

## SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Committee on the Judiciary Subcommittee on Immigration and Border Security be authorized to meet to conduct a hearing on "Refugees: Seeking Solutions to a Global Concern" on Tuesday, September 21, 2004, at 2:30 p.m. in SD226.

## Agenda:

*Panel I:* Gene Dewey, Assistant Secretary, Bureau of Population, Refugees, and Migration, Department of State, Washington, D.C.; Eduardo Aguirre, Director, U.S. Citizenship and Immigration Services, Department of Homeland Security, Washington, D.C.

*Panel II:* Charles H. Kuck, Managing Partner, Immigration Group, Weathersby, Howard & Kuck, LLC, Atlanta, GA; Mark Franken, Chair, Refugee Counsel, USA, Washington, D.C.; Lavinia Limon, Executive Director, United States Committee for Refugees, Washington, D.C.

The PRESIDING OFFICER. Without objection, it is so ordered.

## SUBCOMMITTEE ON NATIONAL PARKS

Mr. SANTORUM. Mr. President, I ask unanimous consent that the subcommittee on National Parks of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, September 21 at 2:30 pm.

The purpose of the hearing is to receive testimony on the following bills: S. 784 and H.R. 1630, to Revise the Boundary of Petrified Forest National Park in the State of Arizona, and for other purposes; S. 2656, to establish a National Commission on the Quincentennial of the Discovery of Florida by Ponce De Leon; S. 2499, to modify the boundary of the Harry S Truman National Historic Site in the State of Missouri, and for other purposes; S. 1311, to establish the Hudson-Fulton-Champlain 400th Commemoration Commission, and for other purposes; and H.R. 2055, to amend P.L. 89-366 to allow for an Adjustment in the Number of Free Roaming Horses Permitted in Cape Lookout National Seashore.

THE PRESIDING OFFICER. Without objection, it is so ordered.

## PRIVILEGES OF THE FLOOR

Mr. KENNEDY. Mr. President, I ask unanimous consent that Stephen Kosack, a fellow in my office, be granted the privileges of the floor during the remainder of morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Mr. President, I ask unanimous consent that Katie Callahan of my staff be granted the privileges of the floor for the duration of today's session.

The PRESIDING OFFICER. Without objection, it is so ordered.

## MARITIME TRANSPORTATION SECURITY ACT OF 2004

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 530, S. 2279.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 2279) to amend title 46, United States Code, with respect to maritime transportation security, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 2279

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## [SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

[(a) SHORT TITLE.—This Act may be cited as the "Maritime Transportation Security Act of 2004".

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

[Sec. 1. Short title; table of contents

[Sec. 2. In rem liability; enforcement; pier and wharf security costs.

[Sec. 3. Maritime information.

[Sec. 4. Intermodal cargo security plan.

[Sec. 5. Joint operations center for port security.

[Sec. 6. Maritime transportation security plan grants.

[Sec. 7. Assistance for foreign ports.

[Sec. 8. Federal and State commercial maritime transportation training.

[Sec. 9. Port security research and development.

[Sec. 10. Nuclear facilities in maritime areas.

[Sec. 11. Transportation worker background investigation programs.

[Sec. 12. Security service fee.

[Sec. 13. Port security capital fund.

## [SEC. 2. IN REM LIABILITY; ENFORCEMENT; PIER AND WHARF SECURITY COSTS.

[(a) IN GENERAL.—Chapter 701 of title 46, United States Code, is amended—

[(1) by redesignating section 70117 as 70120; and

[(2) by inserting after section 70116 the following:

## [“§ 70117. In rem liability for civil penalties and certain costs

[(a) IN GENERAL.—Any vessel subject to the provisions of this chapter, which is used in violation of this chapter or any regulations issued hereunder shall be liable in rem for any civil penalty assessed pursuant to section 70120 and may be proceeded against in the United States district court for any district in which such vessel may be found.

[(b) REIMBURSABLE COSTS.—

[(1) IN GENERAL.—Any vessel subject to the provisions of this chapter shall be liable in rem for the reimbursable costs incurred by any valid claimant related to implementation and enforcement of this chapter with respect to the vessel, including port authorities, facility or terminal operators, shipping agents, Federal, State, or local government agencies, and other persons to whom the management of the vessel at the port of supply is entrusted, and any fine or penalty relating to reporting requirements of the ves-

sel or its cargo, crew, or passengers, and may be proceeded against in the United States district court for any district in which such vessel may be found.

[(2) REIMBURSABLE COSTS DEFINED.—In this subsection the term 'reimbursable costs' means costs incurred by any service provider, including port authorities, facility or terminal operators, shipping agents, Federal, State, or local government agencies, or other person to whom the management of the vessel at the port of supply is entrusted, for—

[(A) vessel crew on board, or in transit to or from, the vessel under lawful order, including accommodation, detention, transportation, and medical expenses; and

[(B) required handling under lawful order of cargo or other items on board the vessel.

## [“§ 70118. Enforcement by injunction or withholding of clearance

[(a) INJUNCTION.—The United States district courts shall have jurisdiction to restrain violations of this chapter or of regulations issued hereunder, for cause shown.

[(b) WITHHOLDING OF CLEARANCE.—

[(1) If any owner, agent, master, officer, or person in charge of a vessel is liable for a penalty or fine under section 70120, or if reasonable cause exists to believe that the owner, agent, master, officer, or person in charge may be subject to a penalty under section 70120, the Secretary may, with respect to such vessel, refuse or revoke any clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91).

[(2) Clearance refused or revoked under this subsection may be granted upon filing of a bond or other surety satisfactory to the Secretary.

## [“§ 70119. Security of piers and wharfs

[(a) IN GENERAL.—Notwithstanding any provision of law, the Secretary shall require any uncleared, imported merchandise remaining on the wharf or pier onto which it was unladen for more than 5 calendar days to be removed from the wharf or pier and deposited in the public stores or a general order warehouse, where it shall be inspected for determination of contents, and thereafter a permit for its delivery may be granted.

[(b) PENALTY.—The Secretary may impose an administrative penalty of \$5,000 for each bill of lading for general order merchandise remaining on a wharf or pier in violation of subsection (a).”

[(b) CONFORMING AMENDMENT FOR IN REM LIABILITY PROVISION IN CHAPTER 701.—Section 2 of the Act of June 15, 1917 (50 U.S.C. 192) is amended—

[(1) by striking “Act,” each place it appears and inserting “title,”; and

[(2) by adding at the end the following:

[(d) IN REM LIABILITY.—Any vessel subject to the provisions of this title, which is used in violation of this title, or any regulations issued hereunder, shall be liable in rem for any civil penalty assessed pursuant to subsection (c) and may be proceeded against in the United States district court for any district in which such vessel may be found.

[(e) INJUNCTION.—The United States district courts shall have jurisdiction to restrain violations of this title or of regulations issued hereunder, for cause shown.

[(f) WITHHOLDING OF CLEARANCE.—

[(1) If any owner, agent, master, officer, or person in charge of a vessel is liable for a penalty or fine under subsection (c), or if reasonable cause exists to believe that the owner, agent, master, officer, or person in charge may be subject to a penalty or fine under subsection (c), the Secretary may, with respect to such vessel, refuse or revoke any clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91).

“(2) Clearance refused or revoked under this subsection may be granted upon filing of a bond or other surety satisfactory to the Secretary of the Department in which the Coast Guard is operating.”.

“(c) **EMPTY CONTAINERS.**—Within 90 days after the date of enactment of this Act, the Secretary of Homeland Security shall review United States ports and transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report on the practices and policies in place to secure shipment of empty containers. The Secretary shall include in the report recommendations with respect to whether additional regulations or legislation is necessary to ensure the safe and secure delivery of cargo and to prevent potential acts of terrorism involving such containers.

“(d) **CLERICAL AMENDMENT.**—The chapter analysis for chapter 701 of title 46, United States Code, is amended by striking the last item and inserting the following:

“70117. In rem liability for civil penalties and certain costs

70118. Enforcement by injunction or withholding of clearance

70119. Security of piers and wharfs

70120. Civil penalty”.

### SEC. 3. MARITIME INFORMATION.

“(Within 90 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure that provides a preliminary plan for the implementation of section 70113 of title 46, United States Code. The plan shall—

“(1) provide the identification of Federal agencies with maritime information relating to vessels, crew, passengers, cargo, and cargo shippers;

“(2) establish a timeline for coordinating the efforts of those Federal agencies in the collection of maritime information;

“(3) establish a timeline for the incorporation of information on vessel movements derived through the implementation of sections 70114 and 70115 of title 46, United States Code;

“(4) include recommendations on co-locating agency personnel in order to maximize expertise, minimize cost, and avoid redundancy;

“(5) include recommendations on how to leverage information on commercial maritime information collected by the Department of the Navy, and identify any legal impediments that would prevent or reduce the utilization of such information outside the Department of the Navy;

“(6) include recommendations on educating Federal officials on commercial maritime operations in order to facilitate the identification of security risks posed through commercial maritime transportation operations;

“(7) include recommendations on how private sector resources could be utilized to collect or analyze information, along with a preliminary assessment of the availability and expertise of private sector resources;

“(8) include recommendations on how to disseminate information collected and analyzed through Federal maritime security coordinator while considering the need for non-disclosure of sensitive security information and the maximizing of security through the utilization of State, local, and private security personnel; and

“(9) include recommendations on how the Department could help support a maritime information sharing and analysis center for the purpose of collecting information from public and private entities, along with rec-

ommendations on the appropriate levels of funding to help disseminate maritime security information to the private sector.

### SEC. 4. INTERMODAL CARGO SECURITY PLAN.

“(a) **IN GENERAL.**—In addition to the plan submitted under section 3, within 180 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure containing the following:

“(1) **SECURE SYSTEMS OF TRANSPORTATION** (46 U.S.C. 70116).—A plan, along with timelines, for the implementation of section 70116 of title 46, United States Code. The plan shall—

“(A) provide an update on current efforts by the Department of Homeland Security could be incorporated into the certification process outlined in section 70116 to ensure the physical screening or inspection of imported cargo;

“(B) provide a preliminary assessment of resources necessary to evaluate and certify “Secure Systems of Transportation”, and the resources necessary to validate that “Secure Systems of Transportation” are operating in compliance with the certification requirements; and

“(C) contain an analysis of the feasibility of establishing a user fee in order to be able to evaluate, certify, and validate “Secure Systems of Transportation”.

“(2) **RADIATION DETECTORS.**—A report on progress in the installation of a system of radiation detection at all major United States seaports, along with a timeline and expected completion date for the system. In the report, the Secretary shall include a preliminary analysis of any issues related to the installation of the radiation detection equipment, as well as a cost estimate for completing installation of the system.

“(3) **NON-INTRUSIVE INSPECTION AT FOREIGN PORTS.**—A report—

“(A) on whether and to what extent foreign seaports have been willing to utilize screening equipment at their ports to screen cargo, including the number of cargo containers that have been screened at foreign seaports, and the ports where they were screened;

“(B) indicating which foreign ports may be willing to utilize their screening equipment for cargo exported for import into the United States, and a recommendation as to whether, and to what extent, United States cargo screening equipment will be required to be purchased and stationed at foreign seaports for inspection; and

“(C) indicating to what extent additional resources and program changes will be necessary to maximize scrutiny of cargo in foreign seaports.

“(4) **COMPLIANCE WITH SECURITY STANDARD PROGRAMS.**—A plan to establish, validate, and ensure compliance with security standards that would require ports, terminals, vessel operators, and shippers to adhere to security standards established by or consistent with the National Transportation System Security Plan. The plan shall indicate what resources will be utilized, and how they would be utilized, to ensure that companies operate in compliance with security standards.

“(b) **EVALUATION OF CARGO INSPECTION TARGETING SYSTEM FOR INTERNATIONAL INTERMODAL CARGO CONTAINERS.**—

“(1) **IN GENERAL.**—Within 6 months after the date of enactment of this Act, and annually thereafter, the Inspector General of the Department of Homeland Security shall evaluate the system used by the Department to target international intermodal containers for inspection and report the results of the evaluation to the Senate Committee

on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. In conducting the evaluation, the Inspector General shall assess—

“(A) the effectiveness of the current tracking system to determine whether it is adequate to prevent international intermodal containers from being used for purposes of terrorism;

“(B) the sources of information used by the system to determine whether targeting information is collected from the best and most credible sources and evaluate data sources to determine information gaps and weaknesses;

“(C) the targeting system for reporting and analyzing inspection statistics, as well as testing effectiveness;

“(D) the competence and training of employees operating the system to determine whether they are sufficiently capable to detect potential terrorist threats; and

“(E) whether the system is an effective system to detect potential acts of terrorism and whether additional steps need to be taken in order to remedy deficiencies in targeting international intermodal containers for inspection.

“(2) **INCREASE IN INSPECTIONS.**—If the Inspector General determines in any of the reports required by paragraph (1) that the targeting system is insufficiently effective as a means of detecting potential acts of terrorism utilizing international intermodal containers, then within 12 months after that report, the Secretary of Homeland Security shall double the number of containers subjected to intrusive or non-intrusive inspection at United States ports or to be shipped to the United States at foreign seaports.

“(c) **REPORT AND PLAN FORMATS.**—The Secretary and the Inspector General may submit any plan or report required by this section in both classified and redacted formats if the Secretary determines that it is appropriate or necessary.

### SEC. 5. JOINT OPERATIONS CENTER FOR PORT SECURITY.

“(The Commandant of the United States Coast Guard shall report to Congress, within 180 days after the date of enactment of this Act, on the potential benefits of establishing joint operational centers for port security at certain United States seaports. The report shall consider the 3 Joint Operational Centers that have been established at Norfolk, Charleston, San Diego, and elsewhere and compare and contrast their composition and operational characteristics. The report shall consider—

“(1) whether it would be beneficial to establish linkages to Federal maritime information systems established pursuant to section 70113 of title 46, United States Code;

“(2) whether the operational centers could be beneficially utilized to track vessel movements under sections 70114 and 70115 of title 46, United States Code;

“(3) whether the operational centers could be beneficial in the facilitation of intermodal cargo security programs such as the “Secure Systems of Transportation Program”;

“(4) the extent to which such operational centers could be beneficial in the operation of maritime area security plans and maritime area contingency response plans and in coordinating the port security activities of Federal, State, and local officials; and

“(5) include recommendations for the number of centers and their possible location, as well as preliminary cost estimates for the operation of the centers.

### SEC. 6. MARITIME TRANSPORTATION SECURITY PLAN GRANTS.

“(Section 70107(a) of title 46, United States Code, is amended to read as follows:

["(a) IN GENERAL.—The Under Secretary of Homeland Security for Border and Transportation Security shall establish a grant program for making a fair and equitable allocation of funds to implement Area Maritime Transportation Security Plans and to help fund compliance with Federal security plans among port authorities, facility operators, and State and local agencies required to provide security services. Grants shall be made on the basis of the need to address vulnerabilities in security subject to review and comment by the appropriate Federal Maritime Security Coordinators and the Maritime Administration. The grant program shall take into account national economic and strategic defense concerns and shall be coordinated with the Director of the Office of Domestic Preparedness to ensure that the grant process is consistent with other Department of Homeland Security grant programs.”]

#### **[SEC. 7. ASSISTANCE FOR FOREIGN PORTS.]**

[Section 70109 of title 46, United States Code, is amended—

[(1) by striking “The Secretary” in subsection (b) and inserting “The Administrator of the Maritime Administration”; and

[(2) by adding at the end the following:

["(c) FOREIGN ASSISTANCE PROGRAMS.—The Administrator of the Maritime Administration, in coordination with the Secretary of State, shall identify foreign assistance programs that could facilitate implementation of port security antiterrorism measures in foreign countries. The Administrator and the Secretary shall establish a program to utilize those programs that are capable of implementing port security antiterrorism measures at ports in foreign countries that the Secretary finds, under section 70108, to lack effective antiterrorism measures.”]

#### **[SEC. 8. FEDERAL AND STATE COMMERCIAL MARITIME TRANSPORTATION TRAINING.]**

[Section 109 of the Maritime Transportation Security Act of 2002 (46 U.S.C. 70101 note) is amended—

[(1) by redesignating subsections (c) through (f) as subsections (d) through (g), respectively; and

[(2) by inserting after subsection (b) the following:

["(c) FEDERAL AND STATE COMMERCIAL MARITIME TRANSPORTATION TRAINING.—The Secretary of Transportation shall establish a curriculum, to be incorporated into the curriculum developed under subsection (a)(1), to educate and instruct Federal and State officials on commercial maritime and intermodal transportation. The curriculum shall be designed to familiarize those officials with commercial maritime transportation in order to facilitate performance of their commercial maritime and intermodal transportation security responsibilities. In developing the standards for the curriculum, the Secretary shall consult with each agency in the Department of Homeland Security with maritime security responsibilities to determine areas of educational need. The Secretary shall also coordinate with the Federal Law Enforcement Training Center in the development of the curriculum and the provision of training opportunities for Federal and State law enforcement officials at appropriate law enforcement training facilities.”]

#### **[SEC. 9. RESEARCH AND DEVELOPMENT.]**

[(a) IN GENERAL.—Section 70107 of title 46, United States Code, is amended by striking subsection (i) and inserting the following:

["(i) RESEARCH AND DEVELOPMENT.—

["(1) IN GENERAL.—As part of the research and development program within the Science and Technology directorate, the Secretary of Homeland Security shall conduct investigations, fund pilot programs, award grants, and

otherwise conduct research and development across the various portfolios focused on making United States ports safer and more secure. Research conducted under this subsection may include—

["(A) methods or programs to increase the ability to target for inspection vessels, cargo, crewmembers, or passengers that will arrive or have arrived at any port or place in the United States;

["(B) equipment to detect accurately explosives, chemical, or biological agents that could be used to commit terrorist acts against the United States;

["(C) equipment to detect accurately nuclear or radiological materials, including scintillation-based detection equipment capable of signalling the presence of nuclear or radiological materials;

["(D) improved tags and seal designed for use on shipping containers to track the transportation of the merchandise in such containers, including ‘smart sensors’ that are able to track a container throughout its entire supply chain, detect hazardous and radioactive materials within that container, and transmit that information to the appropriate law enforcement authorities;

["(E) tools, including the use of satellite tracking systems, to increase the awareness of maritime areas and to identify potential terrorist threats that could have an impact on facilities, vessels, and infrastructure on or adjacent to navigable waterways, including underwater access;

["(F) tools to mitigate the consequences of a terrorist act on, adjacent to, or under navigable waters of the United States, including sensor equipment, and other tools to help coordinate effective response to a terrorist action; and

["(G) applications to apply existing technologies from other areas or industries to increase overall port security.

#### **["(2) IMPLEMENTATION OF TECHNOLOGY.—**

["(A) IN GENERAL.—In conjunction with ongoing efforts to improve security at United States ports, the Director of the Science and Technology Directorate, in consultation with other Department of Homeland Security agencies with responsibility for port security, may conduct pilot projects at United States ports to test the effectiveness and applicability of new port security projects, including—

["(i) testing of new detection and screening technologies;

["(ii) projects to protect United States ports and infrastructure on or adjacent to the navigable waters of the United States, including underwater access; and

["(iii) tools for responding to a terrorist threat or incident at United States ports and infrastructure on or adjacent to the navigable waters of the United States, including underwater access.

["(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security \$35,000,000 for each of fiscal years 2005 through 2009 to carry out pilot projects under subparagraph (A).

#### **["(3) ADMINISTRATIVE PROVISIONS.—**

["(A) NO DUPLICATION OF EFFORT.—Before making any grant, the Secretary of Homeland Security shall coordinate with other Federal agencies to ensure the grant will not be used for research and development that is already being conducted with Federal funding.

["(B) ACCOUNTING.—The Secretary of Homeland Security shall by regulation establish accounting, reporting, and review procedures to ensure that funds made available under paragraph (1) are used for the purpose for which they were made available, that all expenditures are properly accounted for, and that amounts not used for such purposes and amounts not expended are recovered.

["(C) RECORDKEEPING.—Recipients of grants shall keep all records related to expenditures and obligations of funds provided under paragraph (1) and make them available upon request to the Inspector General of the Department of Homeland Security and the Secretary of Homeland Security for audit and examination.”]

[(b) ANNUAL REPORT.—Within 30 days after the beginning of each fiscal year from fiscal year 2005 through fiscal year 2009, the Director of the Science and Technology Directorate shall submit a report describing its research that can be applied to port security to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Science, and the House of Representatives Select Committee on Homeland Security. The report shall—

[(1) describe any port security-related research, including grants and pilot projects, that were conducted in the preceding fiscal year;

[(2) describe the amount of Department of Homeland Security resources dedicated to research that can be applied to port security;

[(3) describe the steps taken to coordinate with other agencies within the Department to ensure that research efforts are coordinated with port security efforts;

[(4) describe how the results of the Department's research, as well as port security related research of the Department of Defense, will be implemented in the field, including predicted timetables;

[(5) lay out the plans for research in the current fiscal year; and

[(6) include a description of the funding levels for the research in the preceding, current, and next fiscal years.

#### **[SEC. 10. NUCLEAR FACILITIES IN MARITIME AREAS.]**

[(a) WATERWAYS.—Section 70103(b) is amended by adding at the end thereof the following:

["(5) WATERWAYS LOCATED NEAR NUCLEAR FACILITIES.—

["(A) IDENTIFICATION AND SECURITY EVALUATION.—The Secretary shall—

["(i) identify all nuclear facilities on, adjacent to, or in close proximity to navigable waterways that might be damaged by a transportation security incident;

["(ii) in coordination with the Secretary of Energy, evaluate the security plans of each such nuclear facility for its adequacy to protect the facility from damage or disruption from a transportation security incident originating in the navigable waterway, including threats posed by navigation, underwater access, and the introduction of harmful substances into water coolant systems.

["(B) RECTIFICATION OF DEFICIENCIES.—The Secretary, in coordination with the Secretary of Energy, shall take such steps as may be necessary or appropriate to correct any deficiencies in security identified in the evaluations conducted under subparagraph (A).

["(C) REPORT.—As soon as practicable after completion of the evaluation under subparagraph (A), the Secretary shall transmit a report, in both classified and redacted format, to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Select Committee on Homeland Security—

["(i) describing the results of the identification and evaluation required by subparagraph (A);

["(ii) describing the actions taken under subparagraph (B); and

[(iii) evaluating the technology utilized in the protection of nuclear facilities (including any such technology under development).].

[(b) VESSELS.—Section 70103(c)(3) of title 46, United States Code, is amended—

[(1) by striking “and” after the semicolon in subparagraph (F);

[(2) by striking “facility.” in subparagraph (G) and inserting “facility; and”; and

[(3) by adding at the end the following:

[(“(H) establish a requirement, coordinated with the Department of Energy, for criminal background checks of all United States and foreign seamen employed on vessels transporting nuclear materials in the navigable waters of the United States.”.]

# **[SEC. 11. TRANSPORTATION WORKER BACKGROUND INVESTIGATION PROGRAMS.]**

[Within 120 days after the date of enactment of this Act, the Secretary of Homeland Security, after consultation with the Secretary of Transportation, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure—

[(1) making recommendations (including legislative recommendations, if appropriate or necessary) for harmonizing, combining, or coordinating requirements, procedures, and programs for conducting background checks under section 70105 of title 46, United States Code, section 5103a(c) of title 49, United States Code, section 44936 of title 49, United States Code, and other provisions of Federal law or regulations requiring background checks for individuals engaged in transportation or transportation-related activities; and

[(2) setting forth a detailed timeline for implementation of such harmonization, combination, or coordination.]

# **[SEC. 12. SECURITY SERVICE FEE.]**

[(a) IN GENERAL.—Chapter 701 of title 46, United States Code, as amended by section 2, is further amended by adding at the end the following:

## **“§ 70121. Security service fee**

[(“(a) IN GENERAL.—

[(“(1) SECURITY FEE.—Within 90 days after the date of enactment of the Maritime Transportation Security Act of 2004, the Secretary of Homeland Security shall assess and collect an international port security service fee on commercial maritime transportation entities that benefit from a secure system of international maritime transportation to pay for the costs of providing port security services. The amount of the fees assessed and collected under this paragraph and paragraph (2) shall, in the aggregate, be sufficient to provide the services and levels of funding described in section 70122(c).]

[(“(2) INTERNATIONAL TRANSSHIPMENT SECURITY FEE.—The Secretary shall also assess and collect an international maritime transshipment security user fee for providing security services for shipments of cargo and transportation of passengers entering the United States as part of an international transportation movement by water through Canadian or Mexican ports at the same rates as the fee imposed under paragraph (1). The fee authorized by this paragraph shall not be assessed or collected on transshipments from—

[(“(A) Canada after the date on which the Secretary determines that an agreement between the United States and Canada, or

[(“(B) Mexico after the date on which the Secretary determines that an agreement between the United States and Mexico, has entered into force that will provide equivalent security regimes and international maritime security user fees of the

United States and that country for transshipments between the countries.]

[(“(b) SCHEDULE OF FEES.—In imposing fees under subsection (a), the Secretary shall ensure that the fees are reasonably related to the costs of providing services rendered and the value of the benefit derived from the continuation of secure international maritime transportation.]

[(“(c) IMPOSITION OF FEE.—

[(“(1) IN GENERAL.—Notwithstanding section 9701 of title 31 and the procedural requirements of section 553 of title 5, the Secretary shall impose the fees under subsection (a) through the publication of notice in the Federal Register and begin collection of the fee within 60 days of the date of enactment of the Maritime Transportation Security Act of 2004, or as soon as possible thereafter. No fee shall be assessed more than once, and no fee shall be assessed for international ferry voyages.]

[(“(2) MEANS OF COLLECTION.—The Secretary shall prescribe procedures to collect fees under this section. The Secretary may use a department, agency, or instrumentality of the United States Government or of a State or local government to collect the fee and may reimburse the department, agency, or instrumentality a reasonable amount for its services.]

[(“(3) SUBSEQUENT MODIFICATION OF FEE.—After imposing a fee under subsection (a), the Secretary may modify, from time to time through publication of notice in the Federal Register, the imposition or collection of such fee, or both. The Secretary shall evaluate the fee annually to determine whether it is necessary and appropriate to pay the cost of activities and services, and shall adjust the amount of the fee accordingly.]

[(“(4) LIMITATION ON COLLECTION.—No fee may be collected under this section except to the extent that the expenditure of the fee to pay the costs of activities and services for which the fee is imposed is provided for in advance in an appropriations Act.]

[(“(d) ADMINISTRATION OF FEES.—

[(“(1) FEES PAYABLE TO SECRETARY.—All fees imposed and amounts collected under this section are payable to the Secretary.]

[(“(2) INFORMATION.—The Secretary may require the provision of such information as the Secretary decides is necessary to verify that fees have been collected and remitted at the proper times and in the proper amounts.]

[(“(e) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, any fee collected under this section—

[(“(1) shall be credited as offsetting collections to the account that finances the activities and services for which the fee is imposed;

[(“(2) shall be available for expenditure only to pay the costs of activities and services for which the fee is imposed; and

[(“(3) shall remain available until expended.]

[(“(f) REFUNDS.—The Secretary may refund any fee paid by mistake or any amount paid in excess of that required.]

[(“(g) SUNSET.—The fees authorized by subsection (a) may not be assessed after September 31, 2009.”.]

[(“(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 701 of title 46, United States Code, as amended by section 2, is amended by adding at the end the following:

[(“(70121. Security service fee.”.]

# **[SEC. 13. PORT SECURITY CAPITAL FUND.]**

[(“(a) IN GENERAL.—Chapter 701 of title 46, United States Code, as amended by section 11, is further amended by adding at the end the following:

## **[(“(§ 70122. Port security capital fund.]**

[(“(a) IN GENERAL.—There is established within the Department of Homeland Security a fund to be known as the Port Security Capital Fund. There are appropriated to the Fund such sums as may be derived from the fees authorized by section 70121(a).]

[(“(b) PURPOSE.—Amounts in the Fund shall be available to the Secretary of Homeland Security—

[(“(1) to provide financial assistance to port authorities, facility operators, and State and local agencies required to provide security services to defray capital investment in transportation security at port facilities in accordance with the provisions of this chapter;

[(“(2) to provide financial assistance to those entities required to provide security services to help ensure compliance with Federal area maritime security plans; and

[(“(3) to help defray the costs of Federal port security programs.]

[(“(c) ALLOCATION OF FUNDS.—

[(“(1) FUNDS DERIVED FROM SECURITY FEES.—From amounts in the Fund attributable to fees collected under section 70121(a)(1) and (2)—

[(“(A) no less than \$400,000,000 (or such amount as may be appropriate to reflect any modification of the fees under section 70121(c)(3)) shall be made available each fiscal year for grants under section 70107 to help ensure compliance with facility security plans or to help implement Area Maritime Transportation Security Plans;

[(“(B) funds shall be made available to the Coast Guard for the costs of implementing sections 70114 and 70115 fully by the end of fiscal year 2006;

[(“(C) funds shall be made available to the Coast Guard for the costs of establishing command and control centers at United States ports to help coordinate port security law enforcement activities and implementing Area Maritime Security Plans, and may be transferred, as appropriate, to port authorities, facility operators, and State and local government agencies to help them defray costs associated with port security services;

[(“(D) funds shall be made available to the Under Secretary of Homeland Security for Border and Transportation Security for the costs of implementing cargo security programs, including the costs of certifying secure systems of transportation under section 70116;

[(“(E) funds shall be made available to the Under Secretary of Homeland Security for Border and Transportation Security for the costs of acquiring and operating nonintrusive screening equipment at United States ports; and

[(“(F) funds shall be made available to the Transportation Security Administration for the costs of implementing of section 70113 and the collection of commercial maritime intelligence (including the collection of commercial maritime transportation information from the private sector), of which a portion shall be made available to the Coast Guard and the Customs Service only for the purpose of coordinating the system of collecting and analyzing information on vessels, crew, passengers, cargo, and intermodal shipments.]

[(“(2) TRANSSHIPMENT FEES.—Amounts in the Fund attributable to fees collected under section 70121(a)(3), shall be made available to the Secretary to defray the costs of providing international maritime transshipment security at the United States borders with Canada and Mexico.]

“(d) UTILIZATION REPORTS.—The Commandant of the Coast Guard and the Secretary of Homeland Security shall report annually to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on utilization of amounts received from the Fund.

“(e) LETTERS OF INTENT.—The Secretary of Homeland Security, or his delegate, may execute letters of intent to commit funding to port sponsors from the Fund.”

“(f) CONFORMING AMENDMENT.—The chapter analysis for chapter 701 of title 46, United States Code, as amended by section 11, is amended by adding at the end the following:

“70122. Port security capital fund.”

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Maritime Transportation Security Act of 2004”.

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

- Sec. 1. Short title; table of contents
- Sec. 2. In rem liability; enforcement; pier and wharf security costs.
- Sec. 3. Maritime information.
- Sec. 4. Intermodal cargo security plan.
- Sec. 5. Joint operations center for port security.
- Sec. 6. Maritime transportation security plan grants.
- Sec. 7. Assistance for foreign ports.
- Sec. 8. Federal and State commercial maritime transportation training.
- Sec. 9. Port security research and development.
- Sec. 10. Nuclear facilities in maritime areas.
- Sec. 11. Transportation worker background investigation programs.
- Sec. 12. Report on cruise ship security.
- Sec. 13. Report on design of maritime security grant programs.

#### SEC. 2. IN REM LIABILITY; ENFORCEMENT; PIER AND WHARF SECURITY COSTS.

(a) **IN GENERAL.**—Chapter 701 of title 46, United States Code, is amended—

- (1) by redesignating section 70117 as 70120; and
- (2) by inserting after section 70116 the following:

##### “§ 70117. In rem liability for civil penalties and certain costs

“(a) **IN GENERAL.**—Any vessel subject to the provisions of this chapter, which is used in violation of this chapter or any regulations issued hereunder shall be liable in rem for any civil penalty assessed pursuant to section 70120 and may be proceeded against in the United States district court for any district in which such vessel may be found.

“(b) **REIMBURSABLE COSTS.**—

“(1) **IN GENERAL.**—Any vessel subject to the provisions of this chapter shall be liable in rem for the reimbursable costs incurred by any valid claimant related to implementation and enforcement of this chapter with respect to the vessel, including port authorities, facility or terminal operators, shipping agents, Federal, State, or local government agencies, and other persons to whom the management of the vessel at the port of supply is entrusted, and any fine or penalty relating to reporting requirements of the vessel or its cargo, crew, or passengers, and may be proceeded against in the United States district court for any district in which such vessel may be found.

“(2) **REIMBURSABLE COSTS DEFINED.**—In this subsection the term ‘reimbursable costs’ means costs incurred by any service provider, including port authorities, facility or terminal operators, shipping agents, Federal, State, or local government agencies, or other person to whom the management of the vessel at the port of supply is entrusted, for—

“(A) vessel crew on board, or in transit to or from, the vessel under lawful order, including accommodation, detention, transportation, and medical expenses; and

“(B) required handling under lawful order of cargo or other items on board the vessel.

##### “§ 70118. Enforcement by injunction or withholding of clearance

“(a) **INJUNCTION.**—The United States district courts shall have jurisdiction to restrain violations of this chapter or of regulations issued hereunder, for cause shown.

“(b) **WITHHOLDING OF CLEARANCE.**—

“(1) If any owner, agent, master, officer, or person in charge of a vessel is liable for a penalty or fine under section 70120, or if reasonable cause exists to believe that the owner, agent, master, officer, or person in charge may be subject to a penalty under section 70120, the Secretary may, with respect to such vessel, refuse or revoke any clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91).

“(2) Clearance refused or revoked under this subsection may be granted upon filing of a bond or other surety satisfactory to the Secretary.

##### “§ 70119. Security of piers and wharfs

“(a) **IN GENERAL.**—Notwithstanding any other provision of law, the Secretary shall require any uncleared, imported merchandise remaining on the wharf or pier onto which it was unladen for more than 5 calendar days to be removed from the wharf or pier and deposited in the public stores or a general order warehouse, where it shall be inspected for determination of contents, and thereafter a permit for its delivery may be granted.

“(b) **PENALTY.**—The Secretary may impose an administrative penalty of \$5,000 for each bill of lading for general order merchandise remaining on a wharf or pier in violation of subsection (a).”

(b) **CONFORMING AMENDMENT FOR IN REM LIABILITY PROVISION IN CHAPTER 701.**—Section 2 of the Act of June 15, 1917 (50 U.S.C. 192) is amended—

- (1) by striking “Act,” each place it appears in subsection (c) and inserting “title,”; and
- (2) by adding at the end the following:

“(d) **IN REM LIABILITY.**—Any vessel subject to the provisions of this title that is used in violation of this title, or any regulations issued hereunder, shall be liable in rem for any civil penalty assessed pursuant to subsection (c) and may be proceeded against in the United States district court for any district in which such vessel may be found.

“(e) **INJUNCTION.**—The United States district courts shall have jurisdiction to restrain violations of this title or of regulations issued hereunder, for cause shown.

“(f) **WITHHOLDING OF CLEARANCE.**—

“(1) If any owner, agent, master, officer, or person in charge of a vessel is liable for a penalty or fine under subsection (c), or if reasonable cause exists to believe that the owner, agent, master, officer, or person in charge may be subject to a penalty or fine under subsection (c), the Secretary may, with respect to such vessel, refuse or revoke any clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91).

“(2) Clearance refused or revoked under this subsection may be granted upon filing of a bond or other surety satisfactory to the Secretary of the Department in which the Coast Guard is operating.”

(c) **EMPTY CONTAINERS.**—Within 90 days after the date of enactment of this Act, the Secretary of Homeland Security shall review United States ports and transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report on the practices and policies in place to secure shipment of empty containers. The Secretary shall include in the report recommendations with respect to whether additional regulations or legislation is necessary to ensure the safe and secure delivery of cargo and to prevent potential acts of terrorism involving such containers.

(d) **CLERICAL AMENDMENT.**—The chapter analysis for chapter 701 of title 46, United States Code, is amended by striking the last item and inserting the following:

“70117. In rem liability for civil penalties and certain costs

“70118. Enforcement by injunction or withholding of clearance

“70119. Security of piers and wharfs

“70120. Civil penalty”.

#### SEC. 3. MARITIME INFORMATION.

Within 90 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure that provides a preliminary plan for the implementation of section 70113 of title 46, United States Code. The plan shall—

(1) identify Federal agencies with maritime information relating to vessels, crew, passengers, cargo, and cargo shippers, those agencies’ maritime information collection and analysis activities, and the resources devoted to those activities;

(2) establish a lead agency within the Department of Homeland Security to coordinate the efforts of other Department agencies in the collection of maritime information and to identify and avoid unwanted redundancy in those efforts;

(3) establish a timeline for coordinating the efforts of those Federal agencies in the collection of maritime information;

(4) include recommendations on co-locating agency personnel in order to maximize expertise, minimize costs, and avoid redundancy in both the collection and analysis of maritime information;

(5) establish a timeline for the incorporation of information on vessel movements derived through the implementation of sections 70114 and 70115 of title 46, United States Code;

(6) include recommendations on how to leverage information on commercial maritime information collected by the Department of the Navy, and identify any legal impediments that would prevent or reduce the utilization of such information outside the Department of the Navy;

(7) include recommendations on educating Federal officials on commercial maritime operations in order to facilitate the identification of security risks posed through commercial maritime transportation operations;

(8) include recommendations on how private sector resources could be utilized to collect or analyze information, along with a preliminary assessment of the availability and expertise of private sector resources;

(9) include recommendations on how to disseminate information collected and analyzed through Federal maritime security coordinator while considering the need for nondisclosure of sensitive security information and the maximizing of security through the utilization of State, local, and private security personnel; and

(10) include recommendations on the need for and how the Department could help support a maritime information sharing and analysis center for the purpose of collecting and disseminating real-time or near real-time information to and from public and private entities, along with recommendations on the appropriate levels of funding to help disseminate maritime security information to the private sector.

#### SEC. 4. INTERMODAL CARGO SECURITY PLAN.

(a) **IN GENERAL.**—In addition to the plan submitted under section 3, within 180 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure containing the following:

(1) **SECURE SYSTEMS OF TRANSPORTATION.**—A plan, along with timelines, for the implementation of section 70116 of title 46, United States Code. The plan shall—

(A) provide an update on current efforts by the Department of Homeland Security to ensure the physical screening or inspection of imported cargo;

(B) provide a preliminary assessment of resources necessary to evaluate and certify secure systems of transportation, and the resources necessary to validate that the secure systems of transportation are operating in compliance with the certification requirements;

(C) contain an analysis of the feasibility of establishing a user fee in order to be able to evaluate, certify, and validate secure systems of transportation;

(D) contain an analysis of the need and feasibility of establishing a system to inspect, monitor, and track intermodal shipping containers within the United States; and

(E) contain an analysis of the need and feasibility for developing international standards for secure systems of transportation, including recommendations, that includes an examination of working with appropriate international organizations to develop standards to enhance the physical security of shipping containers consistent with the provisions of section 70116 of title 46, United States Code.

(2) **RADIATION DETECTORS.**—A report on progress in the installation of a system of radiation detection at all major United States seaports, along with a timeline and expected completion date for the system. In the report, the Secretary shall include a preliminary analysis of any issues related to the installation or efficacy of the radiation detection equipment, as well as a cost estimate for completing installation of the system.

(3) **NON-INTRUSIVE INSPECTION AT FOREIGN PORTS.**—A report—

(A) on whether and to what extent foreign seaports have been willing to utilize screening equipment at their ports to screen cargo, including the number of cargo containers that have been screened at foreign seaports, and the ports where they were screened;

(B) indicating which foreign ports may be willing to utilize their screening equipment for cargo exported for import into the United States, and a recommendation as to whether, and to what extent, United States cargo screening equipment will be required to be purchased and stationed at foreign seaports for inspection; and

(C) indicating ways to increase the effectiveness of the targeting and screening activities of United States Customs Service inspectors who are stationed outside the United States and to what extent additional resources and program changes will be necessary to maximize scrutiny of cargo in foreign seaports that is destined for the United States.

(4) **COMPLIANCE WITH SECURITY STANDARD PROGRAMS.**—A plan to establish, validate, and ensure compliance with security standards that would require ports, terminals, vessel operators, and shippers to adhere to security standards established by or consistent with the National Transportation System Security Plan. The plan shall indicate what resources will be utilized, and how they would be utilized, to ensure that companies operate in compliance with security standards.

(b) **INSPECTOR GENERAL IMPLEMENTATION REPORT.**—One year after the date on which the plan described in subsection (a)(1) is submitted to the Committees, the Inspector General of the Department of Homeland Security shall transmit a report to those Committees evaluating the progress made by the Department in implementing the plan.

(c) **EVALUATION OF CARGO INSPECTION TARGETING SYSTEM FOR INTERNATIONAL INTERMODAL CARGO CONTAINERS.**—

(1) **IN GENERAL.**—Within 6 months after the date of enactment of this Act, and annually thereafter, the Inspector General of the Department of Homeland Security shall evaluate the system used by the Department to target international intermodal containers for inspection

and report the results of the evaluation to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. In conducting the evaluation, the Inspector General shall assess—

(A) the effectiveness of the current tracking system to determine whether it is adequate to prevent international intermodal containers from being used for purposes of terrorism;

(B) the sources of information, and the quality of the information at the time of reporting, used by the system to determine whether targeting information is collected from the best and most credible sources and evaluate data sources to determine information gaps and weaknesses;

(C) the targeting system for reporting and analyzing inspection statistics, as well as testing effectiveness;

(D) the competence and training of employees operating the system to determine whether they are sufficiently capable to detect potential terrorist threats; and

(E) whether the system is an effective system to detect potential acts of terrorism and whether additional steps need to be taken in order to remedy deficiencies in targeting international intermodal containers for inspection.

(2) **INCREASE IN INSPECTIONS.**—If the Inspector General determines in any of the reports required by paragraph (1) that the targeting system is insufficiently effective as a means of detecting potential acts of terrorism utilizing international intermodal containers, then within 12 months after that report, the Secretary of Homeland Security shall double the number of containers subjected to intrusive or non-intrusive inspection at United States ports or to be shipped to the United States at foreign seaports.

(d) **REPORT AND PLAN FORMATS.**—The Secretary and the Inspector General may submit any plan or report required by this section in both classified and redacted formats if the Secretary determines that it is appropriate or necessary.

#### **SEC. 5. JOINT OPERATIONS CENTER FOR PORT SECURITY.**

The Commandant of the United States Coast Guard shall report to Congress, within 180 days after the date of enactment of this Act, on the potential benefits of establishing joint operational centers for port security at certain United States seaports. The report shall consider the 3 Joint Operational Centers that have been established at Norfolk, Charleston, San Diego, and elsewhere and compare and contrast their composition and operational characteristics. The report shall consider—

(1) whether it would be beneficial to establish linkages to Federal maritime information systems established pursuant to section 70113 of title 46, United States Code;

(2) whether the operational centers could be beneficially utilized to track vessel movements under sections 70114 and 70115 of title 46, United States Code;

(3) whether the operational centers could be beneficial in the facilitation of intermodal cargo security programs such as the secure systems of transportation program;

(4) the extent to which such operational centers could be beneficial in the operation of maritime area security plans and maritime area contingency response plans and in coordinating the port security activities of Federal, State, and local officials; and

(5) include recommendations for the number of centers and their possible location, as well as preliminary cost estimates for the operation of the centers.

#### **SEC. 6. MARITIME TRANSPORTATION SECURITY PLAN GRANTS.**

Section 70107(a) of title 46, United States Code, is amended to read as follows:

“(a) **IN GENERAL.**—The Under Secretary of Homeland Security for Border and Transportation Security shall establish a grant program

for making a fair and equitable allocation of funds to implement Area Maritime Transportation Security Plans and to help fund compliance with Federal security plans among port authorities, facility operators, and State and local agencies required to provide security services. Grants shall be made on the basis of the need to address vulnerabilities in security subject to review and comment by the appropriate Federal Maritime Security Coordinators and the Maritime Administration. The grant program shall take into account national economic and strategic defense concerns and shall be coordinated with the Director of the Office of Domestic Preparedness to ensure that the grant process is consistent with other Department of Homeland Security grant programs.”

#### **SEC. 7. ASSISTANCE FOR FOREIGN PORTS.**

(a) **IN GENERAL.**—Section 70109 of title 46, United States Code, is amended—

(1) by striking “The Secretary,” in subsection (b) and inserting “The Administrator of the Maritime Administration,”; and

(2) by adding at the end the following:

“(c) **FOREIGN ASSISTANCE PROGRAMS.**—The Administrator of the Maritime Administration, in coordination with the Secretary of State, shall identify foreign assistance programs that could facilitate implementation of port security antiterrorism measures in foreign countries. The Administrator and the Secretary shall establish a program to utilize those programs that are capable of implementing port security antiterrorism measures at ports in foreign countries that the Secretary finds, under section 70108, to lack effective antiterrorism measures.”

(b) **REPORT ON SECURITY AT PORTS IN THE CARIBBEAN BASIN.**—Not later than 60 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committee on Commerce, Science, and Transportation of the Senate and Committee on Transportation and Infrastructure of the House of Representatives a report on the security of ports in the Caribbean Basin. The report shall include the following:

(1) An assessment of the effectiveness of the measures employed to improve security at ports in the Caribbean Basin and recommendations for any additional measures to improve such security.

(2) An estimate of the number of ports in the Caribbean Basin that will not be secured by July 2004, and an estimate of the financial impact in the United States of any action taken pursuant to section 70110 of title 46, United States Code, that affects trade between such ports and the United States.

(3) An assessment of the additional resources and program changes that are necessary to maximize security at ports in the Caribbean Basin.

#### **SEC. 8. FEDERAL AND STATE COMMERCIAL MARITIME TRANSPORTATION TRAINING.**

Section 109 of the Maritime Transportation Security Act of 2002 (46 U.S.C. 70101 note) is amended—

(1) by redesignating subsections (c) through (f) as subsections (d) through (g), respectively; and

(2) by inserting after subsection (b) the following:

“(c) **FEDERAL AND STATE COMMERCIAL MARITIME TRANSPORTATION TRAINING.**—The Secretary of Transportation shall establish a curriculum, to be incorporated into the curriculum developed under subsection (a)(1), to educate and instruct Federal and State officials on commercial maritime and intermodal transportation. The curriculum shall be designed to familiarize those officials with commercial maritime transportation in order to facilitate performance of their commercial maritime and intermodal transportation security responsibilities. In developing the standards for the curriculum, the Secretary



shall consult with each agency in the Department of Homeland Security with maritime security responsibilities to determine areas of educational need. The Secretary shall also coordinate with the Federal Law Enforcement Training Center in the development of the curriculum and the provision of training opportunities for Federal and State law enforcement officials at appropriate law enforcement training facilities.”.

#### SEC. 9. RESEARCH AND DEVELOPMENT.

(a) *IN GENERAL.*—Section 70107 of title 46, United States Code, is amended by striking subsection (i) and inserting the following:

“(i) *RESEARCH AND DEVELOPMENT.*—

“(1) *IN GENERAL.*—As part of the research and development program within the Science and Technology directorate, the Secretary of Homeland Security shall conduct investigations, fund pilot programs, award grants, and otherwise conduct research and development across the various portfolios focused on making United States ports safer and more secure. Research conducted under this subsection may include—

“(A) methods or programs to increase the ability to target for inspection vessels, cargo, crewmembers, or passengers that will arrive or have arrived at any port or place in the United States;

“(B) equipment to detect accurately explosives, chemical, or biological agents that could be used to commit terrorist acts against the United States;

“(C) equipment to detect accurately nuclear or radiological materials, including scintillation-based detection equipment capable of signalling the presence of nuclear or radiological materials;

“(D) improved tags and seals designed for use on shipping containers to track the transportation of the merchandise in such containers, including ‘smart sensors’ that are able to track a container throughout its entire supply chain, detect hazardous and radioactive materials within that container, and transmit that information to the appropriate law enforcement authorities;

“(E) tools, including the use of satellite tracking systems, to increase the awareness of maritime areas and to identify potential terrorist threats that could have an impact on facilities, vessels, and infrastructure on or adjacent to navigable waterways, including underwater access;

“(F) tools to mitigate the consequences of a terrorist act on, adjacent to, or under navigable waters of the United States, including sensor equipment, and other tools to help coordinate effective response to a terrorist action;

“(G) applications to apply existing technologies from other areas or industries to increase overall port security; and

“(H) improved container design, including blast-resistant containers.

“(2) *IMPLEMENTATION OF TECHNOLOGY.*—

“(A) *IN GENERAL.*—In conjunction with ongoing efforts to improve security at United States ports, the Director of the Science and Technology Directorate, in consultation with other Department of Homeland Security agencies with responsibility for port security, may conduct pilot projects at United States ports to test the effectiveness and applicability of new port security projects, including—

“(i) testing of new detection and screening technologies;

“(ii) projects to protect United States ports and infrastructure on or adjacent to the navigable waters of the United States, including underwater access; and

“(iii) tools for responding to a terrorist threat or incident at United States ports and infrastructure on or adjacent to the navigable waters of the United States, including underwater access.

“(B) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated to the

Secretary of Homeland Security \$35,000,000 for each of fiscal years 2005 through 2009 to carry out pilot projects under subparagraph (A).

“(3) *ADMINISTRATIVE PROVISIONS.*—

“(A) *NO DUPLICATION OF EFFORT.*—Before making any grant, the Secretary of Homeland Security shall coordinate with other Federal agencies to ensure the grant will not be used for research and development that is already being conducted with Federal funding.

“(B) *ACCOUNTING.*—The Secretary of Homeland Security shall by regulation establish accounting, reporting, and review procedures to ensure that funds made available under paragraph (1) are used for the purpose for which they were made available, that all expenditures are properly accounted for, and that amounts not used for such purposes and amounts not expended are recovered.

“(C) *RECORDKEEPING.*—Recipients of grants shall keep all records related to expenditures and obligations of funds provided under paragraph (1) and make them available upon request to the Inspector General of the Department of Homeland Security and the Secretary of Homeland Security for audit and examination.”.

(b) *ANNUAL REPORT.*—Within 30 days after the beginning of each fiscal year from fiscal year 2005 through fiscal year 2009, the Director of the Science and Technology Directorate shall submit a report describing its research that can be applied to port security to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Science, and the House of Representatives Select Committee on Homeland Security. The report shall—

(1) describe any port security-related research, including grants and pilot projects, that were conducted in the preceding fiscal year;

(2) describe the amount of Department of Homeland Security resources dedicated to research that can be applied to port security;

(3) describe the steps taken to coordinate with other agencies within the Department to ensure that research efforts are coordinated with port security efforts;

(4) describe how the results of the Department’s research, as well as port security related research of the Department of Defense, will be implemented in the field, including predicted timetables;

(5) lay out the plans for research in the current fiscal year; and

(6) include a description of the funding levels for the research in the preceding, current, and next fiscal years.

#### SEC. 10. NUCLEAR FACILITIES IN MARITIME AREAS.

(a) *WATERWAYS.*—Section 70103(b) is amended by adding at the end thereof the following:

“(5) *WATERWAYS LOCATED NEAR NUCLEAR FACILITIES.*—

“(A) *IDENTIFICATION AND SECURITY EVALUATION.*—The Secretary shall—

“(i) identify all nuclear facilities on, adjacent to, or in close proximity to navigable waterways that might be damaged by a transportation security incident; and

“(ii) in coordination with the Secretary of Energy, evaluate the security plans of each such nuclear facility for its adequacy to protect the facility from damage or disruption from a transportation security incident originating in the navigable waterway, including threats posed by navigation, underwater access, and the introduction of harmful substances into water coolant systems.

“(B) *RECTIFICATION OF DEFICIENCIES.*—The Secretary, in coordination with the Secretary of Energy, shall take such steps as may be necessary or appropriate to correct any deficiencies in security identified in the evaluations conducted under subparagraph (A).

“(C) *REPORT.*—As soon as practicable after completion of the evaluation under subparagraph (A), the Secretary shall transmit a report, in both classified and redacted format, to the Senate Committee on Commerce, Science, and

Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Select Committee on Homeland Security—

“(i) describing the results of the identification and evaluation required by subparagraph (A);

“(ii) describing the actions taken under subparagraph (B); and

“(iii) evaluating the technology utilized in the protection of nuclear facilities (including any such technology under development).”.

(b) *VESSELS.*—Section 70103(c)(3) of title 46, United States Code, is amended—

(1) by striking “and” after the semicolon in subparagraph (F);

(2) by striking “facility.” in subparagraph (G) and inserting “facility; and”; and

(3) by adding at the end the following:

“(H) establish a requirement, coordinated with the Department of Energy, for criminal background checks of all United States and foreign seamen employed on vessels transporting nuclear materials in the navigable waters of the United States.”.

#### SEC. 11. TRANSPORTATION WORKER BACKGROUND INVESTIGATION PROGRAMS.

Within 120 days after the date of enactment of this Act, the Secretary of Homeland Security, after consultation with the Secretary of Transportation, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure—

(1) making recommendations (including legislative recommendations, if appropriate or necessary) for harmonizing, combining, or coordinating requirements, procedures, and programs for conducting background checks under section 70105 of title 46, United States Code, section 5103a(c) of title 49, United States Code, section 44936 of title 49, United States Code, and other provisions of Federal law or regulations requiring background checks for individuals engaged in transportation or transportation-related activities;

(2) setting forth a detailed timeline for implementation of such harmonization, combination, or coordination;

(3) setting forth a plan with a detailed timeline for the implementation of the Transportation Worker Identification Credential in seaports;

(4) making recommendations for a waiver and appeals process for issuing a transportation security card to an individual found otherwise ineligible for such a card under section 70105(c)(2) and (3) of title 46, United States Code, along with recommendations on the appropriate level of funding for such a process; and

(5) making recommendations for how information collected through the Transportation Worker Identification Credential program may be shared with port officials, terminal operators, and other officials responsible for maintaining access control while also protecting workers’ privacy.

#### SEC. 12. REPORT ON CRUISE SHIP SECURITY.

(a) *IN GENERAL.*—Not later than 120 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report on the security of ships and facilities used in the cruise line industry.

(b) *CONTENT.*—The report required by subsection (a) shall include an assessment of security measures employed by the cruise line industry, including the following:

(1) An assessment of the security of cruise ships that originate at ports in foreign countries.

(2) An assessment of the security of ports utilized for cruise ship docking.

(3) The costs incurred by the cruise line industry to carry out the measures required by the

*Maritime Transportation Security Act of 2002 (Public Law 107-295; 116 Stat. 2064) and the amendments made by that Act.*

(4) *The costs of employing canine units and hand-held explosive detection wands at ports, including the costs of screening passengers and baggage with such methods.*

(5) *An assessment of security measures taken by the Secretary of Homeland Security to increase the security of the cruise line industry and the costs incurred to carry out such security measures.*

(6) *A description of the need for and the feasibility of deploying explosive detection systems and canine units at ports used by cruise ships and an assessment of the cost of such deployment.*

(7) *A summary of the fees paid by passengers of cruise ships that are used for inspections and the feasibility of creating a dedicated passenger vessel security fund from such fees.*

(8) *The recommendations of the Secretary, if any, for measures that should be carried out to improve security of cruise ships that originate at ports in foreign countries.*

(9) *The recommendations of the Secretary, if any, on the deployment of further measures to improve the security of cruise ships, including explosive detection systems, canine units, and the use of technology to improve baggage screening, and an assessment of the cost of implementing such measures.*

### **SEC. 13. REPORT ON DESIGN OF MARITIME SECURITY GRANT PROGRAMS.**

*Within 90 days after the date of enactment of this Act, the Secretary of Homeland Security shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the design of maritime security grant programs that includes recommendations on—*

(1) *whether the grant programs should be discretionary or formula based and why;*

(2) *requirements for ensuring that Federal funds will not be substituted for grantee funds;*

(3) *targeting requirements to ensure that funding is directed in a manner that reflects a national, risk-based perspective on priority needs, the fiscal capacity of recipients to fund the improvements without grant funds, and an explicit analysis of the impact of minimum funding to small ports that could affect funding available for the most strategic or economically important ports; and*

(4) *matching requirements to ensure that Federal funds provide an incentive to grantees for the investment of their own funds in the improvements financed in part by Federal funds.*

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Hollings amendment at the desk be agreed to, the Committee-reported substitute, as amended, be agreed to, the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD as if read.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 3669) was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 2279), as amended, was read the third time and passed, as follows:

S. 2279

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

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

(a) **SHORT TITLE.**—This Act may be cited as the "Maritime Transportation Security Act of 2004".

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

- Sec. 1. Short title; table of contents
- Sec. 2. Enforcement; pier and wharf security costs.
- Sec. 3. Security at foreign ports.
- Sec. 4. Federal and State commercial maritime transportation training.
- Sec. 5. Transportation worker background investigation programs.
- Sec. 6. Report on cruise ship security.
- Sec. 7. Maritime transportation security plan grants.
- Sec. 8. Report on design of maritime security grant programs.

### **SEC. 2. ENFORCEMENT; PIER AND WHARF SECURITY COSTS.**

(a) **IN GENERAL.**—Chapter 701 of title 46, United States Code, is amended—

(1) by redesignating the second section 70118 (relating to firearms, arrests, and seizure of property), as added by section 801(a) of the Coast Guard and Maritime Transportation Act of 2004, as section 70119;

(2) by redesignating the first section 70119 (relating to enforcement by State and local officers), as added by section 801(a) of the Coast Guard and Maritime Transportation Act of 2004, as section 70120;

(3) by redesignating the second section 70119 (relating to civil penalty), as redesignated by section 802(a)(1) of the Coast Guard and Maritime Transportation Act of 2004, as section 70123; and

(4) by inserting after section 70120 the following:

#### **"§ 70121. Enforcement by injunction or withholding of clearance**

"(a) **INJUNCTION.**—The United States district courts shall have jurisdiction to restrain violations of this chapter or of regulations issued hereunder, for cause shown.

"(b) **WITHHOLDING OF CLEARANCE.**—

"(1) If any owner, agent, master, officer, or person in charge of a vessel is liable for a penalty or fine under section 70119, or if reasonable cause exists to believe that the owner, agent, master, officer, or person in charge may be subject to a penalty under section 70119, the Secretary may, with respect to such vessel, refuse or revoke any clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91).

"(2) Clearance refused or revoked under this subsection may be granted upon filing of a bond or other surety satisfactory to the Secretary.

#### **"§ 70122. Security of piers and wharfs**

"(a) **IN GENERAL.**—Notwithstanding any other provision of law, the Secretary shall require any uncleared, imported merchandise remaining on the wharf or pier onto which it was unladen for more than 7 calendar days, not including any time the imported merchandise was held in federal custody, to be removed from the wharf or pier and deposited in the public stores or a general order warehouse, where it shall be inspected for determination of contents, and thereafter a permit for its delivery may be granted.

"(b) **PENALTY.**—The Secretary may impose an administrative penalty of \$5,000 on the consignee for each bill of lading for general order merchandise remaining on a wharf or pier in violation of subsection (a), except that no penalty shall be imposed if the violation was a result of force majeure."

(b) **CONFORMING AMENDMENTS.**—

(1) The chapter analysis for chapter 701 of title 46, United States Code, is amended by

striking the items following the item relating to section 70116 and inserting the following:

- "70117. In rem liability for civil penalties and certain costs
- "70118. Withholding of clearance
- "70119. Firearms, arrests, and seizure of property
- "70120. Enforcement by State and local officers
- "70121. Enforcement by injunction or withholding of clearance
- "70122. Security of piers and wharfs
- "70123. Civil penalty"

(2) Section 70117(a) of title 46, United States Code, is amended by striking "section 70120" and inserting "section 70123".

(3) Section 70118(a) of such title is amended by striking "under section 70120," and inserting "under that section."

### **SEC. 3. SECURITY AT FOREIGN PORTS.**

(a) **IN GENERAL.**—Section 70109 of title 46, United States Code, is amended—

(1) by striking "The Secretary," in subsection (b) and inserting "The Administrator of the Maritime Administration,"; and

(2) by adding at the end the following:

"(c) **FOREIGN ASSISTANCE PROGRAMS.**—The Administrator of the Maritime Administration, in coordination with the Secretary of State, shall identify foreign assistance programs that could facilitate implementation of port security antiterrorism measures in foreign countries. The Administrator and the Secretary shall establish a program to utilize those programs that are capable of implementing port security antiterrorism measures at ports in foreign countries that the Secretary finds, under section 70108, to lack effective antiterrorism measures."

(b) **REPORT ON SECURITY AT PORTS IN THE CARIBBEAN BASIN.**—Not later than 60 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committee on Commerce, Science, and Transportation of the Senate and Committee on Transportation and Infrastructure of the House of Representatives a report on the security of ports in the Caribbean Basin. The report shall include the following:

(1) An assessment of the effectiveness of the measures employed to improve security at ports in the Caribbean Basin and recommendations for any additional measures to improve such security.

(2) An estimate of the number of ports in the Caribbean Basin that will not be secured by July 2004, and an estimate of the financial impact in the United States of any action taken pursuant to section 70110 of title 46, United States Code, that affects trade between such ports and the United States.

(3) An assessment of the additional resources and program changes that are necessary to maximize security at ports in the Caribbean Basin.

### **SEC. 4. FEDERAL AND STATE COMMERCIAL MARITIME TRANSPORTATION TRAINING.**

Section 109 of the Maritime Transportation Security Act of 2002 (46 U.S.C. 70101 note) is amended—

(1) by redesignating subsections (c) through (f) as subsections (d) through (g), respectively; and

(2) by inserting after subsection (b) the following:

"(c) **FEDERAL AND STATE COMMERCIAL MARITIME TRANSPORTATION TRAINING.**—The Secretary of Transportation shall establish a curriculum, to be incorporated into the curriculum developed under subsection (a)(1), to educate and instruct Federal and State officials on commercial maritime and intermodal transportation. The curriculum shall be designed to familiarize those officials with commercial maritime transportation in



order to facilitate performance of their commercial maritime and intermodal transportation security responsibilities. In developing the standards for the curriculum, the Secretary shall consult with each agency in the Department of Homeland Security with maritime security responsibilities to determine areas of educational need. The Secretary shall also coordinate with the Federal Law Enforcement Training Center in the development of the curriculum and the provision of training opportunities for Federal and State law enforcement officials at appropriate law enforcement training facilities.”.

#### SEC. 5. TRANSPORTATION WORKER BACKGROUND INVESTIGATION PROGRAMS.

Within 120 days after the date of enactment of this Act, the Secretary of Homeland Security, after consultation with the Secretary of Transportation, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure—

(1) making recommendations (including legislative recommendations, if appropriate or necessary) for harmonizing, combining, or coordinating requirements, procedures, and programs for conducting background checks under section 70105 of title 46, United States Code, section 5103a(c) of title 49, United States Code, section 44936 of title 49, United States Code, and other provisions of Federal law or regulations requiring background checks for individuals engaged in transportation or transportation-related activities;

(2) setting forth a detailed timeline for implementation of such harmonization, combination, or coordination;

(3) setting forth a plan with a detailed timeline for the implementation of the Transportation Worker Identification Credential in seaports;

(4) making recommendations for a waiver and appeals process for issuing a transportation security card to an individual found otherwise ineligible for such a card under section 70105(c)(2) and (3) of title 46, United States Code, along with recommendations on the appropriate level of funding for such a process; and

(5) making recommendations for how information collected through the Transportation Worker Identification Credential program may be shared with port officials, terminal operators, and other officials responsible for maintaining access control while also protecting workers' privacy.

#### SEC. 6. REPORT ON CRUISE SHIP SECURITY.

(a) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report on the security of ships and facilities used in the cruise line industry.

(b) CONTENT.—The report required by subsection (a) shall include an assessment of security measures employed by the cruise line industry, including the following:

(1) An assessment of the security of cruise ships that originate at ports in foreign countries.

(2) An assessment of the security of ports utilized for cruise ship docking.

(3) The costs incurred by the cruise line industry to carry out the measures required by the Maritime Transportation Security Act of 2002 (Public Law 107-295; 116 Stat. 2064) and the amendments made by that Act.

(4) The costs of employing canine units and hand-held explosive detection wands at ports, including the costs of screening passengers and baggage with such methods.

(5) An assessment of security measures taken by the Secretary of Homeland Security to increase the security of the cruise line industry and the costs incurred to carry out such security measures.

(6) A description of the need for and the feasibility of deploying explosive detection systems and canine units at ports used by cruise ships and an assessment of the cost of such deployment.

(7) A summary of the fees paid by passengers of cruise ships that are used for inspections and the feasibility of creating a dedicated passenger vessel security fund from such fees.

(8) The recommendations of the Secretary, if any, for measures that should be carried out to improve security of cruise ships that originate at ports in foreign countries.

(9) The recommendations of the Secretary, if any, on the deployment of further measures to improve the security of cruise ships, including explosive detection systems, canine units, and the use of technology to improve baggage screening, and an assessment of the cost of implementing such measures.

#### SEC. 7. MARITIME TRANSPORTATION SECURITY PLAN GRANTS.

Section 70107(a) of title 46, United States Code, is amended to read as follows:

“(a) IN GENERAL.—The Under Secretary of Homeland Security for Border and Transportation Security shall establish a grant program for making a fair and equitable allocation of funds to implement Area Maritime Transportation Security Plans and to help fund compliance with Federal security plans among port authorities, facility operators, and State and local agencies required to provide security services. Grants shall be made on the basis of threat-based risk assessments subject to review and comment by the appropriate Federal Maritime Security Coordinators and the Maritime Administration. The grant program shall take into account national security priorities, national economic, and strategic defense concerns and shall be coordinated with the Director of the Office of Domestic Preparedness to ensure that the grant process is consistent with other Department of Homeland Security grant programs.”.

#### SEC. 8. REPORT ON DESIGN OF MARITIME SECURITY GRANT PROGRAMS.

Within 90 days after the date of enactment of this Act, the Secretary of Homeland Security shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the design of maritime security grant programs that includes recommendations on—

(1) whether the grant programs should be discretionary or formula based and why;

(2) requirements for ensuring that Federal funds will not be substituted for grantee funds;

(3) targeting requirements to ensure that funding is directed in a manner that reflects a national, risk-based perspective on priority needs, the fiscal capacity of recipients to fund the improvements without grant funds, and an explicit analysis of the impact of minimum funding to small ports that could affect funding available for the most strategic or economically important ports; and

(4) matching requirements to ensure that Federal funds provide an incentive to grantees for the investment of their own funds in the improvements financed in part by Federal funds.

#### UNANIMOUS CONSENT AGREEMENT—H.R. 1350

Mr. McCONNELL. Mr. President, I ask unanimous consent that when the

Senate receives the House message to accompany H.R. 1350, the IDEA reauthorization bill, if the House amends the Senate amendment, the Senate disagree with the House amendment or insist upon its amendment, as is appropriate, and request a conference with the House on the disagreeing votes of the two Houses; provided, alternatively, that if the House requests a conference, the Senate agree to the request for a conference, and in either case the Chair be authorized to appoint conferees with a ratio of 11 to 10.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, this is the way we should proceed. This is excellent. I have confidence in Judd Gregg, the chairman of the committee. I don't agree with him lots of times, but he is a man who believes in the procedures we have established here many years ago. I am confident this will be a very successful conference.

Mr. McCONNELL. Mr. President, I, too, am pleased that we have been able to finally get to conference on IDEA. We hope the conferees will be successful shortly.

Mr. KENNEDY. Mr. President, I am pleased that we are going to conference on the reauthorization of the Individuals with Disabilities Education Act. This is the landmark Federal law that sets national standards for special education, and defines the rights of children with disabilities in our public schools.

We have ahead of us the key challenge of modernizing this important law to meet today's demands and to ensure that the rights of children with special needs truly are protected. Disabled does not mean unable. We must do everything possible to ensure that children with disabilities have the same opportunities to learn as other children.

I want to thank our committee chairman, Senator GREGG, for his leadership in guiding through the Senate a strong bipartisan bill to meet that challenge. I look forward to working closely with him, Chairman JOHN BOEHNER, Congressman GEORGE MILLER, and our other colleagues on the committee to produce a final bill that parents can support and that will enjoy bipartisan support.

#### UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. McCONNELL. Mr. President, as in executive session, I ask unanimous consent that on Wednesday, immediately following morning business, the Senate proceed to executive session to consider the following nomination on today's Executive Calendar:

PORTER GOSS to be Director of Central Intelligence.

I further ask unanimous consent that there be 6 hours of debate, equally divided between the chairman and vice chairman or their designees; provided further that upon the use or yielding