

Calendar No. 615

116TH CONGRESS
2D SESSION**S. 2162****[Report No. 116–312]**

To require the Commissioner of U.S. Customs and Border Protection to annually hire at least 600 new Border Patrol agents, to report quarterly to Congress on the status of the Border Patrol workforce, and to conduct a comprehensive staffing analysis.

IN THE SENATE OF THE UNITED STATES

JULY 18, 2019

Mr. JOHNSON introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

DECEMBER 14, 2020

Reported by Mr. JOHNSON, with an amendment

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

A BILL

To require the Commissioner of U.S. Customs and Border Protection to annually hire at least 600 new Border Patrol agents, to report quarterly to Congress on the status of the Border Patrol workforce, and to conduct a comprehensive staffing analysis.

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 “Securing America’s
3 Borders Act of 2019”.

4 **SEC. 2. ADDITIONAL BORDER PATROL PERSONNEL.**

5 (a) AGENTS.—The Commissioner of U.S. Customs
6 and Border Protection shall hire, train, and assign not
7 fewer than 600 new Border Patrol agents, compared to
8 the current attrition level, during every fiscal year until
9 the total number of Border Patrol agents equals and sus-
10 tains the requirements identified in Executive Order
11 13767 (82 Fed. Reg. 8793).

12 (b) SUPPORT STAFF.—The Commissioner is author-
13 ized to hire, train, and assign support staff to perform
14 non-law enforcement administrative functions to support
15 the new Border Patrol agents hired pursuant to subsection
16 (a).

17 (c) REPORTS TO CONGRESS.—Not later than 90 days
18 after the date of the enactment of this Act, and every 90
19 days thereafter, the Commissioner shall submit a report
20 to the Committee on Homeland Security and Govern-
21 mental Affairs of the Senate and the Committee on Home-
22 land Security of the House of Representatives that de-
23 scribes the status of the Border Patrol workforce, includ-
24 ing—

25 (1) the total number of Border Patrol agents;

1 (2) the total number of Border Patrol support
2 staff;

3 (3) the number of Border Patrol agents and
4 support staff hired during the reporting period;

5 (4) the number of Border Patrol agents and
6 support staff lost to attrition, broken down by port
7 of entry; and

8 (5) any hiring authorities, incentive pay, or
9 other special pay incentives utilized during the re-
10 porting period.

11 **SEC. 3. COMPREHENSIVE STAFFING ANALYSIS.**

12 The Commissioner of U.S. Customs and Border Pro-
13 tection shall—

14 (1) not later than 60 days after the date of the
15 enactment of this Act, amend the comprehensive
16 staffing analysis required under section 2(e) of the
17 Border Patrol Agent Pay Reform Act of 2014 (Pub-
18 lic Law 113–277) based on any changes to workload
19 demands since the date of the enactment of such
20 Act; and

21 (2) not later than 90 days after the date of the
22 enactment of this Act, submit a report to the Comp-
23 troller General of the United States that includes
24 the results of a comprehensive staffing analysis, as
25 required under section 2(e) of the Border Patrol

1 ~~Agent Pay Reform Act of 2014 (Public Law 113-~~
 2 ~~277).~~

3 **SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

4 There are authorized to be appropriated, for each of
 5 the fiscal years 2020 through 2026, such sums as may
 6 be necessary to carry out this Act.

7 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

8 (a) *SHORT TITLE.*—*This Act may be cited as the “Se-*
 9 *curing America’s Borders Act of 2019”.*

10 (b) *TABLE OF CONTENTS.*—*The table of contents for*
 11 *this Act is as follows:*

Sec. 1. Short title; table of contents.

Sec. 2. Hiring additional U.S. Customs and Border Protection personnel.

Sec. 3. Border Patrol processing coordinators.

Sec. 4. Medical training for border patrol agents.

Sec. 5. Workforce staffing model.

Sec. 6. Promoting flexibility in employment authorities for rural or remote areas.

Sec. 7. CBP Hiring and Retention Innovation Council.

Sec. 8. Authorization of appropriations.

12 **SEC. 2. HIRING ADDITIONAL U.S. CUSTOMS AND BORDER**
 13 **PROTECTION PERSONNEL.**

14 (a) *AGENTS.*—*The Commissioner of U.S. Customs and*
 15 *Border Protection shall hire, train, and assign not fewer*
 16 *than 600 new Border Patrol agents above the current attri-*
 17 *tion level during every fiscal year until the total number*
 18 *of Border Patrol agents equals 26,370 full-time equivalent*
 19 *agents.*

20 (b) *SUPPORT STAFF.*—*The Commissioner is author-*
 21 *ized to hire, train, and assign support staff to perform non-*

1 *law enforcement administrative functions to support the*
 2 *new Border Patrol agents hired pursuant to subsection (a).*

3 (c) *REPORTS TO CONGRESS.*—*Not later than 90 days*
 4 *after the date of the enactment of this Act, and every 90*
 5 *days thereafter, the Commissioner shall submit a report to*
 6 *the Committee on Homeland Security and Governmental*
 7 *Affairs of the Senate and the Committee on Homeland Se-*
 8 *curity of the House of Representatives that describes the sta-*
 9 *tus of the Border Patrol workforce, including—*

10 (1) *the total number of Border Patrol agents;*

11 (2) *the total number of Border Patrol support*
 12 *staff, including Border Patrol processing coordina-*
 13 *tors;*

14 (3) *the number of Border Patrol agents and sup-*
 15 *port staff hired during the reporting period, broken*
 16 *down by Border Patrol duty location;*

17 (4) *the number of Border Patrol agents and sup-*
 18 *port staff lost to attrition, broken down by Border Pa-*
 19 *trol duty location;*

20 (5) *any hiring authorities, incentive pay, or*
 21 *other special pay incentives utilized during the re-*
 22 *porting period; and*

23 (6) *an analysis of the overall effectiveness of the*
 24 *hiring authorities, incentive pay, and other special*
 25 *pay incentives utilized during the reporting period.*

1 **SEC. 3. BORDER PATROL PROCESSING COORDINATORS.**

2 (a) *IN GENERAL.*—Section 411(e) of the Homeland Se-
3 curity Act of 2002 (6 U.S.C. 211(e)) is amended by adding
4 at the end the following:

5 “(4) *BORDER PATROL PROCESSING COORDINA-*
6 *TORS.*—

7 “(A) *AUTHORIZATION.*—The Chief of the
8 U.S. Border Patrol is authorized to hire Border
9 Patrol processing coordinators, who shall be sta-
10 tioned at Border Patrol facilities.

11 “(B) *DUTIES.*—Border Patrol processing
12 coordinators—

13 “(i) shall assist Border Patrol agents
14 to efficiently and expeditiously intake and
15 process apprehended persons;

16 “(ii) shall perform necessary technical
17 and clerical tasks related to the duties set
18 forth in paragraph (3);

19 “(iii) shall be classified as non-law en-
20 forcement personnel; and

21 “(iv) may not be authorized or des-
22 ignated to exercise powers conferred under
23 section 287(a) of the Immigration and Na-
24 tionality Act (8 U.S.C. 1357(a)).”.

25 (b) *TRAINING.*—The Commissioner of U.S. Customs
26 and Border Protection, in coordination with the Chief of

1 *U.S. Border Patrol and in consultation with the Director*
 2 *of the Federal Law Enforcement Training Centers, shall de-*
 3 *velop tailored training for Border Patrol processing coordi-*
 4 *nators hired pursuant to section 411(e)(4) of the Homeland*
 5 *Security Act of 2002, as added by subsection (a).*

6 *(c) REPORTS TO CONGRESS.—Not later than 90 days*
 7 *after the date of the enactment of this Act, and quarterly*
 8 *for the following 2 years, the Secretary of Homeland Secu-*
 9 *rity shall submit a report to the Committee on Homeland*
 10 *Security and Governmental Affairs of the Senate and the*
 11 *Committee on Homeland Security of the House of Rep-*
 12 *resentatives regarding each U.S. Border Patrol sector that*
 13 *includes information regarding the number of U.S. Border*
 14 *Patrol agents who returned to field operations as a result*
 15 *of increased hiring of U.S. Border Patrol processing coordi-*
 16 *nators.*

17 **SEC. 4. MEDICAL TRAINING FOR BORDER PATROL AGENTS.**

18 *(a) IN GENERAL.—Section 411(l) of the Homeland Se-*
 19 *curity Act of 2002 (6 U.S.C. 211(l)) is amended—*

20 *(1) by striking “The Commissioner” and insert-*
 21 *ing the following:*

22 *“(1) CONTINUING EDUCATION.—The Commis-*
 23 *sioner”; and*

24 *(2) by adding at the end the following:*

1 “(2) *MEDICAL TRAINING FOR BORDER PATROL*
2 *AGENTS.*—

3 “(A) *IN GENERAL.*—

4 “(i) *AVAILABILITY.*—*Beginning not*
5 *later than 6 months after the date of the en-*
6 *actment of this paragraph, the Commis-*
7 *sioner, in his or her sole and exclusive dis-*
8 *cretion, shall make available in each U.S.*
9 *Border Patrol sector, at no cost to U.S. Bor-*
10 *der Patrol agents selected for such training,*
11 *emergency medical technician (referred to*
12 *in this paragraph as ‘EMT’) and para-*
13 *medic training, including pediatric medical*
14 *training, which shall utilize nationally rec-*
15 *ognized pediatric training curricula that*
16 *includes emergency pediatric care, and*
17 *training identifying and treating individ-*
18 *uals experiencing medical distress.*

19 “(ii) *USE OF OFFICIAL DUTY TIME.*—
20 *A U.S. Border Patrol agent shall be credited*
21 *with work time for any EMT or paramedic*
22 *training provided to such agent under*
23 *clause (i) in order to achieve or maintain*
24 *an EMT or paramedic certification.*

1 “(iii) *LODGING AND PER DIEM.*—*Lodg-*
 2 *ing and per diem shall be made available to*
 3 *U.S. Border Patrol agents attending train-*
 4 *ing described in clause (ii) if such training*
 5 *is not available at a location within com-*
 6 *muting distance of the agent’s residence or*
 7 *worksite.*

8 “(iv) *SERVICE COMMITMENT.*—*Any*
 9 *U.S. Border Patrol agent who completes a*
 10 *certification preparation program pursuant*
 11 *to clause (i) shall—*

12 “(I) *complete 1 year of service as*
 13 *a U.S. Border Patrol agent following*
 14 *the completion of EMT training;*

15 “(II) *complete 3 years of service*
 16 *as a U.S. Border Patrol agent fol-*
 17 *lowing the completion of paramedic*
 18 *training; or*

19 “(III) *reimburse U.S. Customs*
 20 *and Border Protection in an amount*
 21 *equal to the product of—*

22 “(aa) *the cost of providing*
 23 *such training to such agent; mul-*
 24 *tiplied by*

1 “(bb) the percentage of the
 2 service required under subclauses
 3 (I) and (II) that the agent failed
 4 to complete.

5 “(v) *OBLIGATED OVERTIME.*—For any
 6 debt of obligated overtime hours that the
 7 agent may have incurred, pursuant to sec-
 8 tion 5550(b) of title 5, United States Code,
 9 in order to achieve or maintain an EMT or
 10 paramedic certification, the agent shall se-
 11 lect, not later than 1 pay period before the
 12 commencement of the EMT or paramedic
 13 training

14 “(I) to satisfy the debt of obligated
 15 overtime hours; or

16 “(II) to receive a reduction of pay
 17 commensurate to what the agent would
 18 have received for performance of the
 19 overtime hours.

20 “(B) *AVAILABILITY OF MEDICALLY TRAINED*
 21 *BORDER PATROL AGENTS.*—Not later than 6
 22 months after the date of the enactment of this
 23 paragraph, the Commissioner of U.S. Customs
 24 and Border Protection shall undertake an agen-
 25 cy-wide effort—

1 “(i) to encourage, promote, and ensure,
2 to the greatest extent possible, that—

3 “(I) U.S. Border Patrol agents
4 with current EMT or paramedic cer-
5 tifications are stationed at each U.S.
6 Border Patrol sector and remote sta-
7 tion along the southern border of the
8 United States to the greatest extent
9 possible; and

10 “(II) 10 percent of all Border Pa-
11 trol agents have EMT certifications
12 and comprise not fewer than 10 per-
13 cent of all Border Patrol agents as-
14 signed to each U.S. Border Patrol sec-
15 tor; and

16 “(ii) in determining the assigned posts
17 of Border Patrol agents who have received
18 training under subparagraph (A)(i), to give
19 priority to remote stations and forward op-
20 erating bases.

21 “(C) MEDICAL SUPPLIES.—

22 “(i) IN GENERAL.—The Commissioner
23 of U.S. Customs and Border Protection
24 shall provide minimum medical supplies to
25 each Border Patrol agent with an EMT or

1 *paramedic certification and to each U.S.*
2 *Border Patrol sector, including all remote*
3 *stations and forward operating bases, for*
4 *use while on patrol. Such supplies shall in-*
5 *clude—*

6 *“(I) supplies designed for chil-*
7 *dren;*

8 *“(II) first aid kits; and*

9 *“(III) oral hydration, such as*
10 *water.*

11 *“(ii) CONSULTATION.—In developing*
12 *the minimum list of medical supplies re-*
13 *quired under clause (i), the Commissioner*
14 *shall consult national organizations with*
15 *expertise in emergency medical care, includ-*
16 *ing emergency medical care of children, at*
17 *no cost to the Government.*

18 *“(D) GAO REPORT.—Not later than 3 years*
19 *after the date of the enactment of this paragraph,*
20 *the Comptroller General of the United States*
21 *shall—*

22 *“(i) review the success of the U.S. Cus-*
23 *toms and Border Protection’s efforts to*
24 *reach the goal of 10 percent of all U.S. Bor-*

1 *der Patrol agents having EMT or para-*
2 *medic certifications; and*

3 *“(ii) provide a recommendation to*
4 *Congress as to whether—*

5 *“(I) the Commissioner of U.S.*
6 *Customs and Border Protection has ef-*
7 *fectively and vigorously undertaken an*
8 *agency-wide effort to encourage and*
9 *promote the mandate for medical*
10 *training for Border Patrol agents*
11 *under subparagraph (B);*

12 *“(II) additional incentive modi-*
13 *fications are needed to achieve or*
14 *maintain the 10 percent goal, includ-*
15 *ing pay differentials;*

16 *“(III) the 10 percent goal is prop-*
17 *erly scoped to materially contribute to*
18 *the preservation of life and the effec-*
19 *tiveness and efficiency of U.S. Border*
20 *Patrol operations, including whether*
21 *the number is too high or too low; and*

22 *“(IV) the addition of a distinct*
23 *benchmark for Border Patrol agents*
24 *holding paramedic certifications would*
25 *materially contribute to the preserva-*

1 *tion of life and the effectiveness and ef-*
 2 *ficiency of U.S. Border Patrol oper-*
 3 *ations, and, if so, what a proper bench-*
 4 *mark would be.”.*

5 (b) *AUTHORIZATION OF APPROPRIATIONS.—There are*
 6 *authorized to be appropriated such sums as may be nec-*
 7 *essary to carry out section 411(l)(2) of the Homeland Secu-*
 8 *rity Act of 2002, as added by subsection (a).*

9 **SEC. 5. WORKFORCE STAFFING MODEL.**

10 (a) *IMPROVING DATA QUALITY.—In order to improve*
 11 *the quality of data needed to develop a workforce staffing*
 12 *model, the Chief of U.S. Border Patrol shall—*

13 (1) *develop standard operating procedures for the*
 14 *Border Patrol Enforcement Tracking System (referred*
 15 *to in this subsection as “BPETS”);*

16 (2) *train agents on the use, capabilities, and*
 17 *purposes of BPETS; and*

18 (3) *implement and monitor internal controls for*
 19 *BPETS to ensure timely and accurate scheduling and*
 20 *reporting on agents’ actual and completed work hours*
 21 *and activities.*

22 (b) *COMPREHENSIVE STAFFING ANALYSIS FOR DEVEL-*
 23 *OPING A WORKFORCE STAFFING MODEL.—The Commis-*
 24 *sioner of U.S. Customs and Border Protection shall—*

1 (1) *not later than 60 days after the date of the*
2 *enactment of this Act, amend the comprehensive staff-*
3 *ing analysis required under section 2(e) of the Border*
4 *Patrol Agent Pay Reform Act of 2014 (Public Law*
5 *113–277) based on any changes to workload demands*
6 *since the date of the enactment of such Act; and*

7 (2) *not later than 90 days after the date of the*
8 *enactment of this Act, submit a report to the Comp-*
9 *troller General of the United States that includes the*
10 *results of such amended comprehensive staffing anal-*
11 *ysis.*

12 (c) *REPORT TO CONGRESS.—Not later than 180 days*
13 *after the date of the enactment of this Act, the Secretary*
14 *of Homeland Security shall submit a report to the Com-*
15 *mittee on Homeland Security and Governmental Affairs of*
16 *the Senate and the Committee on Homeland Security of the*
17 *House of Representatives that describes—*

18 (1) *how U.S. Customs and Border Protection has*
19 *used the comprehensive staffing analysis in its devel-*
20 *opment of a workforce staffing model; and*

21 (2) *the process used by U.S. Border Patrol to*
22 *create such model, including—*

23 (A) *the steps and associated timelines taken*
24 *to create the model;*

1 (B) the resources assigned to develop the
2 model; and

3 (C) the data sources and methodology used
4 to generate the model.

5 (d) *COMPREHENSIVE STAFFING ANALYSIS FOR DEVEL-*
6 *OPING A WORKFORCE STAFFING MODEL.*—Section 2(e) of
7 *the Border Patrol Agent Pay Reform Act of 2014 (Public*
8 *Law 113–277)* is amended by adding at the end the fol-
9 *lowing:*

10 “(3) *UPDATES.*—

11 “(A) *IN GENERAL.*—The Commissioner of
12 *U.S. Customs and Border Protection shall—*

13 “(i) *update the comprehensive staffing*
14 *analysis required under paragraph (1)*
15 *whenever the Commissioner determines that*
16 *an update is required to better meet the*
17 *needs of U.S. Border Patrol; and*

18 “(ii) *include, as part of the updated*
19 *comprehensive staffing analysis, an update*
20 *to the assessment of force multiplier tech-*
21 *nologies required under section 5(e) of the*
22 *Securing America’s Borders Act of 2019.*

23 “(B) *SUBMISSION OF UPDATED ANALYSIS.*—
24 *The Commissioner shall submit each update to*
25 *the comprehensive staffing analysis to the appro-*

1 *priate committees of Congress and to the Comp-*
 2 *troller General of the United States.*

3 “(C) *INDEPENDENT VALIDATOR.*—*Not later*
 4 *than 90 days after receiving each update under*
 5 *subparagraph (B), the Comptroller General shall*
 6 *submit a report to the appropriate committees of*
 7 *Congress that contains the information required*
 8 *in the report required under paragraph (2).”.*

9 (e) *ASSESSMENT OF FORCE MULTIPLIER TECH-*
 10 *NOLOGIES.*—*Not later than 180 days after the date of the*
 11 *enactment of this Act, the Commissioner of U.S. Customs*
 12 *and Border Protection shall—*

13 (1) *conduct an assessment of the impact on Bor-*
 14 *der Patrol effectiveness of force multiplier tech-*
 15 *nologies, including—*

16 (A) *air and marine assets;*

17 (B) *surveillance equipment; and*

18 (C) *fixed and mobile surveillance tech-*
 19 *nologies; and*

20 (2) *consider the assessment conducted under*
 21 *paragraph (1) when estimating projected staffing*
 22 *needs under the workforce staffing model referred to*
 23 *in subsection (c)(1).*

1 **SEC. 6. PROMOTING FLEXIBILITY IN EMPLOYMENT AU-**
 2 **THORITIES FOR RURAL OR REMOTE AREAS.**

3 (a) *IN GENERAL.*—Chapter 97 of title 5, United States
 4 Code, is amended by adding at the end the following:

5 **“§9702. U.S. Customs and Border Protection employ-**
 6 **ment authorities**

7 “(a) *DEFINITIONS.*—In this section—

8 “(1) the term ‘CBP employee’ means an em-
 9 ployee of U.S. Customs and Border Protection;

10 “(2) the term ‘Commissioner’ means the Com-
 11 missioner of U.S. Customs and Border Protection;

12 “(3) the term ‘Director’ means the Director of the
 13 Office of Personnel Management;

14 “(4) the term ‘rural or remote area’ means an
 15 area within the United States that is not within an
 16 area defined and designated as an urbanized area by
 17 the Bureau of the Census in the most recently com-
 18 pleted decennial census; and

19 “(5) the term ‘Secretary’ means the Secretary of
 20 Homeland Security.

21 “(b) *DEMONSTRATION OF RECRUITMENT AND RETEN-*
 22 *TION DIFFICULTIES IN RURAL OR REMOTE AREAS.*—

23 “(1) *IN GENERAL.*—For purposes of subsections
 24 (c) and (d), the Secretary shall determine, for each
 25 rural or remote area, whether there is—

26 “(A) a critical hiring need in the area; and

1 “(B) a direct relationship between—

2 “(i) the rural or remote nature of the
3 area; and

4 “(ii) difficulty in the recruitment and
5 retention of CBP employees in the area.

6 “(2) *FACTORS*.—In determining whether there is
7 a direct relationship described in paragraph (1)(B),
8 the Secretary may consider evidence—

9 “(A) that the Secretary—

10 “(i) is unable to efficiently and effec-
11 tively recruit individuals for positions as
12 CBP employees, which may be demonstrated
13 with various types of evidence, including—

14 “(I) evidence that multiple posi-
15 tions have been continuously vacant for
16 significantly longer than the national
17 average period for which similar posi-
18 tions in U.S. Customs and Border Pro-
19 tection are vacant; and

20 “(II) recruitment studies that
21 demonstrate the inability of the Sec-
22 retary to efficiently and effectively re-
23 cruit CBP employees for positions in
24 the area; or

1 “(ii) experiences a consistent inability
 2 to retain CBP employees that negatively
 3 impacts agency operations at a local or re-
 4 gional level; or

5 “(B) of any other inability, directly related
 6 to recruitment or retention difficulties, that the
 7 Secretary determines to be sufficient.

8 “(c) *DIRECT HIRE AUTHORITY; RECRUITMENT AND*
 9 *RELOCATION BONUSES; RETENTION BONUSES.*—

10 “(1) *DIRECT HIRE AUTHORITY.*—

11 “(A) *IN GENERAL.*—*The Secretary may ap-*
 12 *point, without regard to the requirements under*
 13 *sections 3309 through 3319, candidates to posi-*
 14 *tions in the competitive service as CBP employ-*
 15 *ees, in a rural or remote area, if the Secretary—*

16 “(i) *determines that—*

17 “(I) *there is a critical hiring*
 18 *need; and*

19 “(II) *there exists a severe shortage*
 20 *of qualified candidates because of the*
 21 *direct relationship identified by the*
 22 *Secretary under subsection (b)(1)(B);*
 23 *and*

24 “(ii) *has given public notice for such*
 25 *positions.*

1 “(B) *PRIORITIZATION OF HIRING VET-*
 2 *ERANS.—If the Secretary uses the direct hiring*
 3 *authority under subparagraph (A), the Secretary*
 4 *shall apply the principles of preference for the*
 5 *hiring of veterans established under subchapter I*
 6 *of chapter 33.*

7 “(2) *RECRUITMENT AND RELOCATION BO-*
 8 *NUSES.—The Secretary may pay a bonus to an indi-*
 9 *vidual (other than an individual described in section*
 10 *5753(a)(2)) if—*

11 “(A) *the Secretary determines that—*

12 “(i) *conditions consistent with those*
 13 *described in paragraphs (1) and (2) of sec-*
 14 *tion 5753(b) are satisfied with respect to the*
 15 *individual (without regard to any other*
 16 *provision of that section); and*

17 “(ii) *the position to which the indi-*
 18 *vidual is appointed or to which the indi-*
 19 *vidual moves or must relocate—*

20 “(I) *is that of a CBP employee;*

21 *and*

22 “(II) *is in a rural or remote area*
 23 *for which the Secretary has identified*
 24 *a direct relationship under subsection*
 25 *(b)(1)(B); and*

1 “(B) the individual enters into a written
2 service agreement with the Secretary—

3 “(i) under which the individual is re-
4 quired to complete a period of employment
5 as a CBP employee of not less than 2 years;
6 and

7 “(ii) that includes—

8 “(I) the commencement and ter-
9 mination dates of the required service
10 period (or provisions for determining
11 such dates);

12 “(II) the amount of the bonus;
13 and

14 “(III) other terms and conditions
15 under which the bonus is payable, in-
16 cluding—

17 “(aa) the requirements under
18 this subsection;

19 “(bb) the conditions under
20 which the agreement may be ter-
21 minated before the agreed-upon
22 service period has been completed;
23 and

24 “(cc) the effect of a termi-
25 nation described in item (bb).

1 “(3) *RETENTION BONUSES.*—*The Secretary may*
 2 *pay a retention bonus to a CBP employee (other than*
 3 *an individual described in section 5754(a)(2)) if—*

4 “(A) *the Secretary determines that—*

5 “(i) *a condition consistent with that*
 6 *described in section 5754(b)(1) is satisfied*
 7 *with respect to the CBP employee without*
 8 *regard to any other provision under section*
 9 *5754;*

10 “(ii) *the CBP employee is employed in*
 11 *a rural or remote area for which the Sec-*
 12 *retary has identified a direct relationship*
 13 *under subsection (b)(1)(B); and*

14 “(iii) *in the absence of a retention*
 15 *bonus, the CBP employee would be likely to*
 16 *leave—*

17 “(I) *the Federal service; or*

18 “(II) *for a different position in*
 19 *the Federal service, including a posi-*
 20 *tion in another agency or component of*
 21 *the Department of Homeland Security;*
 22 *and*

23 “(B) *the individual enters into a written*
 24 *service agreement with the Secretary—*

1 “(i) under which the individual is re-
 2 quired to complete a period of employment
 3 as a CBP employee of not less than 2 years;
 4 and

5 “(ii) that includes—

6 “(I) the commencement and ter-
 7 mination dates of the required service
 8 period (or provisions for determining
 9 such dates);

10 “(II) the amount of the bonus;
 11 and

12 “(III) other terms and conditions
 13 under which the bonus is payable, in-
 14 cluding—

15 “(aa) the requirements under
 16 this subsection;

17 “(bb) the conditions under
 18 which the agreement may be ter-
 19 minated before the agreed-upon
 20 service period has been completed;
 21 and

22 “(cc) the effect of a termi-
 23 nation described in item (bb).

24 “(4) RULES FOR BONUSES.—

25 “(A) MAXIMUM BONUSES.—

1 “(i) *RECRUITMENT AND RELOCATION*
 2 *BONUSES.*—*A bonus paid to an employee*
 3 *under paragraph (2) may not exceed 100*
 4 *percent of the annual rate of basic pay of*
 5 *the employee as of the commencement date*
 6 *of the applicable service period.*

7 “(ii) *RETENTION BONUSES.*—*A bonus*
 8 *paid to an employee under paragraph (3)*
 9 *may not exceed 50 percent of the annual*
 10 *rate of basic pay of the employee as of the*
 11 *commencement date of the applicable service*
 12 *period.*

13 “(B) *RELATION TO BASIC PAY.*—*A bonus*
 14 *paid to an employee under paragraph (2) or (3)*
 15 *shall not be considered part of the basic pay of*
 16 *the employee for any purpose.*

17 “(5) *OFFICE OF PERSONAL MANAGEMENT OVER-*
 18 *SIGHT.*—*The Director, to the extent practicable,*
 19 *shall—*

20 “(A) *set aside a determination of the Sec-*
 21 *retary under this subsection if the Director finds*
 22 *substantial evidence that the Secretary abused*
 23 *his or her discretion in making the determina-*
 24 *tion; and*

1 “(B) oversee the compliance of the Secretary
2 with this subsection.

3 “(d) *SPECIAL PAY AUTHORITY.*—In addition to the
4 circumstances described in section 5305(b), the Director
5 may establish special rates of pay in accordance with that
6 section if the Director finds that the recruitment or reten-
7 tion efforts of the Secretary with respect to positions for
8 CBP employees in an area or location are, or are likely
9 to become, significantly handicapped because the positions
10 are located in a rural or remote area for which the Sec-
11 retary has identified a direct relationship under subsection
12 (b)(1)(B).

13 “(e) *REGULAR CBP REVIEW.*—

14 “(1) *ENSURING FLEXIBILITIES MEET CBP*
15 *NEEDS.*—The Secretary shall annually review the use
16 of hiring flexibilities under subsections (c) and (d) to
17 fill positions at a location in a rural or remote area
18 to determine—

19 “(A) the impact of the use of such flexibili-
20 ties on solving hiring and retention challenges at
21 the location;

22 “(B) whether hiring and retention chal-
23 lenges still exist at the location; and

24 “(C) whether the Secretary needs to con-
25 tinue to use such flexibilities at the location.

1 “(2) *CONSIDERATION.*—*In conducting the review*
 2 *under paragraph (1), the Secretary shall consider—*

3 “(A) *whether any CBP employee—*

4 “(i) *accepted an employment incentive*
 5 *under subsection (c) or (d); and*

6 “(ii) *later transferred to a new loca-*
 7 *tion or left the employment of U.S. Customs*
 8 *and Border Protection; and*

9 “(B) *the period during which each employee*
 10 *identified under subparagraph (A) remained at*
 11 *the original location before transferring to a new*
 12 *location or leaving the employment of U.S. Cus-*
 13 *toms and Border Protection.*

14 “(3) *DISTRIBUTION.*—*The Secretary shall submit*
 15 *a report to Congress describing each review required*
 16 *under paragraph (1).*

17 “(f) *IMPROVING CBP HIRING AND RETENTION.*—

18 “(1) *EDUCATION OF CBP HIRING OFFICIALS.*—
 19 *Not later than 180 days after the date of the enact-*
 20 *ment of the Securing America’s Borders Act of 2019,*
 21 *the Secretary, in conjunction with the Chief Human*
 22 *Capital Officer of the Department of Homeland Secu-*
 23 *rity, shall develop and implement a strategy to im-*
 24 *prove education regarding hiring and human re-*
 25 *sources flexibilities (including hiring and human re-*

1 *sources flexibilities for locations in rural or remote*
 2 *areas) for all employees serving in agency head-*
 3 *quarters or field offices who are involved in the re-*
 4 *cruitment, hiring, assessment, or selection of can-*
 5 *didates for locations in a rural or remote area and*
 6 *the retention of current employees.*

7 “(2) *ELEMENTS.—The strategy required under*
 8 *paragraph (1) shall include—*

9 “(A) *developing or updating training and*
 10 *educational materials on hiring and human re-*
 11 *sources flexibilities for employees who are in-*
 12 *volved in the recruitment, hiring, assessment, or*
 13 *selection of candidates and the retention of cur-*
 14 *rent employees;*

15 “(B) *regular training sessions for personnel*
 16 *who are critical to filling open positions in rural*
 17 *or remote areas;*

18 “(C) *developing pilot programs or other*
 19 *programs, as appropriate, to address identified*
 20 *hiring challenges in rural or remote areas;*

21 “(D) *developing and enhancing strategic re-*
 22 *cruiting efforts through relationships with insti-*
 23 *tutions of higher education (as defined in section*
 24 *102 of the Higher Education Act of 1965 (20*
 25 *U.S.C. 1002)), veterans transition and employ-*

1 *ment centers, and job placement program in re-*
2 *gions that could assist in filling positions in*
3 *rural or remote areas;*

4 “(E) *examining existing programs for effec-*
5 *tively aiding spouses and families of individuals*
6 *who are candidates or new hires in a rural or*
7 *remote area;*

8 “(F) *soliciting feedback from individuals*
9 *who are candidates or new hires at locations in*
10 *a rural or remote area, including feedback on the*
11 *quality of life in rural or remote areas for new*
12 *hires and their families;*

13 “(G) *soliciting feedback from CBP employ-*
14 *ees who are not new hires and are stationed at*
15 *locations in a rural or remote area, including*
16 *feedback on the quality of life in rural or remote*
17 *areas for those CBP employees and their fami-*
18 *lies; and*

19 “(H) *evaluating Department of Homeland*
20 *Security internship programs and the usefulness*
21 *of such programs in improving hiring by the*
22 *Secretary in rural or remote areas.*

23 “(3) *EVALUATION.—*

24 “(A) *IN GENERAL.—The Secretary shall an-*
25 *nually—*

1 “(i) *evaluate the extent to which the*
2 *strategy developed and implemented under*
3 *paragraph (1) has improved the hiring and*
4 *retention ability of the Secretary; and*

5 “(ii) *make any appropriate updates to*
6 *the strategy under paragraph (1).*

7 “(B) *INFORMATION.—The evaluation con-*
8 *ducted under subparagraph (A) shall include—*

9 “(i) *any reduction in the time taken*
10 *by the Secretary to fill mission-critical posi-*
11 *tions in rural or remote areas;*

12 “(ii) *a general assessment of the im-*
13 *pect of the strategy developed and imple-*
14 *mented under paragraph (1) on hiring chal-*
15 *lenges in rural or remote areas; and*

16 “(iii) *other information the Secretary*
17 *determines relevant.*

18 “(g) *INSPECTOR GENERAL REVIEW.—Not later than 2*
19 *years after the date of the enactment of the Securing Amer-*
20 *ica’s Borders Act of 2019, the Inspector General of the De-*
21 *partment of Homeland Security shall review the use of hir-*
22 *ing flexibilities by the Secretary under subsections (c) and*
23 *(d) to determine whether the use of such flexibilities is help-*
24 *ing the Secretary meet hiring and retention needs in rural*
25 *and remote areas.*

1 “(h) *REPORT ON POLYGRAPH REQUESTS.*—The Sec-
 2 retary shall report to Congress regarding the number of re-
 3 quests the Secretary receives from any other Federal agency
 4 for the file of an applicant for a position in U.S. Customs
 5 and Border Protection that includes the results of a poly-
 6 graph examination.

7 “(i) *EXERCISE OF AUTHORITY.*—

8 “(1) *SOLE DISCRETION.*—Notwithstanding chap-
 9 ter 71, the exercise of authority under subsection (c)
 10 shall be subject to the sole and exclusive discretion of
 11 the Secretary (or of the Commissioner, if such author-
 12 ity is delegated pursuant to paragraph (2)).

13 “(2) *DELEGATION.*—

14 “(A) *IN GENERAL.*—Subject to subpara-
 15 graph (B), the Secretary may delegate any au-
 16 thority under this section to the Commissioner.

17 “(B) *OVERSIGHT.*—The Commissioner may
 18 not make a determination under subsection
 19 (b)(1) unless the Secretary approves the deter-
 20 mination.

21 “(j) *RULE OF CONSTRUCTION.*—Nothing in this sec-
 22 tion may be construed to exempt the Secretary or the Direc-
 23 tor from the applicability of the merit system principles
 24 under section 2301.”.

1 (b) *TECHNICAL AND CONFORMING AMENDMENT.*—*The*
 2 *table of sections for chapter 97 of title 5, United States*
 3 *Code, is amended by adding at the end the following:*

“9702. U.S. Customs and Border Protection employment authorities.”.

4 **SEC. 7. CBP HIRING AND RETENTION INNOVATION COUN-**
 5 **CIL.**

6 (a) *ESTABLISHMENT.*—*Not later than 180 days after*
 7 *the date of the enactment of this Act, the Secretary of Home-*
 8 *land Security, in conjunction with the Chief Human Cap-*
 9 *ital Officer of the Department of Homeland Security, shall*
 10 *establish a CBP Hiring and Retention Innovation Council*
 11 *(referred to in this section as the “Council”) to develop*
 12 *strategies and initiatives to improve U.S. Customs and*
 13 *Border Protection hiring and retention efforts and capabili-*
 14 *ties.*

15 (b) *COMPOSITION.*—*The Council shall be composed*
 16 *of—*

17 (1) *the Secretary of Homeland Security, or the*
 18 *Secretary’s designee, who shall serve as the Chair of*
 19 *the Council;*

20 (2) *the Commissioner of U.S. Customs and Bor-*
 21 *der Protection, or the Commissioner’s designee;*

22 (3) *the Assistant Commissioner, Office of Human*
 23 *Resources Management, Enterprise Services, or the*
 24 *Assistant Commissioner’s designee;*

1 (4) *the Assistant Commissioner, Office of Fi-*
2 *nance, Enterprise Services, or the Assistant Commis-*
3 *sioner's designee;*

4 (5) *appropriate representatives from labor*
5 *groups representing U.S. Customs and Border Protec-*
6 *tion employees;*

7 (6) *other members, selected by the Secretary, who*
8 *have the requisite knowledge or expertise to help U.S.*
9 *Customs and Border Protection develop new hiring*
10 *and retention strategies, initiatives, and innovations,*
11 *including—*

12 (A) *private sector human resource experts;*

13 *and*

14 (B) *chief human capital officers, or their*
15 *designees, from other Federal agencies; and*

16 (7) *U.S. Customs and Border Protection officials*
17 *who have experience related to the hiring and reten-*
18 *tion of employees, including at least 1 representative*
19 *of each of the following groups:*

20 (A) *Border Patrol officials with experience*
21 *along the southwest border of the United States.*

22 (B) *Border Patrol officials with experience*
23 *working along the northern border of the United*
24 *States.*

1 (C) *Office of Field Operations officials with*
2 *experience along the southwest border of the*
3 *United States.*

4 (D) *Office of Field Operations officials with*
5 *experience along the northern border of the*
6 *United States.*

7 (E) *Air and Marine Operations officials*
8 *with experience along the land borders of the*
9 *United States.*

10 (F) *Air and Marine Operations officials*
11 *with experience along the marine borders of the*
12 *United States.*

13 (G) *Office of Field Operations officials with*
14 *experience at ports of entry in the interior of the*
15 *United States.*

16 (H) *U.S. Customs and Border Protection*
17 *officials with experience working along the mari-*
18 *time borders in the southeastern region of the*
19 *United States.*

20 (c) *BORDER PATROL HIRING AND RETENTION IM-*
21 *PROVEMENT ANALYSIS.—*

22 (1) *IN GENERAL.—Not later than 2 years after*
23 *the date of the enactment of this Act, the Council shall*
24 *submit a report to Congress that analyzes whether*
25 *Border Patrol workforce hiring and retention would*

1 *be improved by a new pay and employee classifica-*
2 *tion system, without regard to provisions of any other*
3 *law relating to the appointment, number, classifica-*
4 *tion, or compensation of U.S. Border Patrol employ-*
5 *ees.*

6 (2) *REQUIREMENTS.—The analysis conducted by*
7 *the Council pursuant to paragraph (1) shall address*
8 *any hiring, retention, and attrition challenges that*
9 *exist in U.S. Border Patrol as a result of—*

10 (A) *pay structure, including basic and pre-*
11 *mium pay, incentives, and allowances for Border*
12 *Patrol agents and support staff;*

13 (B) *staffing schedules, including those gov-*
14 *erned by collective bargaining agreements;*

15 (C) *staffing levels, including the comprehen-*
16 *sive staffing analysis required under the Border*
17 *Patrol Agent Pay Reform Act of 2014 (Public*
18 *Law 113–277);*

19 (D) *geographic and socioeconomic factors*
20 *surrounding each duty location;*

21 (E) *barriers to effective recruitment of U.S.*
22 *Border Patrol applicants;*

23 (F) *barriers to entry for U.S. Border Patrol*
24 *applicants, including polygraph examinations;*
25 *and*

1 (G) any other considerations determined to
2 be appropriate by the Council.

3 (d) *CBP HIRING AND RETENTION PILOT PRO-*
4 *GRAMS.—*

5 (1) *IN GENERAL.—During the 5-year period be-*
6 *ginning on the date of the enactment of this Act, the*
7 *Secretary of Homeland Security shall carry out pilot*
8 *programs to develop improved strategies to improve*
9 *U.S. Customs and Border Protection hiring and re-*
10 *tention capabilities and programs in order to meet its*
11 *staffing needs.*

12 (2) *REQUIRED PILOT PROGRAMS.—Of the pilot*
13 *programs carried out under paragraph (1)—*

14 (A) *at least 1 pilot program shall focus on*
15 *ports of entry or other duty stations experiencing*
16 *severe workforce shortages, critical hiring needs,*
17 *or retention challenges; and*

18 (B) *at least 1 pilot program shall focus on*
19 *U.S. Border Patrol duty locations experiencing*
20 *severe workforce shortages, critical hiring needs,*
21 *or retention challenges.*

22 (3) *REQUIREMENTS.—In carrying out pilot pro-*
23 *grams under this subsection, the Secretary shall—*

24 (A) *examine the findings of the Council to*
25 *determine which initiatives or strategies devel-*

1 *oped by the Council should be tested in a pilot*
2 *program;*

3 *(B) examine the data collected through the*
4 *exit survey given to all departing U.S. Customs*
5 *and Border Protection employees to inform the*
6 *development of pilot programs;*

7 *(C) beginning not later than 180 days after*
8 *the establishment of the Council, commence at*
9 *least 1 U.S. Customs and Border Protection hir-*
10 *ing or retention pilot program every fiscal year;*
11 *and*

12 *(D) execute pilot programs in the locations*
13 *that the Secretary determines will provide the*
14 *most accurate assessment of the effectiveness of*
15 *the pilot programs.*

16 *(4) CONSIDERATIONS.—The Secretary shall con-*
17 *sider, in accordance with existing law, developing*
18 *pilot programs under this subsection that examine—*

19 *(A) the effectiveness of alternative or non-*
20 *traditional work schedules on hiring and reten-*
21 *tion;*

22 *(B) the impact on hiring and retention of*
23 *providing employees transportation between their*
24 *residences and their work sites;*

1 (C) using existing pay authorities, includ-
 2 ing recruitment and retention incentive pay, on
 3 hiring and retention efforts;

4 (D) improving the morale of the overall
 5 workforce or the workforce at specific U.S. Cus-
 6 toms and Border Protection locations;

7 (E) providing of additional training to em-
 8 ployees to allow them to better execute changing
 9 job requirements; and

10 (F) consumer demand at each port of entry.

11 (5) *OTHER MATTERS.*—*The Secretary is author-*
 12 *ized to implement pilot projects under this subsection*
 13 *using the authorities granted to the Office of Per-*
 14 *sonnel Management under section 4703 of title 5,*
 15 *United States Code.*

16 (6) *ANNUAL REPORT.*—*Not later than 180 days*
 17 *after the date on which the first pilot program is es-*
 18 *tablished under this subsection, and annually there-*
 19 *after, the Secretary shall submit a report to the Com-*
 20 *mittee on Homeland Security and Governmental Af-*
 21 *airs of the Senate and the Committee on Homeland*
 22 *Security of the House of Representatives that—*

23 (A) evaluates the effectiveness of the pilot
 24 programs established under this section; and

1 *(B) analyzes how current or completed pilot*
2 *programs are expected to improve hiring and re-*
3 *tention capabilities and programs at U.S. Cus-*
4 *toms and Border Protection to meet its staffing*
5 *needs.*

6 *(e) SUNSET.—This section is repealed on the date that*
7 *is 5 years after the date of the enactment of this Act.*

8 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

9 *There are authorized to be appropriated such sums as*
10 *may be necessary to carry out this Act.*

Calendar No. 615

116TH CONGRESS
2D Session

S. 2162

[Report No. 116-312]

A BILL

To require the Commissioner of U.S. Customs and Border Protection to annually hire at least 600 new Border Patrol agents, to report quarterly to Congress on the status of the Border Patrol workforce, and to conduct a comprehensive staffing analysis.

DECEMBER 14, 2020

Reported with an amendment