S. 772 would increase revenue collections by less than \$500,000 over the 2012–2016 period and by about \$1 million over the 2012–2021 period because of increased employee retirement contributions.
^bEmployer contributions are intragovernmental transactions that do not affect the deficit. Thus, the amounts shown under changes in spending subject to appropriation would be offset by collections, as shown in the memorandum.

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted by the end of 2011, that the necessary amounts will be appropriated near the start of each fiscal year, and that spending will follow historical patterns for similar activities. CBO estimates that implementing S. 772 would have a discretionary cost of \$176 million over the 2012–2016 period. (Assuming the appropriation of the necessary amounts, intragovernmental collections would rise by \$11 million over that period.) Key components of that estimate are described below.

Federal protective service

The FPS is a federal agency that provides integrated security and law enforcement services to federally owned and leased properties. Using a fee-based system to charge federal agencies for its services, FPS currently employs 1,225 federal security officers, criminal investigators, police officers, and support personnel and contracts with 13,000 other guards to secure approximately 9,000 federal buildings. The bill would specify staffing levels for law enforcement and administrative personnel at the FPS in 2012 and establish permanent minimum staffing levels. In addition, S. 722 would require that any new hiring be conditioned on reducing an equivalent number of current employees. Finally, the legislation also would standardize the oversight and training of FPS’s contract guards and increase the number of canine teams assigned to infrastructure security.

Based on information from the Department of Homeland Security (DHS) about the cost of similar efforts by other agencies, CBO estimates that implementing those provisions would cost \$138 million over the 2012–2016 period. Those amounts would cover the costs to hire new security personnel (primarily contractors), purchase security equipment, provide training for agency staff and contract officers, and oversee those activities.

FPS retirement contribution

Under S. 772, FPS officers would be considered law enforcement officers for retirement purposes. That change, which would apply only to years of service earned after enactment of S. 772, would provide greater retirement benefits to eligible employees after 20 years of law enforcement service. CBO estimates that any increases in federal spending for retirement benefits (which would be considered direct spending) would not occur until after 2021. However, in order to receive the retirement benefit for law enforcement officers, both FPS and the eligible officers would be required to make larger contributions toward that benefit during the officers’ employment. As a result, CBO estimates that FPS would be required to pay an

additional \$11 million in retirement contributions over the 2012–2016 period. (Such contributions are intragovernmental and do not affect the deficit.) CBO estimates that additional employee contributions (recorded as revenues in the budget) would total about \$1 million through 2021.

Other provisions

Under an existing executive order, the Interagency Security Committee sets certain parameters related to security for all federal buildings. The legislation would codify and expand the committee’s size and responsibilities and create an appeals process for affected agencies. S. 772 also would require DHS to report to the Congress on the FPS’s personnel needs, use of contract guards, and overall funding requirements. Based on information from the FPS and the ISC about the cost of similar activities and reports, CBO estimates that implementing all of those provisions would cost \$5 million to \$6 million annually over the 2012–2016 period.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. Enacting S. 772 would increase revenues from employee contributions to retirement accounts by about \$1 million through 2021. The changes in revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS FOR S. 772 AS ORDERED REPORTED BY THE SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS ON MAY 18, 2011

	By fiscal year, in millions of dollars—													2011–2016	2011–2021
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021				
NET INCREASE OR DECREASE (–) IN THE DEFICIT															
Statutory Pay-As-You-Go Impact	0	0	0	0	0	0	0	0	0	0	0	0	0	0	–1

Intergovernmental and private-sector impact: S. 772 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Spending: Matthew Pickford and Amber G. Marcellino; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

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, the following changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

* * * * *

PART III—EMPLOYEES

* * * * *

Subpart B—Employment and Retention

* * * * *

CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

* * * * *

Subchapter I—Examination, Certification, and Appointment

* * * * *

§ 3307. Competitive service; maximum-age entrance requirements; exceptions

(a) * * *

* * * * *

(h) The Secretary of Homeland Security may determine and fix the maximum age limit for an original appointment to a position as a Federal protective service officer, as defined by section 8401(38).

* * * * *

Subpart G—Insurance and Annuities

* * * * *

CHAPTER 83—RETIREMENT

* * * * *

Subchapter III—Civil Service Retirement

* * * * *

§ 8331. Definitions

* * * * *

(1) * * *

* * * * *

(30) the term “air traffic controller” or “controller” means—
(A) a controller within the meaning of section 2109(1);
and

(B) a civilian employee of the Department of Transportation or the Department of Defense who is the immediate supervisor of a person described in section 2019(1)(B); **[and]**

(31) “customs and border protection officer” means an employee in the Department of Homeland Security

(A) who holds a position within the GS–1895 job series (determined applying the criteria in effect as of September 1, 2007) or any successor position, and

(B) whose duties include activities relating to the arrival and departure of persons, conveyances, and merchandise at ports of entry, including any such employee who is transferred directly to a supervisory or administrative position in the Department of Homeland Security after performing such duties (as described in subparagraph (B)) in 1 or more positions (as described in subparagraph (A)) for at least 3 years**[.]; and**

(32) *‘Federal protective service officer’ means an employee in the Federal Protective Service of the Department of Homeland Security—*

(A) who holds a position within the GS–0083, GS–0080, GS–1801, or GS–1811 job series (determined applying the criteria in effect as of September 1, 2007) or any successor position; and

(B) who are authorized to carry firearms and empowered to make arrests in the performance of duties related to the protection of buildings, grounds and property that are owned, occupied, or secured by the Federal Government (including any agency, instrumentality or wholly owned or mixed-ownership corporation thereof) and the persons on the property, including any such employee who is transferred directly to a supervisory or administrative position in the Department of Homeland Security after performing such duties in 1 or more positions (as described under subparagraph (A)) for at least 3 years.

* * * * *

§ 8334. Deductions, contributions, and deposits

(a) * * *

(1) * * *

(A) The employing agency shall deduct and withhold from the basic pay of an employee, Member, Congressional employee, law enforcement officer, firefighter, bankruptcy judge, judge of the United States Court of Appeals for the Armed Forces, United States magistrate, Court of Federal Claims judge, member of the Capital Police, member of the Supreme Court Police, nuclear materials courier, *Federal protective service officer*, or customs and border protections officer, as the case may be, the percentage of basic pay applicable under subsection (c).

(B) * * *

* * * * *

(c) Each employee of Member credited with civilian service after July 31, 1920, for which retirement deductions or deposits have not

been made, may deposit with interest an amount equal to the following percentages of his basic pay received for that service:

	Percentage of basic pay	Service period
Employee	2.5	August 1, 1920 to June 30, 1926.
* * *		
Customs and border protection officer	7.5	After June 29, 2008.
<i>Federal Protective Service Officer</i>	7.5	<i>On or after the effective date under section 5(e)(1) of the SECURE Facilities Act of 2012.</i>
	*	*
	*	*
	*	*
	*	*
	*	*
	*	*

§ 8335. Mandatory separation

- (a) * * *
- (b) * * *

(1) A law enforcement officer, firefighter, nuclear materials courier, *Federal protective service officer*, or customs and border protection officer who is otherwise eligible for immediate retirement under section 8336(c) shall be separated from the service on the last day of the month in which the officer, firefighter, or courier, as the case may be, becomes 57 years of age or completes 20 years of service if then over that age. The head of the agency, when in his judgment the public interest so requires, may exempt such an employee from automatic separation under this subsection until that employee becomes 60 years of age. The employing office shall notify the employee in writing of the date of separation at least 60 days in advance thereof. Action to separate the employee is not effective, without the consent of the employee, until the last day of the month in which the 60-day notice expires.

* * * * *

§ 8336. Immediate retirement

- (a) * * *
- * * *
- (c) * * *

(1) An employee who is separated from the service after becoming 50 years of age and completing 20 years of service as a law enforcement officer, firefighter, nuclear materials courier, *Federal protective service officer*, or customs and border protection officer, or any combination of such service totaling at least 20 years, is entitled to an annuity.

- (2) * * *

* * * * *

(m) A member of the Capitol Police who is separated from the service after becoming 50 years of age and completing 20 years of service as a member of the Capitol Police as a law enforcement officer, *as a Federal protective service officer*, or as a customs and border protection officer, or any combination of such service totaling at least 20 years, is entitled to an annuity.

(n) A member of the Supreme Court Police who is separated from the service after becoming 50 years of age and completing 20 years of service as a member of the Supreme Court Police as a law enforcement officer, *as a Federal protective service officer*, or as a cus-

toms and border protection officer, or any combination of such service totaling at least 20 years, is entitled to an annuity.

* * * * *

CHAPTER 84—FEDERAL EMPLOYEES’ RETIREMENT SYSTEM

* * * * *

Subchapter I—General Provisions

* * * * *

§ 8401. Definitions

(1) * * *

* * * * *

(36) the term “customs and border protection officer” means an employee in the Department of Homeland Security

(A) who holds a position within the GS–1895 job series (determined applying the criteria in effect as of September 1, 2007) or any successor position, and

(B) whose duties include activities relating to the arrival and departure of persons, conveyances, and merchandise at ports of entry, including any such employee who is transferred directly to a supervisory or administrative position in the Department of Homeland Security after performing such duties (as described in subparagraph (B)) in 1 or more positions (as described in subparagraph (A)) for at least 3 years; **[and]**

(37) the term “revised annuity employee” means any individual who—

(A) on December 31, 2012—

(i) is not an employee or Member covered under this chapter;

(ii) is not performing civilian service which is creditable service under section 8411; and

(iii) has less than 5 years of creditable civilian service under section 8411; and

(B) after December 31, 2012, becomes employed as an employee or becomes a Member covered under this chapter performing service which is creditable service under section 8411~~1.~~; and

(38) *Federal protective service officer* means an employee in the Federal Protective Service of the Department of Homeland Security—

(A) who holds a position within the GS–0083, GS–0080, GS–1801, or GS–1811 job series (determined applying the criteria in effect as of September 1, 2007) or any successor position; and

(B) who are authorized to carry firearms and empowered to make arrests in the performance of duties related to the protection of buildings, grounds and property that are owned, occupied, or secured by the Federal Government (including any agency, instrumentality or wholly owned or mixed-ownership corporation thereof) and the persons on

the property, including any such employee who is transferred directly to a supervisory or administrative position in the Department of Homeland Security after performing such duties in 1 or more positions (as described under subparagraph (A)) for at least 3 years.

* * * * *

Subchapter II—Basic Annuity

* * * * *

§ 8412. Immediate Retirement

(a) * * *

* * * * *

(d) An employee who is separated from the service, except by removal for cause on charges of misconduct or delinquency—

(1) after completing 25 years of service as a law enforcement officer, member of the Capitol Police or Supreme Court Police, firefighter, nuclear materials courier, *Federal protective service officer*, or customs and border protection officer, or any combination of such service totaling at least 25 years, or

(2) after becoming 50 years of age and completing 20 years of service as a law enforcement officer, member of the Capitol Police or Supreme Court Police, firefighter, nuclear materials courier, *Federal protective service officer*, or customs and border protection officer, or any combination of such service totaling at least 20 years,

* * * * *

§ 8415. Computation of basic annuity

(a) * * *

* * * * *

(i) * * *

(1) * * *

(2) This subsection applies in the case of an employee who—

(A) retires entitles to an annuity under section 8412; and

(B) at the time of the separation on which entitlement to the annuity is based, is at least 62 years of age and has completed at least 20 years of service; but does not apply in the case of a Congressional employee, military technician (dual status), law enforcement officer, member of the Supreme Court Police, firefighter, nuclear materials courier, air traffic controller, *Federal protective service officer*, or customs and border protection officer

* * * * *

§ 8422. Deductions from pay; contributions for other service; deposits

(a) * * *

(1) * * *

* * * * *

(3) * * *

(A) The applicable percentage under this paragraph for civilian service by employees of Members other than revised annuity employees shall be as follows:

Employee	7	January 2, 1987, to December 31, 1998
* * *		
Customs and border protection officer	7.5	After June 29, 2008."
Federal protective service officer	7.5	On or after the effective date under section 5(e)(1) of the SECURE Facilities Act of 2012."

(B) The applicable percentage under this paragraph for civilian service by revised annuity employees shall be as follows:

Employee	9.3	After December 31, 2012.
* * *		
Customs and border protection officer	9.8	After December 31, 2012.
Federal protective service officer	9.8	On or after the effective date under section 5(e)(1) of the SECURE Facilities Act of 2012.

* * * * *

§ 8423. Government contributions

(a) * * *

(1) * * *

(A) * * *

(B) the product of—

(i) the normal-cost percentage, as determined for Member, Congressional employees, law enforcement officers, members of the Supreme Court Police, firefighters, nuclear materials couriers, *Federal protective service officers*, customs and border protection officers, air traffic controllers, military reserve technicians, and employees under section 302 and 303 of the Central Intelligence Agency Retirement Act, multiplied by

(ii) * * *

(3) Contributions under this subsection shall be paid—

(A) in the case of law enforcement officers, members of the Supreme Court Police, firefighters, nuclear materials couriers, *Federal protective service officer*, customs and border protection officers, air traffic controllers, military reserve technicians, and other employees, from the appropriation or fund used to pay such law enforcement officers, members of the Supreme Court Police, firefighters, nuclear materials couriers, *Federal protective service officers*, customs and border protection officers, air traffic controllers, military reserve technicians, or other employees, respectively;

* * * * *

§ 8425. Mandatory separation

(a) * * *

(b) * * *

(1) A law enforcement officer, firefighter, nuclear materials courier, *Federal protective service officer*, or customs and border protection officer who is otherwise eligible for immediate retirement under section 8412(d) shall be separated from the service on the last day of the month in which that law enforce-

ment officer, firefighter, nuclear materials courier, *Federal protective service officer*, or customs and border protection officer as the case may be, becomes 57 years of age or completes 20 years of service if then over that age. If the head of the agency judges that the public interest so requires, that agency head may exempt such an employee from automatic separation under this subsection until that employee becomes 60 years of age. The employing office shall notify the employee in writing of the date of separation at least 60 days before that date. Action to separate the employee is not effective, without the consent of the employee, until the last day of the month in which the 60-day notice expires.

* * * * *

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

PART I—CRIMES

* * * * *

CHAPTER 44—FIREARMS

* * * * *

§ 926B. Carrying of concealed firearms by qualified law enforcement officers

(a) * * *

* * * * *

(f) For the purposes of this section, a law enforcement officer of the Amtrak Police Department, a law enforcement officer of the Federal Reserve, a *law enforcement officer of the Federal Protective Service*, or a law enforcement or police officer of the executive branch of the Federal Government qualifies as an employee of a governmental agency who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest.

* * * * *

TITLE 40—PUBLIC BUILDINGS, PROPERTY, AND WORKS

* * * * *

Subtitle I—Federal Property and Administrative Services

* * * * *

CHAPTER 13—PUBLIC PROPERTY

* * * * *

§ 1315. Law enforcement authority of Secretary of Homeland Security for protection of public property

(a) * * *

(b) OFFICERS AND AGENTS.—

(1) * * *

(2) POWERS.—**[**While engaged in the performance of official duties, an**]** *An* officer or agent designated under this subsection may—

(A) * * *

(B) **[**carry firearms;**]** *carry firearms on or off duty;*

* * * * *

