

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—118th Cong., 1st Sess.

S. 1444

To increase the pay and enhance the training of United States Border Patrol agents, and for other purposes.

Referred to the Committee on Homeland Security and Governmental Affairs of the Senate and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. LANKFORD

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Border Patrol En-
5 hancement Act”.

6 **SEC. 2. AUTHORIZED STAFFING LEVEL FOR THE UNITED**
7 **STATES BORDER PATROL.**

8 (a) **DEFINED TERM.**—In this Act, the term “vali-
9 dated personnel requirements determination model”
10 means a determination of the number of United States
11 Border Patrol agents needed to meet the critical mission
12 requirements of the United States Border Patrol to main-

1 tain an orderly process for migrants entering the United
2 States, that has been validated by a qualified research en-
3 tity pursuant to subsection (c).

4 (b) UNITED STATES BORDER PATROL PERSONNEL
5 REQUIREMENTS DETERMINATION MODEL.—

6 (1) COMPLETION; NOTICE.—Not later than 180
7 days after the date of the enactment of this Act, the
8 Commissioner shall complete a personnel require-
9 ments determination model for United States Border
10 Patrol that builds on the 5-year United States Bor-
11 der Patrol staffing and deployment plan referred to
12 on page 33 of House of Representatives Report
13 112–91 (May 26, 2011) and submit a notice of com-
14 pletion to—

15 (A) the Committee on Homeland Security
16 and Governmental Affairs of the Senate;

17 (B) the Committee on Homeland Security
18 of the House of Representatives;

19 (C) the Director of the Office of Personnel
20 Management; and

21 (D) the Comptroller General of the United
22 States.

23 (2) CERTIFICATION.—Not later than 30 days
24 after the completion of the personnel requirements
25 determination model described in paragraph (1), the

1 Commissioner shall submit a copy of such model, an
2 explanation of its development, and a strategy for
3 obtaining independent verification of such model,
4 to—

5 (A) the Committee on Homeland Security
6 and Governmental Affairs of the Senate;

7 (B) the Committee on Homeland Security
8 of the House of Representatives;

9 (C) the Office of Personnel Management;
10 and

11 (D) the Comptroller General of the United
12 States.

13 (c) INDEPENDENT STUDY OF PERSONNEL REQUIRE-
14 MENTS DETERMINATION MODEL.—

15 (1) REQUIREMENT FOR STUDY.—Not later than
16 90 days after the completion of the personnel re-
17 quirements determination model pursuant to sub-
18 section (b)(1), the Secretary of Homeland Security
19 shall select an entity that is technically,
20 managerially, and financially independent from the
21 Department of Homeland Security to conduct an
22 independent verification and validation of the model.

23 (2) REPORTS.—

24 (A) TO SECRETARY.—Not later than 1
25 year after the completion of the personnel re-

1 requirements determination model under sub-
2 section (b)(1), the entity performing the inde-
3 pendent verification and validation of the model
4 shall submit a report to the Secretary of Home-
5 land Security that includes—

6 (i) the results of the study conducted
7 pursuant to paragraph (1); and

8 (ii) any recommendations regarding
9 the model that such entity considers to be
10 appropriate.

11 (B) TO CONGRESS.—Not later than 30
12 days after receiving the report described in sub-
13 paragraph (A), the Secretary of Homeland Se-
14 curity shall submit such report, along with any
15 additional views or recommendations regarding
16 the personnel requirements determination
17 model, to the Committee on Homeland Security
18 and Governmental Affairs of the Senate and the
19 Committee on Homeland Security of the House
20 of Representatives.

21 (d) AUTHORITY TO HIRE ADDITIONAL PER-
22 SONNEL.—Beginning on the date that is 180 days after
23 receiving a report from a qualified research entity pursu-
24 ant to subsection (c)(2) that validates the personnel re-
25 quirements determination model and after implementing

1 any recommendations to improve or update such model,
2 the Secretary of Homeland Security may hire, train, and
3 assign 600 or more United States Border Patrol agents
4 above the attrition level during every fiscal year until the
5 number of active agents meets the level recommended by
6 the validated personnel requirements determination model.

7 **SEC. 3. ESTABLISHMENT OF HIGHER RATES OF REGU-**
8 **LARLY SCHEDULED OVERTIME PAY FOR**
9 **UNITED STATES BORDER PATROL AGENTS**
10 **CLASSIFIED AT GS-12.**

11 Section 5550 of title 5, United States Code, is
12 amended by adding at the end the following:

13 “(h) SPECIAL OVERTIME PAY FOR GS-12 BORDER
14 PATROL AGENTS.—

15 “(1) IN GENERAL.—Notwithstanding para-
16 graphs (1)(F), (2)(C), and (3)(C) of subsection (b),
17 a border patrol agent encumbering a position at
18 grade GS-12 shall receive a special overtime pay-
19 ment under this subsection for hours of regularly
20 scheduled work described in paragraph (2)(A)(ii) or
21 (3)(A)(ii) of subsection (b), as applicable, that are
22 credited to the agent through actual performance of
23 work, crediting under rules for canine agents under
24 subsection (b)(1)(F), or substitution of overtime
25 hours in the same work period under subsection

1 (f)(2)(A), except that no such payment may be made
2 for periods of absence resulting in an hours obliga-
3 tion under paragraph (3) or (4) of subsection (f).

4 “(2) COMPUTATION.—The special overtime pay-
5 ment authorized under paragraph (1) shall be com-
6 puted by multiplying the credited hours by 50 per-
7 cent of the border patrol agent’s hourly rate of basic
8 pay, rounded to the nearest cent.

9 “(3) LIMITATIONS.—The special overtime pay-
10 ment authorized under paragraph (1)—

11 “(A) is not considered basic pay for retire-
12 ment under section 8331(3) or 8401(4) or for
13 any other purpose;

14 “(B) is not payable during periods of paid
15 leave or other paid time off; and

16 “(C) is not considered in computing an
17 agent’s lump-sum annual leave payment under
18 sections 5551 and 5552.”.

19 **SEC. 4. GAO ASSESSMENT OF RECRUITING EFFORTS, HIR-**
20 **ING REQUIREMENTS, AND RETENTION OF**
21 **LAW ENFORCEMENT PERSONNEL.**

22 The Comptroller General of the United States shall—

23 (1) conduct an assessment of U.S. Customs and
24 Border Protection’s—

1 (A) efforts to recruit law enforcement per-
2 sonnel;

3 (B) hiring process and job requirements
4 relating to such recruitment; and

5 (C) retention of law enforcement per-
6 sonnel, including the impact of employee com-
7 pensation on such retention efforts; and

8 (2) not later than 2 years after the date of the
9 enactment of this Act, submit a report containing
10 the results of such assessment to—

11 (A) the Committee on Homeland Security
12 and Governmental Affairs of the Senate; and

13 (B) the Committee on Homeland Security
14 of the House of Representatives.

15 **SEC. 5. CONTINUING TRAINING.**

16 (a) IN GENERAL.—The Commissioner shall require
17 all United States Border Patrol agents and other employ-
18 ees or contracted employees designated by the Commis-
19 sioner, to participate in annual continuing training to
20 maintain and update their understanding of—

21 (1) Department of Homeland Security policies,
22 procedures, and guidelines;

23 (2) the fundamentals of law, ethics, and profes-
24 sional conduct;

25 (3) applicable Federal law and regulations;

1 (4) precedential legal rulings, including Federal
2 Circuit Court and United States Supreme Court
3 opinions relating to the duty of care and treatment
4 of persons in the custody of the United States Bor-
5 der Patrol that the Commissioner determines are
6 relevant to active duty agents;

7 (5) applicable migration trends that the Com-
8 missioner determines are relevant;

9 (6) best practices for coordinating with commu-
10 nity stakeholders; and

11 (7) any other information that the Commis-
12 sioner determines to be relevant to active duty
13 agents.

14 (b) TRAINING SUBJECTS.—Continuing training
15 under this subsection shall include training regarding—

16 (1) non-lethal use of force policies available to
17 United States Border Patrol agents and de-esca-
18 lation strategies and methods;

19 (2) identifying, screening, and responding to
20 vulnerable populations, such as children, persons
21 with diminished mental capacity, victims of human
22 trafficking, pregnant mothers, victims of gender-
23 based violence, victims of torture or abuse, and the
24 acutely ill;

1 (3) trends in transnational criminal organiza-
2 tion activities that impact border security and mi-
3 gration;

4 (4) policies, strategies, and programs—

5 (A) to protect due process, the civil,
6 human, and privacy rights of individuals, and
7 the private property rights of land owners;

8 (B) to reduce the number of migrant and
9 agent deaths; and

10 (C) to improve the safety of agents on pa-
11 trol;

12 (5) personal resilience;

13 (6) anti-corruption and officer ethics training;

14 (7) current migration trends, including updated
15 cultural and societal issues of nations that are a sig-
16 nificant source of migrants who are—

17 (A) arriving at a United States port of
18 entry to seek humanitarian protection; or

19 (B) encountered at a United States inter-
20 national boundary while attempting to enter
21 without inspection;

22 (8) the impact of border security operations on
23 natural resources and the environment, including
24 strategies to limit the impact of border security op-
25 erations on natural resources and the environment;

1 (9) relevant cultural, societal, racial, and reli-
2 gious training, including cross-cultural communica-
3 tion skills;

4 (10) training authorized under the Prison Rape
5 Elimination Act of 2003 (42 U.S.C. 15601 et seq.);

6 (11) risk management and safety training that
7 includes agency protocols for ensuring public safety,
8 personal safety, and the safety of persons in the cus-
9 tody of the Department of Homeland Security;

10 (12) non-lethal, self-defense training; and

11 (13) any other training that meets the require-
12 ments to maintain and update the subjects identified
13 in subsection (a).

14 (c) COURSE REQUIREMENTS.—Courses offered under
15 this section—

16 (1) shall be administered by the United States
17 Border Patrol, in consultation with the Federal Law
18 Enforcement Training Center; and

19 (2) shall be approved in advance by the Com-
20 missioner of U.S. Customs and Border Protection to
21 ensure that such courses satisfy the requirements for
22 training under this section.

23 (d) ASSESSMENT.—Not later than 2 years after the
24 date of the enactment of this Act, the Comptroller General
25 of the United States shall submit a report to the Com-

1 mittee on Homeland Security and Governmental Affairs
2 of the Senate and the Committee on Homeland Security
3 of the House of Representatives that assesses the training
4 and education provided pursuant to this section, including
5 continuing education.

6 (e) FREQUENCY REQUIREMENTS.—Training offered
7 as part of continuing education under this section shall
8 include—

9 (1) annual courses focusing on the curriculum
10 described in paragraphs (1) through (6) of sub-
11 section (b); and

12 (2) biannual courses focusing on curriculum de-
13 scribed in paragraphs (7) through (12) of subsection
14 (b).

15 **SEC. 6. REPORTING REQUIREMENTS.**

16 (a) RECRUITMENT AND RETENTION REPORT.—The
17 Comptroller General of the United States shall—

18 (1) conduct a study of the recruitment and re-
19 tention of female agents in the United States Border
20 Patrol that examines—

21 (A) the recruitment, application processes,
22 training, promotion, and other aspects of em-
23 ployment for women in the United States Bor-
24 der Patrol;

1 (B) the training, complaints system, and
2 redress for sexual harassment and assault; and

3 (C) additional issues related to recruitment
4 and retention of female Border Patrol agents;
5 and

6 (2) not later than 1 year after the date of the
7 enactment of this Act, submit a report containing
8 the results of such study and recommendations for
9 addressing any identified deficiencies or opportuni-
10 ties for improvement to—

11 (A) the Commissioner of U.S. Customs
12 and Border Protection;

13 (B) the Committee on Homeland Security
14 and Governmental Affairs of the Senate; and

15 (C) the Committee on Homeland Security
16 of the House of Representatives.

17 (b) IMPLEMENTATION REPORT.—Not later than 90
18 days after receiving the recruitment and retention report
19 required under subsection (a), the Commissioner shall
20 submit a report to the Committee on Homeland Security
21 and Governmental Affairs of the Senate and the Com-
22 mittee on Homeland Security of the House of Representa-
23 tives that describes the status of the Commissioner's ef-
24 forts to implement any recommendations included in re-
25 cruitment and retention report.