



Legislative Bulletin.....May 4, 2006

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H.R. 4954 — SAFE Port Act

Summary of the Bill Under Consideration Today:

Total Number of New Government Programs: at least 13

Total Cost of Discretionary Authorizations: \$9.4 billion over six years

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 1

Total New Private Sector Mandates: 1

Number of Bills Without Committee Reports: 0

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 4954 – SAFE Port Act — *as reported* (Lungren, R-CA)

Order of Business: The bill is scheduled for consideration on Thursday, May 4, 2006, subject to a structured rule (H.Res. 739), which makes in order 15 amendments.

Summary by Title:

Title I: Security of United States Seaports

➤ Lists a number of findings regarding port security, including the following:

- “In 2004, maritime vessels carried approximately 9,700,000 shipping containers into United States seaports at an average of 27,000 containers per day;
- “In its final report, the National Commission on Terrorist Attacks Upon the United States noted, ‘While commercial aviation remains a possible target, terrorists may turn their attention

to other modes of transportation. Opportunities to do harm are as great, or greater in maritime or surface transportation’;

- “In May 2002, the Brookings Institution estimated that costs associated with United States port closures from a detonated terrorist weapon could add up to \$1 trillion from the resulting economic slump and changes in our Nation’s inability to trade. Anticipated port closures on the west coast of the United States could cost the United States economy \$1 billion per day for the first five days after a terrorist attack;
- “Significant enhancements can be achieved by applying a layered approach to supply chain security, in a coordinated fashion. Current supply chain programs within the Federal Government have been independently operated, often falling short of gains which could have been made if such programs were operated in a coordinated manner;
- “While it is impossible to completely remove the risk of a terrorist attack, security measures in the supply chain can add certainty and stability to the global economy, raise investor confidence, and facilitate trade. Some counterterrorism costs are integral to the price that must be paid to protect society. However, counterterrorism measures also present an opportunity to increase the efficiency of the global trade system through international harmonization of such measures. These efficiency gains are maximized when all countries adopt such counterterrorism measures; and
- “Increasing transparency in the supply chain will assist in mitigating the impact of a terrorist attack by allowing for a targeted shutdown of the international supply chain and expedited restoration of commercial traffic.”

- Authorizes the Secretary of Homeland Security to “verify the effectiveness of each facility security plan periodically” (not less than twice annually), by conducting unannounced inspections of port facilities.
- Requires that security plans required under current law be resubmitted for approval if the ownership of the facility changes hands. In addition, the bill requires that the Facility Security Officer at each facility be a U.S. citizen, unless DHS grants a waiver.
- **Authorizes \$20 million for FY07** to be used by DHS to begin issuing transportation security cards to individuals at certain seaport facilities. The DHS is also directed to compare each individual who has unescorted access to a secure area of a seaport facility against terrorist watch lists to determine if the individual poses a threat.
- Requires DHS, no later than April 1, 2007 to develop and implement a long-range automated vessel tracking system for all vessels in United States waters that are equipped with the Global Maritime Distress and Safety System or equivalent satellite technology. Under current law, DHS already has this authority, however, this bill adds to this authority the specified date for development and implementation.
- **Authorizes \$360 million for FY07-FY12 (\$60 million each year) for a new program** at DHS. The agency is directed to establish an integrated network of virtual and physical maritime security command centers at appropriate U.S. seaports and maritime regions, as determined by the DHS Secretary.
- **Authorizes \$2.4 billion from 2007-2012 (\$400 million each year) for a new grant program** to allocate federal financial assistance to ports in the U.S. on the basis of risk and needs. The bill lists

specific authorized uses of funds granted under this new program, some of which include covering the cost of acquisition, operation, and maintenance of equipment, conducting vulnerability assessments, conducting exercises to strengthen terrorism preparedness and establishing mechanisms for sharing terrorism threat information. The bill prohibits grant money from being used to supplant state or local funds for certain activities, constructing buildings or other physical facilities, acquiring land, and making state or local government cost-sharing contributions. The federal funds for any eligible project under this grant program are not to exceed 75% of the total cost of the project. The bill specifies that amounts authorized to be appropriated for this program are to originate from duties collected by U.S. Customs and Border Protection.

- **Directs DHS to establish a new Port Security Training Program** “for the purpose of enhancing the capabilities of each of the Nation’s commercial seaports to prevent, prepare for, respond to, mitigate against, and recover from threatened or actual acts of terrorism, natural disasters, and other emergencies.”
- **Directs DHS to establish a new Port Security Exercise Program** for the purpose of testing and evaluated entities such as the federal, state, local and foreign governments in their ability to respond to acts of terrorism, natural disasters, and other emergencies at commercial seaports. DHS is directed to consolidate all existing port security exercise programs and conduct on a periodic basis, port security exercises at commercial seaports. The DHS Secretary is also directed to establish a Remedial Action Management System to among other things, identify and analyze each port security exercise for lessons learned and best practices.
- **Authorizes such sums as necessary for FY07-FY12, for the Coast Guard to establish a new pilot project** to establish and maintain a reserve officers and junior reserve officers training program in certain locations, and to establish a program to provide students with instruction in subject areas relating to operations of the Coast Guard and training them in skills that are useful and appropriate for a career in the Coast Guard. **The bill mandates that at least one of the programs must be established at each of “an historically black college or university, an Hispanic-serving institution, and a high school with majority-minority population.”**
- Directs DHS to hire *at least* 200 full-time active duty port of entry inspection officers for *each* year of FY07-FY12. The bill authorizes the following amounts to carry out this provision:
 - \$20 million for FY 2007
 - \$40 million for FY 2008
 - \$60 million for FY 2009
 - \$80 million for FY 2010
 - \$100 million for FY 2011
 - \$120 million for FY 2012
- **Authorizes \$1.89 billion** to DHS for the acquisition and construction of vessels, aircraft, shore and offshore facilities and other components associated with the Integrated Deepwater System.
- Directs DHS to establish at least one Border Patrol unit for the Virgin Islands.

Title II: Security of the International Supply Chain

- Directs the Secretary of Homeland Security (DHS) in consultation with federal, state, local and tribal government agencies and private sector stakeholders responsible for security matters affecting the movement of containers through the international supply chain, to develop, implement and update as appropriate, a strategic plan to enhance the security of the maritime transportation system. The bill outlines 12 specific requirements that the strategic plan must include. Some of these requirements include the following that the plan must:
 - identify and address gaps and unnecessary overlaps in the roles, responsibilities, or authorities of the involved agencies;
 - identify and make recommendations regarding legislative, regulatory, and organizational changes necessary to improve coordination among the entities or to enhance the security of the international supply chain; and
 - provide measurable goals, including objectives, mechanisms, and a schedule, for furthering the security of commercial operations from point of origin to point of destination.

- “Encourages” DHS, in establishing the strategic plan, to consider proposed or established standards and practices of foreign governments and international organizations, including the International Maritime Organization, the World Customs Organization, the International Labor Organization, and the International Organization for Standardization, as appropriate, to establish standards and best practices for the security of containers moving through the international supply chain.

- **Authorizes \$30 million from FY07-FY12** (\$5 million each year) for DHS to develop and implement a plan for improving the Automated Targeting System for the identification of high-risk containers moving through the international supply chain. (The Automated Targeting System was established by U.S. Customs and Border Protection to assess imports and target those imports which pose a high risk of containing contraband).

- **Authorizes \$1.176 billion from 2007-2012 (\$196 million each year) for a new program**, the Container Security Initiative (CSI), to identify and examine maritime containers that pose a risk for terrorism at foreign ports before the containers are shipped to the U.S. The bill prohibits DHS from designating a foreign port under CSI unless certain requirements have been met. H.R.4954 outlines the requirements and procedures for the CSI inspections and foreign assistance procedures.

- Directs DHS to establish by regulation, minimum standards and verification procedures for securing containers in transit to an importer in the United States. The bill requires that within two years of enactment of the bill, all containers bound for ports of entry in the U.S are to meet the standards and procedures established by DHS.

- Directs DHS to develop a secure electronic data interchange system to collect from and share appropriate risk information related to securing the supply chain with the private sector entities determined appropriate by the DHS Secretary.

- **Authorizes \$450 million for FY07-FY12 (\$75 million each year) a new grant program**, the Customs-Trade Partnership Against Terrorism (C-TPAT) program, “to strengthen and improve the overall security of the international supply chain and U.S. border security.” Specifically, DHS is to implement the recommendations of the C-TPAT program identified by the GAO in Report GAO-05-404 (<http://www.gao.gov/new.items/d05404.pdf>). The Secretary is directed to establish minimum requirements, program tiers, and program benefits. Under the new program, importers, brokers, air, sea, land carriers, and other entities in the international supply chain and intermodal

transportation system are eligible to apply to voluntarily enter into partnerships with DHS. If these entities meet certain requirements, specified in the bill, under the C-TPAT program, they would be eligible for certain benefits such as reduced examinations and priority for processing for searchers. Within C-TPAT, the third tier of benefits is called the GreenLane and would be offered to validated C-TPAT participants demonstrating a sustained commitment beyond the minimum requirements for participation. In addition, DHS is directed to **establish a new pilot program** to test the feasibility costs, and benefits of utilizing their party entities to conduct validations of C-TPAT participants.

- Directs DHS to direct research, development, test, and evaluation efforts in furring maritime and cargo security and to ensure that these efforts that are funded by DHS are to be coordinated in order to avoid duplication of efforts.
- **Authorizes \$150 million from FY07-FY12 (\$25 million each year) for DHS to establish a new grant program**, as part of Operation Safe Commerce that among other things, integrate non-intrusive inspection and radiation detection equipment with automatic identification methods for containers, vessels, and vehicles, among other things. DHS would also be required to establish demonstration projects that further the security of the international supply chain.
- Directs DHS to establish and implement a single, uniform data system for the electronic collection, dissemination, and sharing of import and export information to increase the efficiency of data submission and the security of the data related to border security, trade, and public health and safety of international cargoes.
- Directs DHS to conduct **a new one-year pilot program** to evaluate and improve the security of empty containers at U.S. seaports to ensure the safe and secure deliver of cargo and to prevent potential acts of terrorism involving these containers.

Title III: Directorate for Policy, Planning, and International Affairs

- Establishes at DHS, a Directorate for Policy, Planning, and International Affairs. The head of the Directorate would be appointed the Under Secretary for Policy and would serve as the principal policy advisor to the Secretary.
- Establishes within the Directorate for Policy, Planning, and International Affairs, an Office of International Affairs, to be headed by an Assistant Secretary, appointed by the Secretary. The bill also establishes within the Directorate, an Office of Policy, an Office of the Private Sector, a Director of Cargo Security, and several other positions.
- Establishes at DHS, a Domestic Nuclear Detection Office, to be headed by a Director of Domestic Nuclear Detection (appointed by the President). The office is to “protect against the unauthorized importation, possession, storage, transportation, development, or use of a nuclear explosive device, fissile material, or radiological material against the U.S.”
- Directs DHS to coordinate the federal government’s implementation of a global nuclear detection architecture.

- Directs DHS to **establish a new research and development program** to “achieve transformational and evolutionary improvements in detection capabilities for shielded and unshielded nuclear explosive devices and radiological dispersion devices.”
- Directs DHS to **establish a new program** to test and evaluate technology for detecting nuclear explosive devices and fissile or radiological material.
- Directs DHS to develop and execute a strategy for the acquisition and deployment of detection systems in order to implement components of the global nuclear detection.
- Directs DHS to utilize classified and unclassified nuclear and radiological threat assessments in designing the global nuclear detection architecture under section 2003, prioritizing detection system deployments, and testing and optimizing system performance of that architecture.
- Directs DHS to establish an Advisory Council on Nuclear Detection, which will advise the on recommendations for the global nuclear detection architecture.
- Directs the President to establish an interagency coordination council to facilitate interagency cooperation to implement the provisions in Title III.
- Authorizes for the implementation of Title III, \$536 million for FY07, and such sums as necessary for each subsequent year.
- Directs DHS to **establish a new pilot program** to deploy and test the operational performance of next-generation radiation portal monitors at one or more U.S. seaports with a high-volume of containerized cargo.

Possible Conservative Concerns: Some conservatives may be concerned that during a time of deficit spending, this bill creates 13 new federal programs at a cost of \$9.4 billion to taxpayers. In addition, a recent Heritage Foundation paper warned that in addressing port security, it is a “bad idea to throw money at the problem.” The Homeland Security Inspector General has found that money being poured into *current* port security grant programs is being wasted and has yielded minimal security benefits. (Sources: <http://www.heritage.org/Research/HomelandDefense/wm1014.cfm>, <http://www.rawstory.com/news/2006/HSsportsreport.pdf>)

Committee Action: H.R. 4954 was introduced on March 14, 2006 and was referred to the Committee on Homeland Security, which considered it, held a mark-up, and reported the bill by voice vote on April 26, 2006. The bill was also referred the Committee on Transportation and Infrastructure, which took no official action.

Cost to Taxpayers: According to CBO, H.R. 4954 authorizes **\$8.9 billion** in appropriations from 2007-2011. In addition, the bill also authorizes \$881 million for 2012. From these authorizations, CBO estimates the total cost will be \$7.4 billion from 2007-2011, with \$2 billion in spending after 2011.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. The bill **creates thirteen new programs** and creates several new federal bureaucratic offices and positions.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. According to CBO, H.R. 4954 imposes an unfunded intergovernmental mandate, as it would require state and local entities “to participate in staffing command centers for maritime security, resubmit security plans in certain circumstances, and hire a United States citizen for the position of chief security officer.”

In addition, CBO states that the bill imposes an unfunded private-sector mandate on owners and operators of maritime terminal facilities, as they would be required to submit security plans outlining their operations.

Constitutional Authority: The Homeland Security Committee, in Committee Report 109-447, finds constitutional authority in Article I, Section 8, Clause 1, which grants Congress the power to provide for the common Defense of the United States.

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