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H. R. 875

One Hundred Fourteenth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the fourth day of January, two thousand and sixteen

An Act

To provide for alternative financing arrangements for the provision of certain services and the construction and maintenance of infrastructure at land border ports of entry, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Cross-Border Trade Enhancement Act of 2016".

SEC. 2. PUBLIC-PRIVATE PARTNERSHIPS.

(a) IN GENERAL.—Title IV of the Homeland Security Act of 2002 (6 U.S.C. 202 et seq.) is amended by adding at the end the following:

"Subtitle G—U.S. Customs and Border Protection Public Private Partnerships

"SEC. 481. FEE AGREEMENTS FOR CERTAIN SERVICES AT PORTS OF ENTRY.

"(a) IN GENERAL.—Notwithstanding section 13031(e) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)) and section 451 of the Tariff Act of 1930 (19 U.S.C. 1451), the Commissioner of U.S. Customs and Border Protection, upon the request of any entity, may enter into a fee agreement with such entity under which—

"(1) U.S. Customs and Border Protection shall provide services described in subsection (b) at a United States port of entry or any other facility at which U.S. Customs and Border Protection provides or will provide such services;

"(2) such entity shall remit to U.S. Customs and Border Protection a fee imposed under subsection (h) in an amount equal to the full costs that are incurred or will be incurred in providing such services; and

"(3) if space is provided by such entity, each facility at which U.S. Customs and Border Protection services are performed shall be maintained and equipped by such entity, without cost to the Federal Government, in accordance with U.S. Customs and Border Protection specifications.

"(b) SERVICES DESCRIBED.—The services described in this subsection are any activities of any employee or Office of Field Operations contractor of U.S. Customs and Border Protection (except employees of the U.S. Border Patrol, as established under section

411(e)) pertaining to, or in support of, customs, agricultural processing, border security, or immigration inspection-related matters at a port of entry or any other facility at which U.S. Customs and Border Protection provides or will provide services.

"(c) MODIFICATION OF PRIOR AGREEMENTS.—The Commissioner of U.S. Customs and Border Protection, at the request of an entity who has previously entered into an agreement with U.S. Customs and Border Protection for the reimbursement of fees in effect on the date of enactment of this section, may modify such agreement to implement any provisions of this section.

"(d) LIMITATIONS.—

"(1) IMPACTS OF SERVICES.—The Commissioner of U.S. Customs and Border Protection—

"(A) may enter into fee agreements under this section only for services that—

"(i) will increase or enhance the operational capacity of U.S. Customs and Border Protection based on available staffing and workload; and

"(ii) will not shift the cost of services funded in any appropriations Act, or provided from any account in the Treasury of the United States derived by the collection of fees, to entities under this Act; and

"(B) may not enter into a fee agreement under this section if such agreement would unduly and permanently impact services funded in any appropriations Act, or provided from any account in the Treasury of the United States, derived by the collection of fees.

"(2) NUMBER.—There shall be no limit to the number of fee agreements that the Commissioner of U.S. Customs and Border Protection may enter into under this section.

"(e) AIR PORTS OF ENTRY.—

"(1) FEE AGREEMENT.—Except as otherwise provided in this subsection, a fee agreement for U.S. Customs and Border Protection services at an air port of entry may only provide for the payment of overtime costs of U.S. Customs and Border Protection officers and salaries and expenses of U.S. Customs and Border Protection employees to support U.S. Customs and Border Protection officers in performing services described in subsection (b).

"(2) SMALL AIRPORTS.—Notwithstanding paragraph (1), U.S. Customs and Border Protection may receive reimbursement in addition to overtime costs if the fee agreement is for services at an air port of entry that has fewer than 100,000 arriving international passengers annually.

"(3) COVERED SERVICES.—In addition to costs described in paragraph (1), a fee agreement for U.S. Customs and Border Protection services at an air port of entry referred to in paragraph (2) may provide for the reimbursement of—

"(A) salaries and expenses of not more than five full-time equivalent U.S. Customs and Border Protection Officers beyond the number of such officers assigned to the port of entry on the date on which the fee agreement was signed;

"(B) salaries and expenses of employees of U.S. Customs and Border Protection, other than the officers referred to in subparagraph (A), to support U.S. Customs and

Border Protection officers in performing law enforcement functions; and

"(C) other costs incurred by U.S. Customs and Border Protection relating to services described in subparagraph (B), such as temporary placement or permanent relocation of employees, including incentive pay for relocation, as appropriate.

"(f) PORT OF ENTRY SIZE.—The Commissioner of U.S. Customs and Border Protection shall ensure that each fee agreement proposal is given equal consideration regardless of the size of the port of entry.

"(g) DENIED APPLICATION.—

"(1) IN GENERAL.—If the Commissioner of U.S. Customs and Border Protection denies a proposal for a fee agreement under this section, the Commissioner shall provide the entity submitting such proposal with the reason for the denial unless—

"(A) the reason for the denial is law enforcement sensitive; or

"(B) withholding the reason for the denial is in the national security interests of the United States.

"(2) JUDICIAL REVIEW.—Decisions of the Commissioner of U.S. Customs and Border Protection under paragraph (1) are in the discretion of the Commissioner and are not subject to judicial review.

"(h) FEE.—

"(1) IN GENERAL.—The amount of the fee to be charged under an agreement authorized under subsection (a) shall be paid by each entity requesting U.S. Customs and Border Protection services, and shall be for the full cost of providing such services, including the salaries and expenses of employees and contractors of U.S. Customs and Border Protection, to provide such services and other costs incurred by U.S. Customs and Border Protection relating to such services, such as temporary placement or permanent relocation of such employees and contractors.

"(2) TIMING.—The Commissioner of U.S. Customs and Border Protection may require that the fee referred to in paragraph (1) be paid by each entity that has entered into a fee agreement under subsection (a) with U.S. Customs and Border Protection in advance of the performance of U.S. Customs and Border Protection services.

"(3) OVERSIGHT OF FEES.—The Commissioner of U.S. Customs and Border Protection shall develop a process to oversee the services for which fees are charged pursuant to an agreement under subsection (a), including—

"(A) a determination and report on the full costs of providing such services, and a process for increasing such fees, as necessary;

"(B) the establishment of a periodic remittance schedule to replenish appropriations, accounts, or funds, as necessary; and

"(C) the identification of costs paid by such fees.

"(i) DEPOSIT OF FUNDS.—

"(1) ACCOUNT.—Funds collected pursuant to any agreement entered into pursuant to subsection (a)—

"(A) shall be deposited as offsetting collections;

"(B) shall remain available until expended without fiscal year limitation; and

"(C) shall be credited to the applicable appropriation, account, or fund for the amount paid out of such appropriation, account, or fund for any expenses incurred or to be incurred by U.S. Customs and Border Protection in providing U.S. Customs and Border Protection services under any such agreement and any other costs incurred or to be incurred by U.S. Customs and Border Protection relating to such services.

"(2) RETURN OF UNUSED FUNDS.—The Commissioner of U.S. Customs and Border Protection shall return any unused funds collected and deposited into the account described in paragraph (1) if a fee agreement entered into pursuant to subsection (a) is terminated for any reason or the terms of such fee agreement change by mutual agreement to cause a reduction of U.S. Customs and Border Protections services. No interest shall be owed upon the return of any such unused funds.

"(j) TERMINATION.—

"(1) IN GENERAL.—The Commissioner of U.S. Customs and Border Protection shall terminate the services provided pursuant to a fee agreement entered into under subsection (a) with an entity that, after receiving notice from the Commissioner that a fee under subsection (h) is due, fails to pay such fee in a timely manner. If such services are terminated, all costs incurred by U.S. Customs and Border Protection that have not been paid shall become immediately due and payable. Interest on unpaid fees shall accrue based on the rate and amount established under sections 6621 and 6622 of the Internal Revenue Code of 1986.

"(2) PENALTY.—Any entity that, after notice and demand for payment of any fee under subsection (h), fails to pay such fee in a timely manner shall be liable for a penalty or liquidated damage equal to two times the amount of such fee. Any such amount collected under this paragraph shall be deposited into the appropriate account specified under subsection (i) and shall be available as described in such subsection.

"(3) TERMINATION BY THE ENTITY.—Any entity who has previously entered into an agreement with U.S. Customs and Border Protection for the reimbursement of fees in effect on the date of enactment of this section, or under the provisions of this section, may request that such agreement be amended to provide for termination upon advance notice, length, and terms that are negotiated between such entity and U.S. Customs and Border Protection.

"(k) ANNUAL REPORT.—The Commissioner of U.S. Customs and Border Protection shall—

"(1) submit an annual report identifying the activities undertaken and the agreements entered into pursuant to this section to—

"(A) the Committee on Appropriations of the Senate;

"(B) the Committee on Finance of the Senate;

"(C) the Committee on Homeland Security and Governmental Affairs of the Senate;

"(D) the Committee on the Judiciary of the Senate;

"(E) the Committee on Appropriations of the House of Representatives;

"(F) the Committee on Homeland Security of the House of Representatives;

"(G) the Committee on the Judiciary of the House of Representatives; and

"(H) the Committee on Ways and Means of the House of Representatives; and

"(2) not later than 15 days before entering into a fee agreement, notify the members of Congress that represent the State or Congressional District in which the affected port of entry or facility is located of such agreement.

"(l) RULE OF CONSTRUCTION.—Nothing in this section may be construed as imposing on U.S. Customs and Border Protection any responsibilities, duties, or authorities relating to real property.

"SEC. 482. PORT OF ENTRY DONATION AUTHORITY.

"(a) PERSONAL PROPERTY DONATION AUTHORITY.—

"(1) IN GENERAL.—The Commissioner of U.S. Customs and Border Protection, in consultation with the Administrator of General Services, may enter into an agreement with any entity to accept a donation of personal property, money, or nonpersonal services for the uses described in paragraph (3) only with respect to the following locations at which U.S. Customs and Border Protection performs or will be performing inspection services:

"(A) A new or existing sea or air port of entry.

"(B) An existing Federal Government-owned land port of entry.

"(C) A new Federal Government-owned land port of entry if—

"(i) the fair market value of the donation is $50,000,000 or less; and

"(ii) the fair market value, including any personal and real property donations in total, of such port of entry when completed, is $50,000,000 or less.

"(2) LIMITATION ON MONETARY DONATIONS.—Any monetary donation accepted pursuant to this subsection may not be used to pay the salaries of U.S. Customs and Border Protection employees performing inspection services.

"(3) USES.—Donations accepted pursuant to this subsection may be used for activities of the Office of Field Operations set forth in subparagraphs (A) through (F) of section 411(g)(3), which are related to a new or existing sea or air port of entry or a new or existing Federal Government-owned land port of entry described in paragraph (1), including expenses related to—

"(A) furniture, fixtures, equipment, or technology, including the installation or deployment of such items; and

"(B) the operation and maintenance of such furniture, fixtures, equipment, or technology.

"(b) REAL PROPERTY DONATION AUTHORITY.—

"(1) IN GENERAL.—Subject to paragraph (3), the Commissioner of U.S. Customs and Border Protection, and the Administrator of the General Services Administration, as applicable, may enter into an agreement with any entity to accept a donation of real property or money for uses described in paragraph (2) only with respect to the following locations at which

U.S. Customs and Border Protection performs or will be performing inspection services:

"(A) A new or existing sea or air port of entry.

"(B) An existing Federal Government-owned land port of entry.

"(C) A new Federal Government-owned land port of entry if—

"(i) the fair market value of the donation is $50,000,000 or less; and

"(ii) the fair market value, including any personal and real property donations in total, of such port of entry when completed, is $50,000,000 or less.

"(2) USE.—Donations accepted pursuant to this subsection may be used for activities of the Office of Field Operations set forth in section 411(g), which are related to the construction, alteration, operation, or maintenance of a new or existing sea or air port of entry or a new or existing a Federal Government-owned land port of entry described in paragraph (1), including expenses related to—

"(A) land acquisition, design, construction, repair, or alteration; and

"(B) operation and maintenance of such port of entry facility.

"(3) LIMITATION ON REAL PROPERTY DONATIONS.—A donation of real property under this subsection at an existing land port of entry owned by the General Services Administration may only be accepted by the Administrator of General Services.

"(4) SUNSET.—

"(A) IN GENERAL.—The authority to enter into an agreement under this subsection shall terminate on the date that is 4 years after the date of the enactment of this section.

"(B) RULE OF CONSTRUCTION.—The termination date referred to in subparagraph (A) shall not apply to carrying out the terms of an agreement under this subsection if such agreement is entered into before such termination date.

"(c) GENERAL PROVISIONS.—

"(1) DURATION.—An agreement entered into under subsection (a) or (b) (and, in the case of such subsection (b), in accordance with paragraph (4) of such subsection) may last as long as required to meet the terms of such agreement.

"(2) CRITERIA.—In carrying out an agreement entered into under subsection (a) or (b), the Commissioner of U.S. Customs and Border Protection, in consultation with the Administrator of General Services, shall establish criteria regarding—

"(A) the selection and evaluation of donors;

"(B) the identification of roles and responsibilities between U.S. Customs and Border Protection, the General Services Administration, and donors;

"(C) the identification, allocation, and management of explicit and implicit risks of partnering between the Federal Government and donors;

"(D) decision-making and dispute resolution processes; and

"(E) processes for U.S. Customs and Border Protection, and the General Services Administration, as applicable,

to terminate agreements if selected donors are not meeting the terms of any such agreement, including the security standards established by U.S. Customs and Border Protection.

"(3) EVALUATION PROCEDURES.—

"(A) IN GENERAL.—The Commissioner of U.S. Customs and Border Protection, in consultation with the Administrator of General Services, as applicable, shall—

"(i) establish criteria for evaluating a proposal to enter into an agreement under subsection (a) or (b); and

"(ii) make such criteria publicly available.

"(B) CONSIDERATIONS.—Criteria established pursuant to subparagraph (A) shall consider—

"(i) the impact of a proposal referred to in such subparagraph on the land, sea, or air port of entry at issue and other ports of entry or similar facilities or other infrastructure near the location of the proposed donation;

"(ii) such proposal's potential to increase trade and travel efficiency through added capacity;

"(iii) such proposal's potential to enhance the security of the port of entry at issue;

"(iv) the impact of the proposal on reducing wait times at that port of entry or facility and other ports of entry on the same border;

"(v) for a donation under subsection (b)—

"(I) whether such donation satisfies the requirements of such proposal, or whether additional real property would be required; and

"(II) how such donation was acquired, including if eminent domain was used;

"(vi) the funding available to complete the intended use of such donation;

"(vii) the costs of maintaining and operating such donation;

"(viii) the impact of such proposal on U.S. Customs and Border Protection staffing requirements; and

"(ix) other factors that the Commissioner or Administrator determines to be relevant.

"(C) DETERMINATION AND NOTIFICATION.—

"(i) INCOMPLETE PROPOSALS.—

"(I) IN GENERAL.—Not later than 60 days after receiving the proposals for a donation agreement from an entity, the Commissioner of U.S. Customs and Border Protection shall notify such entity as to whether such proposal is complete or incomplete.

"(II) RESUBMISSION.—If the Commissioner of U.S. Customs and Border Protection determines that a proposal is incomplete, the Commissioner shall—

"(aa) notify the appropriate entity and provide such entity with a description of all information or material that is needed to complete review of the proposal; and

"(bb) allow the entity to resubmit the proposal with additional information and material described in item (aa) to complete the proposal.

"(ii) COMPLETE PROPOSALS.—Not later than 180 days after receiving a completed proposal to enter into an agreement under subsection (a) or (b), the Commissioner of U.S. Customs and Border Protection, with the concurrence of the Administrator of General Services, as applicable, shall—

"(I) determine whether to approve or deny such proposal; and

"(II) notify the entity that submitted such proposal of such determination.

"(4) SUPPLEMENTAL FUNDING.—Except as required under section 3307 of title 40, United States Code, real property donations to the Administrator of General Services made pursuant to subsection (a) and (b) at a GSA-owned land port of entry may be used in addition to any other funding for such purpose, including appropriated funds, property, or services.

"(5) RETURN OF DONATIONS.—The Commissioner of U.S. Customs and Border Protection, or the Administrator of General Services, as applicable, may return any donation made pursuant to subsection (a) or (b). No interest shall be owed to the donor with respect to any donation provided under such subsections that is returned pursuant to this subsection.

"(6) PROHIBITION ON CERTAIN FUNDING.—

"(A) IN GENERAL.—Except as provided in subsections (a) and (b) regarding the acceptance of donations, the Commissioner of U.S. Customs and Border Protection and the Administrator of General Services, as applicable, may not, with respect to an agreement entered into under either of such subsections, obligate or expend amounts in excess of amounts that have been appropriated pursuant to any appropriations Act for purposes specified in either of such subsections or otherwise made available for any of such purposes.

"(B) CERTIFICATION REQUIREMENT.—Before accepting any donations pursuant to an agreement under subsection (a) or (b), the Commissioner of U.S. Customs and Border Protection shall certify to the congressional committees set forth in paragraph (7) that the donation will not be used for the construction of a detention facility or a border fence or wall.

"(7) ANNUAL REPORTS.—The Commissioner of U.S. Customs and Border Protection, in collaboration with the Administrator of General Services, as applicable, shall submit an annual report identifying the activities undertaken and agreements entered into pursuant to subsections (a) and (b) to—

"(A) the Committee on Appropriations of the Senate;

"(B) the Committee on Environment and Public Works of the Senate;

"(C) the Committee on Finance of the Senate;

"(D) the Committee on Homeland Security and Governmental Affairs of the Senate;

"(E) the Committee on the Judiciary of the Senate;

"(F) the Committee on Appropriations of the House of Representatives;

"(G) the Committee on Homeland Security of the House of Representatives;

"(H) the Committee on the Judiciary of the House of Representatives;

"(I) the Committee on Transportation and Infrastructure of the House of Representatives; and

"(J) the Committee on Ways and Means of the House of Representatives.

"(d) GAO REPORT.—The Comptroller General of the United States shall submit an annual report to the congressional committees referred to in subsection (c)(7) that evaluates—

"(1) fee agreements entered into pursuant to section 481;

"(2) donation agreements entered into pursuant to subsections (a) and (b); and

"(3) the fees and donations received by U.S. Customs and Border Protection pursuant to such agreements.

"(e) JUDICIAL REVIEW.—Decisions of the Commissioner of U.S. Customs and Border Protection and the Administrator of the General Services Administration under this section regarding the acceptance of real or personal property are in the discretion of the Commissioner and the Administrator and are not subject to judicial review.

"(f) RULE OF CONSTRUCTION.—Except as otherwise provided in this section, nothing in this section may be construed as affecting in any manner the responsibilities, duties, or authorities of U.S. Customs and Border Protection or the General Services Administration.

"SEC. 483. CURRENT AND PROPOSED AGREEMENTS.

"Nothing in this subtitle or in section 4 of the Cross-Border Trade Enhancement Act of 2016 may be construed as affecting—

"(1) any agreement entered into pursuant to section 560 of division D of the Consolidated and Further Continuing Appropriations Act, 2013 (Public Law 113–6) or section 559 of title V of division F of the Consolidated Appropriations Act, 2014 (6 U.S.C. 211 note; Public Law 113–76), as in existence on the day before the date of the enactment of this subtitle, and any such agreement shall continue to have full force and effect on and after such date; or

"(2) a proposal accepted for consideration by U.S. Customs and Border Protection pursuant to such section 559, as in existence on the day before such date of enactment.

"SEC. 484. DEFINITIONS.

"In this subtitle:

"(1) DONOR.—The term 'donor' means any entity that is proposing to make a donation under this Act.

"(2) ENTITY.—The term 'entity' means any—

"(A) person;

"(B) partnership, corporation, trust, estate, cooperative, association, or any other organized group of persons;

"(C) Federal, State or local government (including any subdivision, agency or instrumentality thereof); or

"(D) any other private or governmental entity.".

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 is amended by adding at the end of the list of items relating to title IV the following:

"Subtitle G—U.S. Customs and Border Protection Public Private Partnerships

"Sec. 481. Fee agreements for certain services at ports of entry.
"Sec. 482. Port of entry donation authority.
"Sec. 483. Current and proposed agreements.
"Sec. 484. Definitions.".

SEC. 3. MODIFICATION OF EXISTING REPORTS TO CONGRESS.

Section 907(b) of the Trade Facilitation and Trade Enforcement Act of 2015 (Public Law 114–125) is amended—

(1) in paragraph (3), by striking "or" at the end;

(2) in paragraph (4), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(5) the program for entering into reimbursable fee agreements with U.S. Customs and Border Protection established under section 481 of the Homeland Security Act of 2002.".

SEC. 4. REPEALS.

(a) CONTRACT AUTHORITY.—Section 560 of division D of the Consolidated and Further Continuing Appropriations Act, 2013 (Public Law 113–6) is repealed.

(b) PARTNERSHIP PILOT PROGRAM.—Section 559 of division F of the Consolidated Appropriations Act, 2014 (6 U.S.C. 211 note; Public Law 113–76) is repealed.

SEC. 5. WAIVER OF POLYGRAPH EXAMINATION REQUIREMENT FOR CERTAIN LAW ENFORCEMENT APPLICANTS.

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

(1) in the matter preceding paragraph (1), by striking "The Secretary" and inserting the following:

"(a) IN GENERAL.—The Secretary";

(2) in subsection (a)(1), as redesignated, by inserting "(except as provided in subsection (b))" after "Border Protection"; and

(3) by adding at the end the following:

"(b) WAIVER.—The Commissioner of U.S. Customs and Border Protection may waive the polygraph examination requirement under subsection (a)(1) for any applicant who—

"(1) is deemed suitable for employment;

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

"(3) has a current Single Scope Background Investigation;

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

"(5) is a veteran (as defined in section 2108 of title 5, United States Code).".

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.