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{ REPORT
115-179

**BORDER ENFORCEMENT SECURITY TASK
FORCE REAUTHORIZATION ACT OF 2017**

R E P O R T

OF THE

**COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE**

TO ACCOMPANY

S. 1199

TO AMEND THE HOMELAND SECURITY ACT OF 2002 TO
REAUTHORIZE THE BORDER ENFORCEMENT SECURITY TASK
FORCE PROGRAM WITHIN THE DEPARTMENT OF HOMELAND
SECURITY, AND FOR OTHER PURPOSES



OCTOBER 30, 2017.—Ordered to be printed

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BORDER ENFORCEMENT SECURITY TASK FORCE
REAUTHORIZATION ACT OF 2017

OCTOBER 30, 2017.—Ordered to be printed

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

R E P O R T

[To accompany S. 1199]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1199), to amend the Homeland Security Act of 2002 to reauthorize the Border Enforcement Security Task Force program within the Department of Homeland Security, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 1199, the Border Enforcement Security Task Force Reauthorization Act of 2017, is to reauthorize the Border Enforcement Security Task Force (BEST) program, which is responsible for investigating, disrupting, and collecting intelligence on transnational criminal organizations (TCO) at the U.S. border. Although the BEST program is successful, its current structure is not adequate to address the changing border security landscape. Modernizing the BEST program provides frontline law enforcement

agents with the proper tools to effectively adapt to new criminal activity trends and drug trafficking patterns.

This bill also updates the BEST program by requiring each maritime unit to include a U. S. Coast Guard (USCG) employee. It extends the reporting requirements by five years and requires the Department of Homeland Security (DHS or the Department) Secretary to report on the effectiveness of the BEST program's efforts to combat TCOs, its cooperation with stakeholders, and its integration with Joint Task Force Operations on an annual basis.

Finally, the bill modernizes the Immigration and Customs Enforcement's (ICE) overseas pay system. Specifically, S. 1199 authorizes the Director of ICE to provide danger pay for law enforcement officers serving in dangerous locations outside the United States. By providing this authority, Congress is ensuring that ICE agents have pay parity with their Drug Enforcement Agency (DEA) and Federal Bureau of Investigations (FBI) law enforcement counterparts serving in similar environments.

II. BACKGROUND AND THE NEED FOR LEGISLATION

The BEST program is a partnership between ICE and "federal, state, local, tribal and international law enforcement" agencies to disrupt border related criminal activity.¹ There are 57 BEST units operating across 22 states and Puerto Rico.² These teams are comprised of over 1,000 members who represent over 100 law enforcement agencies that focus on disrupting criminal smuggling and trafficking operations and on denying criminal organizations the opportunity to transport their illicit funds.³ According to ICE Homeland Security Investigations (HSI), during fiscal year 2016 "the BEST program accounted for 3,710 criminal arrests, 991 administrative arrests, and prosecutors obtained 2,248 indictments and 1,923 convictions."⁴

The BEST program is critical to maintaining security at the U.S. borders. With the increased use of alternative methods to conceal transnational crime, this program's rapid response mechanisms have prevented further criminal activity from occurring within the United States.⁵ Additionally, the BEST program provides safety and security to U.S. citizens who reside near the U.S. border.

While the BEST program has been successful, the current authorization is not flexible enough to allow the program to react to changes in the border security landscape, including the establishment of DHS Joint Task Forces and the Department's shift in strategic priorities toward securing our border and dismantling TCOs.⁶

¹U.S. Immigration and Customs Enforcement, *Border Enforcement Security Task Force (BEST)*, <https://www.ice.gov/best> (last visited July 20, 2017).

²*Id.* at "BEST Locations."

³*Id.*

⁴See *A Dangerous and Sophisticated Adversary: The Threat to the Homeland Posed by Cartel Operations: Hearing Before the H. Comm. on Homeland Sec.*, 115th Cong. (Feb. 16, 2017) (written statement of Matt Allen, ICE Homeland Security Investigations Assistant Director for Investigative Programs), available at <https://www.dhs.gov/news/2017/02/16/written-testimony-ice-house-homeland-security-subcommittee-border-and-maritime>.

⁵*Id.*

⁶See generally, *Securing the Border: Understanding Threats and Strategies for the Northern Border: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (Apr. 22, 2015), available at <https://www.hsgac.senate.gov/hearings/securing-the-border-understanding-threats-and-strategies-for-the-northern-border>.

Modifications are necessary to ensure the BEST program is adapting to the evolving security changes at the border.

With the reporting period for BEST set to expire on December 7, 2017, Congress has the opportunity to direct the Department to consider strategic priorities and location of existing Joint Task Force operations when determining placement of future BEST units.

The bill also ensures that all maritime BEST units have USCG personnel assigned to them. Requiring the USCG to assign personnel to maritime BEST units that have a nexus to port security will allow for the rapid dissemination of maritime-based intelligence to other Federal, state, and local entities, increasing the chance of a law enforcement resolution to illicit maritime activity. This is particularly important in light of recent media reports asserting that coca cultivation in Colombia has increased by fifty percent.⁷ USCG maritime operations will be instrumental in preventing more cocaine from reaching American communities through maritime transit zones.

Lastly, through this legislation, Congress seeks to modernize ICE's compensation system for those law enforcement officers serving abroad. ICE HSI Special Agents assigned abroad conduct criminal investigations under dangerous circumstances. In 2011, for example, ICE HSI Special Agent Jaime Zapata was murdered by cartel gunmen while stationed in Mexico, and another agent was seriously wounded.⁸ Given that ICE HSI is responsible for combating criminal organizations illegally exploiting America's trade, travel, financial, and immigration systems, S. 1199 would ensure that these law enforcement officers have pay parity with their DEA and FBI counterparts, who have already been granted danger pay allowances by Congress.⁹

III. LEGISLATIVE HISTORY

S. 1199 was introduced on May 22, 2017, by Ranking Member Claire McCaskill. Chairman Ron Johnson and Senator Jon Tester joined as cosponsors on July 25, 2017. The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 1199 at a business meeting on July 26, 2017. Two amendments were considered at the business meeting. Johnson Amendment 1 added ICE to the list of agencies that are authorized to provide danger pay to employees serving abroad. The substitute amendment was adopted by voice vote *en bloc*, with Senators Johnson, Portman, Lankford, Daines, McCaskill, Tester, Heitkamp, Peters, Hassan, and Harris present.

Heitkamp Amendment 1 as modified included several factors the Secretary of DHS should consider and include in the required report to Congress regarding BEST operations and programming. The amendment was adopted by voice vote *en bloc*, with Senators

⁷Colombia coca cultivation rises by 50% says UN, BBC News (July 15, 2017), available at <http://www.bbc.com/news/world-latin-america-40616502>.

⁸Press Release, U.S. Dep't. of Justice, *Two Cartel Members Found Guilty of Murder and Other Charges in Slaying of ICE Special Agent Jaime Zapata and Attempted Murder of Ice Special Agent Victory Avila* (July 27, 2017), <https://www.justice.gov/opa/pr/two-cartel-members-found-guilty-murder-and-other-charges-slaying-ice-special-agent-jaime>.

⁹See Pub. L. No. 101-246, § 151, 104 Stat. 42 (1990); Pub. L. No. 207-273, § 11005, 116 Stat. 1817.

Johnson, Portman, Lankford, Daines, McCaskill, Tester, Heitkamp, Peters, Hassan, and Harris present.

The Committee ordered S. 1199, as amended by Johnson Amendment 1 and Heitkamp Amendment 1, reported favorably by voice vote en bloc with Senators Johnson, Portman, Lankford, Daines, McCaskill, Tester, Heitkamp, Peters, Hassan, and Harris present.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Sec. 1. Short title

This section provides the bill's short title, the "Border Enforcement Security Task Force Reauthorization Act of 2017."

Sec. 2. Modified instructions

Subsection (a) requires the Secretary of DHS to apply additional risk-based criteria before establishing a BEST unit. The criteria are required to include the threats posed by transnational criminal organizations, the BEST unit's potential to enhance DHS's strategic priorities, and to assess how BEST units benefit Joint Task Force operations.

Subsection (b) requires that BEST units with a port security nexus include at least one member of the USCG Investigative Service and at least one member from the geographically responsible USCG Sector Intelligence Office.

Subsection (c) expands reporting requirements. In addition to previous areas of analysis, annual reports must include an assessment of the effectiveness of the program's effort to dismantle TCOs. The report must provide an assessment of joint operational cooperation and information sharing effectiveness among Federal, state, local, tribal and foreign law enforcement agencies, as well as the capability gaps that exist related to intelligence sharing. Further, this subsection also calls for assessments regarding: authorities, Memorandums of Understanding, and funding impacts. Reporting timelines remain the same.

Sec. 3. Authorization of danger pay allowance for ICE agents stationed in dangerous areas

Subsection (a) explains the importance of providing danger pay authority to the ICE Director.

Subsection (b) includes ICE in the list of Federal components authorized to provide danger pay to their employees serving abroad.

Subsection (c) is a technical provision that repeals Public Law 101-246.

Subsection (d) implements transparency and accountability by requiring the ICE Director to submit a report to appropriate committees listing the overseas posts that qualify for danger pay allowances accompanied by a detailed justification for each designation. ICE must submit such information no later than 30 days after the date on which regulations are issued.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The

Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

AUGUST 17, 2017.

Hon. RON JOHNSON,
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. 1199, the Border Enforcement Security Task Force Reauthorization Act of 2017.

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

Sincerely,

KEITH HALL.

Enclosure.

S. 1199—Border Enforcement Security Task Force Reauthorization Act of 2017

CBO estimates that, in total, implementing S. 1199 would cost about \$1 million annually, subject to the availability of appropriated funds.

S. 1199 would authorize Immigration and Customs Enforcement (ICE) to provide a danger-pay allowance for ICE agents who are assigned to certain overseas posts. ICE expects that 39 employees would receive this allowance and estimates that each person would earn, on average, an additional \$13,600 per year; that amount is equivalent to 15 percent of their current pay, which is in line with other agencies that provide danger pay. Thus, CBO estimates that implementing this provision of the bill would cost about \$530,000 in 2017, with those costs growing as average salaries increased over time.

In addition, S. 1199 would require the Department of Homeland Security (DHS), for five years after enactment, to submit an annual report to the Congress on a DHS task force working to improve border security. The report would include an evaluation of the task force's effectiveness in enhancing border security, reducing crime, and improving the sharing of information among law enforcement agencies. Based on the cost of similar activities, CBO estimates that the report would cost less than \$500,000 annually over the next 5 years.

Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting S. 1199 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 1199 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On May 12, 2017, CBO transmitted a cost estimate for H.R. 2281, the Border Enforcement Security Task Force Reauthorization

Act of 2017, as ordered reported by the House Committee on Homeland Security on May 3, 2017. H.R. 2281 would require DHS to prepare a report similar to the one in S. 1199 but would not authorize danger pay for ICE agents. The estimates of the two versions of the bill reflect that difference.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by H. Samuel Papenfuss, 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, changes in existing law made by S. 1199, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and 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 D—Pay and Allowances

* * * * *

CHAPTER 59—ALLOWANCES

* * * * *

Subchapter III—Overseas Differentials and Allowances

* * * * *

SEC. 5928. DANGER PAY ALLOWANCE.

An employee serving in a foreign area may be granted a danger pay allowance on the basis of civil insurrection, civil war, terrorism, or wartime conditions which threaten physical harm or imminent danger to the health or well-being of the employee. *The Secretary of State may not deny an request by the Administrator of the Drug Enforcement Agency, the Director of the Federal Bureau of Investigation, or the Director of U.S. Immigration and Customs Enforcement to authorize a danger pay allowance under this section for any employee of any such agency.* A danger pay allowance may not exceed 35 percent of the basic pay of the employee, except that if an employee is granted an additional differential under section 5925(b) of this title with respect to an assignment, the sum of that additional differential and any danger pay allowance granted to the employee with respect to that assignment may not exceed 35 percent of the basic pay of the employee. The presence of nonessential

personnel or dependents shall not preclude payment of an allowance under this section. In each instance where an allowance under this section is initiated or terminated, the Secretary of State shall inform the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate of the action taken and the circumstances justifying it.

* * * * *

TITLE 6—DOMESTIC SECURITY

* * * * *

CHAPTER 1—HOMELAND SECURITY ORGANIZATION

* * * * *

Subchapter IV—Border, Maritime, and Transportation Security

* * * * *

PART C—MISCELLANEOUS PROVISIONS

SEC. 240. BORDER ENFORCEMENT SECURITY TASK FORCE.

(a) * * *

(b) * * *

(c) COMPOSITION AND ESTABLISHMENT OF UNITS.—

(1) * * *

(2) ESTABLISHMENT OF UNITS.—The Secretary is authorized to establish BEST units in jurisdictions in which such units can contribute to BEST missions, as appropriate. Before establishing a BEST unit, the Secretary **【shall consider】** *shall apply risk-based criteria that takes into consideration—*

(A) whether the area in which the BEST unit would be established is significantly impacted by cross-border threats *including threats posed by transnational criminal organizations*;

(B) * * *

(C) the extent to which border security threats are having a significant harmful impact in the jurisdiction in which the BEST unit is to be established, and other jurisdictions in the country; **【and】**

(D) whether or not an Integrated Border Enforcement Team already exists in the area in which the BEST unit would be established**【.】**;

(E) *the extent to which the BEST unit would advance the Department's homeland and border security strategic priorities and related objectives; and*

(F) *whether departmental Joint Task Force operations established pursuant to section 708 and other joint cross-border initiatives would be enhanced, improved, or otherwise assisted by the BEST unit.*

(3) * * *

(d) OPERATION.—After determining the jurisdictions in which to establish BEST units under subsection (c)(2), and in order to provide Federal assistance to such jurisdictions, the Secretary may—

(1) * * *

(2) * * *

(3) * * *

(4) *PORT SECURITY BEST UNITS.*—A *BEST* unit established pursuant to paragraph (2) with a port security nexus shall be composed of at least 1 member of each of the following:

(A) *The Coast Guard Investigative Service.*

(B) *The geographically responsible Coast Guard Sector Intelligence Office.*

[(e) *Report*—Not later than 180 days after the date on which *BEST* is established under this section, and annually thereafter for the following 5 years, the Secretary shall submit a report to Congress that describes the effectiveness of *BEST* in enhancing border security and reducing the drug trafficking, arms smuggling, illegal alien trafficking and smuggling, violence, and kidnapping along and across the international borders of the United States, as measured by crime statistics, including violent deaths, incidents of violence, and drug-related arrests.]

(e) *REPORT.*—Not later than 180 days after the date of the enactment of this subsection, and annually thereafter for the following 5 years, the Secretary shall submit to Congress a report that includes—

(1) *a description of the effectiveness of BEST in enhancing border security, disrupting and dismantling transnational criminal organizations, and reducing drug trafficking, arms smuggling, child exploitation, illegal alien trafficking and smuggling, violence, and kidnapping along and across the international borders of the United States, as measured by crime statistics, including violent deaths, incidents of violence, and drug-related arrests;*

(2) *an assessment of how BEST enhances information-sharing, including the dissemination of homeland security information, among Federal, State, local, tribal, and foreign law enforcement agencies, as well as BEST capability gaps relating to intelligence coordinating and sharing efforts;*

(3) *a description of how BEST advances the Department's homeland and border security strategic priorities and effectiveness of BEST in achieving related objectives;*

(4) *an assessment of BEST's joint operational efforts with departmental Joint Task Force operations established pursuant to section 708 and other joint cross-border initiatives;*

(5) *an assessment of whether additional authorities are needed to accomplish the BEST mission;*

(6) *an assessment of whether additional Memos of Understanding are needed to address intelligence and coordination gaps; and*

(7) *an assessment of where funding has an impact on the overall mission of BEST operations to assist in advancing the Department's homeland and border security priorities and related objectives.*