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S.L.C.
John Cornyn

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BW

AMENDMENT NO. _____ Calendar No. _____

Purpose: To enhance cross border trade and travel at United States ports of entry.

IN THE SENATE OF THE UNITED STATES—114th Cong., 2d Sess.

H R 626

AMENDMENT N^o 3779

By Cornyn

To: Amor No 3679

to permanently
and for other

and

20
Page(s)

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CORNYN (for himself, Mr. FLAKE, Mr. HELLER, and Mr. MCCAIN) to the amendment (No. ~~3464~~) proposed by Mr. THUNE (for himself and Mr. NELSON) 3679

Viz:

1 At the appropriate place, insert the following:
2 **TITLE _____ —CROSS-BORDER**
3 **TRADE ENHANCEMENT ACT**
4 **OF 2016**

5 **SEC. _01. SHORT TITLE.**

6 This title may be cited as the “Cross-Border Trade
7 Enhancement Act of 2016”.

8 **SEC. _02. REPEAL AND TRANSITION PROVISION.**

9 (a) REPEAL.—Subject to subsections (b) and (c), sec-
10 tion 560 of the Department of Homeland Security Appro-

1 priations Act, 2013 (division D of Public Law 113–6; 127
2 Stat. 378) and section 559 of the Department of Home-
3 land Security Appropriations Act, 2014 (division F of
4 Public Law 113–76; 6 U.S.C. 211 note) are repealed.

5 (b) AGREEMENTS IN EFFECT.—Notwithstanding
6 subsection (a), nothing in this Act may be construed as
7 affecting in any manner an agreement entered into pursu-
8 ant to section 560 of the Department of Homeland Secu-
9 rity Appropriations Act, 2013 (division D of Public Law
10 113–6; 127 Stat. 378) or section 559 of the Department
11 of Homeland Security Appropriations Act, 2014 (division
12 F of Public Law 113–76; 6 U.S.C. 211 note) that is in
13 effect on the day before the date of the enactment of this
14 Act, and any such agreement shall continue to have full
15 force and effect on and after such date.

16 (c) PROPOSED AGREEMENTS.—Notwithstanding sub-
17 section (a), nothing in this Act may be construed as affect-
18 ing in any manner a proposal accepted for consideration
19 by U.S. Customs and Border Protection pursuant to sec-
20 tion 559 of the Department of Homeland Security Appro-
21 priations Act, 2014 (division F of Public Law 113–76; 6
22 U.S.C. 211 note) that was accepted prior to the date of
23 the enactment of this Act.

24 **SEC. _03. DEFINITIONS.**

25 In this title:

1 (1) ADMINISTRATION.—The term “Administra-
2 tion” mean the General Services Administration.

3 (2) ADMINISTRATOR.—The term “Adminis-
4 trator” mean the Administrator of the Administra-
5 tion.

6 (3) COMMISSIONER.—The term “Commis-
7 sioner” means the Commissioner of U.S. Customs
8 and Border Protection.

9 (4) DONATION AGREEMENT.—The term “dona-
10 tion agreement” means an agreement made under
11 section __05(a).

12 (5) FEE AGREEMENT.—The term “fee agree-
13 ment” means an agreement made by the Commis-
14 sioner under section __04(a)(1).

15 (6) PERSON.—The term “person” means—

16 (A) an individual;

17 (B) a corporation, partnership, trust, es-
18 tate, association, or any other private or public
19 entity;

20 (C) a Federal, State, or local government;

21 (D) any subdivision, agency, or instrumen-
22 tality of a Federal, State, or local government;

23 or

24 (E) any other governmental entity.

1 (7) RELEVANT COMMITTEES OF CONGRESS.—

2 The term “relevant committees of Congress”
3 means—

4 (A) the Committee on ^{Appropriations,} Environment and
5 Public Works, the Committee on Finance, the
6 Committee on Homeland Security and Govern-
7 mental Affairs, and the Committee on the Judi-
8 ciary of the Senate; and

9 (B) the Committee on ^{Appropriations} Homeland Security,
10 the Committee on the Judiciary, and the Com-
11 mittee on Transportation and Infrastructure of
12 the House of Representatives.

13 **SEC. 04. AUTHORITY TO ENTER INTO FEE AGREEMENTS**
14 **FOR THE PROVISION OF CERTAIN SERVICES**
15 **OF U.S. CUSTOMS AND BORDER PROTECTION.**

16 (a) FEE AGREEMENTS.—

17 (1) AUTHORITY FOR FEE AGREEMENTS.—Not-
18 withstanding section 13031(e) of the Consolidated
19 Omnibus Budget Reconciliation Act of 1985 (19
20 U.S.C. 58c(e)) and section 451 of the Tariff Act of
21 1930 (19 U.S.C. 1451), the Commissioner may,
22 upon the request of any person, enter into an agree-
23 ment with that person under which—

24 (A) U.S. Customs and Border Protection
25 will provide the services described in paragraph

1 (2) at a port of entry or any other facility
2 where U.S. Customs and Border Protection
3 provides or will provide services;

4 (B) such person will remit a fee imposed
5 under subsection (b) to U.S. Customs and Bor-
6 der Protection in an amount equal to the full
7 costs incurred or that will be incurred in pro-
8 viding such services; and

9 (C) any additional facilities ^{at} which U.S.
10 Customs and Border Protection ^{are performed or} deems ^{advisable} nec-
11 essary for the provision of services under an
12 agreement entered into under this section shall
13 be provided, maintained, and equipped by such
14 person ^{without additional cost to the Federal government,} in accordance with U.S. Customs and
15 Border Protection specifications.

16 3 (X) SERVICES DESCRIBED.—Services described
17 in this paragraph are any services related to, or in
18 support of, customs, agricultural processing, border
19 security, or inspection-related immigration matters
20 provided by an employee or contractor of U.S. Cus-
21 toms and Border Protection at ports of entry or any
22 other facility where U.S. Customs and Border Pro-
23 tection provides or will provide services.

24 4 (X) MODIFICATION OF PRIOR AGREEMENTS.—
25 The Commissioner, at the request of a person who

(2) Criteria: The Commissioner shall establish ^{advisable} criteria for entering into a partnership under subsection (a)(1) that includes the following:
(A) selection and evaluation of potential partners;
(B) identification and documentation of roles and responsibilities between CBP and GSA and private and government partners
(C) identification, allocation and management of explicit and implicit risks of partnership between CBP, GSA, and private and government partners
(D) Decision-making and dispute resolution processes in partnership arrangements

(E) Criteria and processes for CBP to terminate agreements if private or government partners are not meeting the ~~standards~~ or terms of such agreement

1 has previously entered into an agreement with U.S.
 2 Customs and Border Protection for the reimburse-
 3 ment of fees in effect on the date of enactment of
 4 this Act, may modify such agreement to implement
 5 any provisions of this title.

6 ~~5~~ (A) NUMERICAL LIMITATIONS.—Except as pro-
 7 vided in paragraphs (5) and (6), there shall be no
 8 limit to the number of fee agreements that may be
 9 entered into by the Commissioner.

10 ~~6~~ (5) AUTHORITY FOR NUMERICAL LIMITA-
 11 TIONS.—

12 (A) RESOURCE AVAILABILITY.—If the
 13 Commissioner finds that resource or allocation
 14 constraints would prevent U.S. Customs and
 15 Border Protection from fulfilling, in whole or in
 16 part, requests for services under the terms of
 17 existing or proposed fee agreements, the Com-
 18 missioner shall impose annual limits on the
 19 number of new fee agreements.

20 (B) ANNUAL REVIEW.—If the Commis-
 21 sioner limits the number of new fee agreements
 22 under this paragraph, the Commissioner shall
 23 annually evaluate and reassess such limits and
 24 publish the results of such evaluation and af-

(A) Limitations -
 The Commissioner
 may not enter
 into a reimbursable
 fee agreement under
 this subsection if
 such agreement would
 violate any permanent
 import service level
 in this or any
 other appropriations
 Act or provided
 by any account in
 the Treasury of
 the U.S. derived
 or the collection
 of fees

1 firm any such limits that shall remain in effect
2 in a publicly available format.

3 7 (6) NUMERICAL LIMITATIONS AT AIR PORTS OF
4 ENTRY.—

5 (A) IN GENERAL.—The Commissioner may
6 not enter into more than 10 fee agreements per
7 year to provide U.S. Customs and Border Pro-
8 tection services at air ports of entry.

9 (B) CERTAIN COSTS.—A fee agreement for
10 U.S. Customs and Border Protection services at
11 an air port of entry may only provide for the
12 reimbursement of—

13 (i) salaries and expenses of not more
14 than 5 full-time equivalent U.S. Customs
15 and Border Protection officers;

16 (ii) costs incurred by U.S. Customs
17 and Border Protection for the payment of
18 overtime to employee;

19 (iii) the salaries and expenses of em-
20 ployees of U.S. Customs and Border Pro-
21 tection to support U.S. customs and Bor-
22 der Protection officers in performing law
23 enforcement functions at air ports of entry,
24 including primary and secondary proc-
25 essing of passengers; and

1 (iv) other costs incurred by U.S. Cus-
2 toms and Border Protection relating to
3 services described in paragraph (2), such
4 as temporary placement or permanent relo-
5 cation of such employees.

6 (C) PRECLEARANCE.—The authority in the
7 section may not be used to enter into new
8 preclearance agreements or initiate the provi-
9 sion of U.S. Customs and Border Protection
10 services outside of the United States.

11 ~~8~~ DENIED APPLICATION.—If the Commis-
12 sioner denies a proposal for a fee agreement, the
13 Commission shall provide the person who submitted
14 the proposal a detailed justification for the denial.

15 ~~9~~ CONSTRUCTION.—Nothing in this section
16 may be construed—

17 (A) to require a person entering into a fee
18 agreement to cover costs that are otherwise the
19 responsibility of the U.S. Customs and Border
20 Protection or any other agency of the Federal
21 Government and are not incurred, or expected
22 to be incurred, to cover services specifically cov-
23 ered by an agreement entered into under au-
24 thorities provided by this title; or

1 (B) to unduly and permanently reduce the
 2 responsibilities or duties of U.S. Customs and
 3 Border Protection to provide services at ports
 4 of entry that have been authorized or mandated
 5 by law and are funded in any appropriation Act
 6 or from any accounts in the Treasury of the
 7 United States derived by the collection of fees.

*(10) Judicial Review
 Decision of the
 Commissioner under
 this section occur
 at the discretion
 of the Commissioner
 and are not
 subject to judicial
 review*

8 (b) FEE.—

9 (1) IN GENERAL.—A person who enters into a
 10 fee agreement shall pay a fee pursuant to such
 11 agreement in an amount equal to the full cost of
 12 U.S. Customs and Border Protection—

13 (A) of the salaries and expenses of individ-
 14 uals employed or contracted by U.S. Customs
 15 and Border Protection to provide such services;
 16 and

17 (B) of other costs incurred by U.S. Cus-
 18 toms and Border Protection related to pro-
 19 viding such services, such as temporary place-
 20 ment or permanent relocation of employees.

21 (2) ADVANCE PAYMENT.—The Commissioner,
 22 with approval from a person requesting services of
 23 U.S. Customs and Border Protection services pursu-
 24 ant to a fee agreement, may accept the fee for serv-
 25 ices prior to providing such services.

1 (3) OVERSIGHT OF FEES.—The Commissioner
2 shall develop a process to oversee the activities for
3 which fees are charged pursuant to a fee agreement
4 that includes the following:

5 (A) A determination and report on the full
6 cost of providing services, including direct and
7 indirect costs, as well as a process, through con-
8 sultation with affected parties and other inter-
9 ested stakeholders, for increasing such fees as
10 necessary.

11 (B) The establishment of a periodic remit-
12 tance schedule to replenish appropriations, ac-
13 counts or funds, as necessary.

14 (C) The identification of costs paid by such
15 fees.

16 (4) DEPOSIT OF FUNDS.—Amounts collected
17 pursuant to a fee agreement shall—

18 (A) be deposited as an offsetting collection;

19 (B) remain available until expended, with-
20 out fiscal year limitation; and

21 (C) be credited to the applicable appropria-
22 tion, account, or fund for the amount paid out
23 of that appropriation, account, or fund for—

1 (i) any expenses incurred or to be in-
2 curred by U.S. Customs and Border Pro-
3 tection in providing such services; and

4 (ii) any other costs incurred by U.S.
5 Customs and Border Protection relating to
6 such services.

7 (5) TERMINATION BY THE COMMISSIONER.—

8 (A) IN GENERAL.—The Commissioner
9 shall terminate the services provided pursuant
10 to a fee agreement with a person that, after re-
11 ceiving notice from the Commissioner that a fee
12 imposed under the fee agreement is due, fails to
13 pay such fee in a timely manner.

14 (B) EFFECT OF TERMINATION.—At the
15 time services are terminated pursuant to sub-
16 paragraph (A), all costs incurred by U.S. Cus-
17 toms and Border Protection which have not
18 been paid, will become immediately due and
19 payable.

20 (C) INTEREST.—Interest on unpaid fees
21 will accrue based on the quarterly rate(s) estab-
22 lished under sections 6621 and 6622 of the In-
23 ternal Revenue Code of 1986.

24 (D) PENALTIES.—Any person that fails to
25 pay any fee incurred under a fee agreement in

1 a timely manner, after notice and demand for
2 payment, shall be liable for a penalty or liq-
3 uidated damage equal to 2 times the amount of
4 such fee.

5 (E) AMOUNT COLLECTED.—Any amount
6 collected pursuant to a fee agreement shall be
7 deposited into the account specified under para-
8 graph (4) and shall be available as described
9 therein.

10 (F) RETURN OF UNUSED FUNDS.—The
11 Commissioner shall return any unused funds
12 collected under a fee agreement that is termi-
13 nated for any reason, or in the event that the
14 terms of such agreement change by mutual
15 agreement to cause a reduction of U.S. Cus-
16 toms and Border Protections services. No inter-
17 est shall be owed upon the return of any unused
18 funds. (i)

19 (6) TERMINATION BY THE SPONSOR.—Any per-
20 son who has previously entered into an agreement
21 with U.S. Customs and Border Protection for the re-
22 imbursement of fees in effect on the date of enact-
23 ment of this Act, or under the provisions of this Act,
24 may request that such agreement make provision for
25 termination at the request of such person upon ad-

1 vance notice, the length and terms of which shall be
2 negotiated between such person and U.S. Customs
3 and Border Protection.

4 (e) ANNUAL REPORT AND NOTICE TO CONGRESS.—
5 The Commissioner shall—

6 (1) submit to the relevant committees of Con-
7 gress an annual report that identifies each fee agree-
8 ment made during the previous year and, consistent
9 with the requirements of section 907 of the Trade
10 Facilitation and Trade Enforcement Act of 2015
11 ~~(Public Law 114-125)~~, or pertaining to authorities
12 and programs repealed and transitioned under sec-
13 tion ~~_____02~~ of this title or otherwise authorized by
14 ~~this section~~; and

15 (2) not less than ¹⁵ ~~7~~ days before entering into a
16 fee agreement, notify the members of Congress that
17 represent the State or district in which the affected
18 port or facility is located.

19 (e) ~~(d)~~ EFFECTIVE PERIOD.—The authority for the
20 Commission to enter into new fee agreements shall be in
21 effect until September 30, 2025. Any fee agreement en-
22 tered into prior to that date shall remain in effect under
23 the terms of that fee agreement.

(c) Modification of Existing Reports to Congress
The Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114-125) is amended in Section 907 by inserting the following at the end of subsection (b), insert (5) "the program for entering into reimbursable fee agreements for the provision of U.S. CBP services, as authorized by the Cross Border Trade Enhancement Act of 2016."

1 **SEC. _05. AUTHORITY TO ENTER INTO AGREEMENTS TO**
2 **ACCEPT DONATIONS FOR PORTS OF ENTRY.**

3 (a) AGREEMENTS AUTHORIZED.—

4 (1) COMMISSIONER.—The Commissioner, in col-
5 laboration with the Administrator as provided under
6 subsection (f), may enter into an agreement with
7 any person to accept a donation of real or personal
8 property, including monetary donations, or nonper-
9 sonal services, for activities in subsection (b) at a
10 new or existing land, sea, or air port of entry, or any
11 facility or other infrastructure at a location where
12 U.S. Customs and Border Protection performs or
13 will be performing inspection services within the
14 United States.

15 (2) ADMINISTRATOR.—Where the Adminis-
16 trator owns or leases a new or existing land port of
17 entry, facility, or other infrastructure at a location
18 where U.S. Customs and Border Protection per-
19 forms or will be performing inspection services, the
20 Administrator, in collaboration with the Commis-
21 sioner, may enter into an agreement with any person
22 to accept a donation of real or personal property, in-
23 cluding monetary donations, or nonpersonal services,
24 at that location for activities set forth in subsection
25 (b).

1 (b) USE.—A donation made under a donation agree-
2 ment may be used for activities related to construction,
3 alteration, operation or maintenance, including expenses
4 related to—

5 (1) land acquisition, design, construction, re-
6 pair, and alteration;

7 (2) furniture, fixtures, equipment, and tech-
8 nology, including installation and the deployment
9 thereof; and

10 (3) operation and maintenance of the facility,
11 infrastructure, equipment, and technology.

12 (c) LIMITATION ON MONETARY DONATIONS.—Any
13 monetary donation accepted pursuant to a donation agree-
14 ment may not be used to pay the salaries of employees
15 of U.S. Customs and Border Protection who perform in-
16 spection services.

17 (d) TRANSFER.—

18 (1) AUTHORITY TO TRANSFER.—Donations ac-
19 cepted by the Commissioner or the Administrator
20 under a donation agreement may be transferred be-
21 tween U.S. Customs and Border Protection and the
22 Administration.

23 (2) NOTIFICATION.—Prior to executing a trans-
24 fer under this subsection, the Commissioner or Ad-
25 ministrator shall notify a person that entered into

1 the donation agreement of an intent to transfer the
2 donated property or services.

3 (e) TERM OF DONATION AGREEMENT.—The term of
4 a donation agreement may be as long as is required to
5 meet the terms of the agreement.

6 (f) ROLE OF ADMINISTRATOR.—The Administrator's
7 role, involvement, and authority under this section is lim-
8 ited with respect to donations made at new or existing
9 land ports of entry, facilities, or other infrastructure
10 owned or leased by the Administration.

11 (g) EVALUATION PROCEDURES.—

12 (1) REQUIREMENTS FOR PROCEDURES.—Not
13 later than 180 days after the date of enactment, the
14 Commissioner, in consultation with the Adminis-
15 trator as appropriate, shall issue procedures for eval-
16 uating proposals for donation agreements.

17 (2) AVAILABILITY.—The procedures issued
18 under paragraph (1) shall be made available to the
19 public.

20 (3) COST-SHARING ARRANGEMENTS.—In
21 issuing the procedures under paragraph (1), the
22 Commissioner, in consultation with the Administra-
23 tion, shall evaluate the use of authorities provided
24 under this section to enter into cost-sharing or reim-
25 bursement agreements with eligible persons and de-

1 termine whether such agreements may improve facil-
2 ity conditions or inspection services at new or exist-
3 ing land, sea, or air ports of entry.

4 (h) DETERMINATION AND NOTIFICATION.—

5 (1) IN GENERAL.—Not later than 60 days after
6 receiving a proposal for a donation agreement, the
7 Commissioner, and Administrator if applicable, shall
8 notify the person that submitted the proposal as to
9 whether it is complete or incomplete.

10 (2) INCOMPLETE PROPOSALS.—If the Commis-
11 sioner, and Administrator if applicable, determines
12 that a proposal is incomplete, the person that sub-
13 mitted the proposal shall be notified and provided
14 with—

15 (A) a detailed description of all specific in-
16 formation or material that is needed to com-
17 plete review of the proposal; and

18 (B) allow the person to resubmit the pro-
19 posal with additional information and material
20 described under subparagraph (A) to complete
21 the proposal.

22 (3) COMPLETE APPLICATIONS.—Not later than
23 180 days after receiving a completed and final pro-
24 posal for a donation agreement, the Commissioner,
25 and Administrator if applicable, shall—

1 (A) make a determination whether to deny
2 or approve the proposal; and

3 (B) notify the person that submitted the
4 proposal of the determination.

5 (4) CONSIDERATIONS.—In making the deter-
6 mination under paragraph (3)(A), the Commis-
7 sioner, and Administrator if applicable, shall con-
8 sider—

9 (A) the impact of the proposal on reducing
10 wait times at that port of entry or facility and
11 other ports of entry on the same border;

12 (B) the potential of the proposal to in-
13 crease trade and travel efficiency through added
14 capacity; and

15 (C) the potential of the proposal to en-
16 hance the security of the port of entry or facil-
17 ity.

18 (i) SUPPLEMENTAL FUNDING.—Any property, in-
19 cluding monetary donations and nonpersonal services, do-
20 nated pursuant to a donation agreement may be used in
21 addition to any other funds, including appropriated funds,
22 property, or services made available for the same purpose.

23 (j) RETURN OF DONATION.—If the Commissioner or
24 the Administrator does not use the property or services
25 donated pursuant to a donation agreement, such donated

1 property or services shall be returned to the person that
2 made the donation.

3 (k) INTEREST PROHIBITED.—No interest may be
4 owed on any donation returned to a person under this sub-
5 section.

6 ~~M~~ ANNUAL REPORT AND NOTICE TO CONGRESS.—

7 The Commissioner, in collaboration with the Adminis-
8 trator if applicable, shall—

9 (1) submit to the relevant committees of Con-
10 gress an annual report that identifies each donation
11 agreement made during the previous year; and

12 (2) not less than ¹⁵ days before entering into a
13 donation agreement, notify the members of Congress
14 that represent the State or district in which the af-
15 fected port or facility is located.

16 ~~N~~ (n) RULE OF CONSTRUCTION.—Except as otherwise
17 provided in this section, nothing in this section may be
18 construed as affecting in any manner the responsibilities,
19 duties, or authorities of U.S. Customs and Border Protec-
20 tion or the Administration.

21 ~~O~~ (o) EFFECTIVE PERIOD.—The authority for the
22 Commission or the Administrator to enter into new dona-
23 tion agreements shall be in effect until September 30,
24 2025. Any donation agreement entered into prior to that

(1) Prohibition on Certain Funding—
The Commissioner, in collaboration with the Administrator if applicable, with respect to an agreement authorized under this section, may not obligate or expend amounts in excess of amounts that have been appropriated pursuant to any appropriations act for purposes specified in the agreement or otherwise made available for any such purposes.

1 date shall remain in effect under the terms of that dona-
2 tion agreement.