



Legislative Bulletin.....September 29, 2006

H.R. 4954 – SAFE Port Act, Conference Report — (Lungren, R-CA)

Order of Business: The bill is scheduled for consideration on Friday, September 29, 2006, subject to a unanimous consent agreement in lieu of a rule.

Summary by Title:

Title I: Security of United States Seaports

- 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.
- Directs DHS to begin implementing the transportation security card program at the ten U.S. ports designated as top priority by July 1, 2007. DHS would then have to implement the program at the next 40 priority ports by January 1, 2008, and then at all U.S. ports by January 1, 2009.
- Directs DHS, by January 1, 2009, to process and issue or deny each application for a transportation security card to individuals with current and valid merchant mariners’ documents as of this bill’s enactment. Such cards could not be issued to people convicted of certain felonies.
- 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.
- Directs DHS to update and finalize the rulemaking within 180 days on notices of arrival for foreign vessels on the Outer Continental Shelf.

- Accelerates the implementation of certain crewmember identification requirements.
- **Authorizes \$2.0 billion from 2007-2011 (\$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** to enhance 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. No separate funds authorized.
- **Directs DHS to establish a new Port Security Exercise Program** for the purpose of testing and evaluating entities, such as the federal, state, local and foreign governments, commercial seaport personnel, and emergency response providers in their respective abilities 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.
- **Requires that, by December 31, 2007, all containers entering the United States through the 22 ports through which the greatest volume of containers enter by vessel be scanned for radiation. By December 31, 2008, the remainder of U.S. ports would have to have radiation detection capabilities deployed.**
- Creates an Intermodal Rail Radiation Detection Test Center to test concepts specific to the challenges posed by on-dock rail.
- Directs DHS to develop a plan within 120 days for the inspection of car ferries entering the U.S. from abroad.
- Within one year, DHS would have to implement a plan to conduct random searches of containers (in addition to any other search requirements).
- Directs DHS to implement a threat assessment screening for all port truck drivers with access to secure areas of a port.
- Directs DHS to establish at least one Border Patrol unit for the Virgin Islands.

- Establishes a university-based Center for Excellence for Maritime Domain Awareness to provide educational, technical, and analytical assistance for federal agencies with responsibilities for maritime domain awareness.

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 \$106.38 million from FY08-FY10** 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 \$443 million from FY08 – FY10 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.
- **Authorizes \$212 million for FY08-FY10, for a new grant program**, the Customs-Trade Partnership Against Terrorism (C-TPAT) program (a government-private sector 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.

- **Requires at least 50 full-time staff** to be engaged in the validation and revalidation of C-TPAT participants, and **authorizes \$86.1 million over the FY08 – FY12 period** for this purpose.
- 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.
- 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: Administration

- Establishes an Office of Cargo Security in DHS to coordinate policy regarding cargo security.
- The Director of Cargo Security is to advise the Assistant Secretary for Policy in the development of cargo security policy
- Directs the secretary of State to appoint a liaison to assist the Secretary of Homeland Security in negotiating security related international agreements.
- Reauthorizes the DHS Science and Technology Advisory Committee until the end of 2008. The committee is to coordinate efforts to incorporate security innovations into cargo security procedures.

Title IV: Agency Resources and Oversight

- Directs the Secretary of Homeland Security to appoint a senior official to ensure that the Department's activities impact on trade and revenues are taken into account.
- Creates a Director of Trade Policy to coordinate trade policy and consider the impact of cargo security policy on revenue.
- Creates, in the U.S. Customs and Border Protection, an Office of International Trade headed by an Assistant Commissioner and transfers the assets of the Office of Strategic Trade and the Office of Regulations and Rulings to the new Office of International Trade.
- Establishes an International Trade Committee to be chaired by the Commissioner of U.S. Customs and Border Protection, which includes various Assistant Commissioners. The Committee is to advise the Commissioner, coordinate policy, and make annual reports to Congress.

- Directs the Commissioner to hire 200 more Customs and Border Protection Officers in the 2008-2012 period. The bill appropriates \$36 million in FY08, \$75 million in FY09, \$118 million in FY10, \$165 million in FY11, and \$217 million in FY12, for these purposes.
- Amends the Tariff Act of 1930 by adding provisions directing the Secretary of Homeland Security, the U.S. Trade Representative, and other U.S. officials to work with international organizations like the World Customs Organization and the World Trade Organization to facilitate the efficient flow of trade.
- Directs the Secretary to **establish the International Trade Data System (ITDS)**, operated by U.S. Customs and Border Protection, to eliminate redundant information requirements, to efficiently regulate the flow of commerce, and to effectively enforce international trade policy.
- Creates an Interagency Steering Committee to help the Secretary of Homeland Security in overseeing ITDS.

Title V: Domestic Nuclear Detection Office

- 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 submit to Congress a research and development investment strategy for nuclear and radiological detection.

Title VI: Commercial Mobile Service Alerts

- Establishes a new federal commission to develop a national standard and relevant protocols and procedures necessary to enable commercial mobile service providers to voluntarily transmit emergency alerts, capable of alerting the public to emergency situations on a national, regional, or local basis; provides limited liability for such voluntary service providers;
- Directs the DHS Under Secretary to establish a program to research and evaluation program based on the results of the commission, which must fund further research and testing at academic institutions
- Establishes a new grant program for remote community alert systems, which may not exceed \$10 million per year;

Title VII: Other Matters

- Directs DHS to submit to Congress, a plan for the Essential Air Service airports in the U.S.
- Directs each state or local government that receives a homeland security grant to submit a report to DHS that contains a list of all expenditures made by the state or locality using the grant funds.

- Provides that if the President determines that one or more “substances of concern” (defined in the bill) have been released in a disaster area, the President **may carry out a program** for the coordination, protection, assessment and monitoring of the health and safety of individuals with high expose levels, and **authorizes such sums as necessary** for that purpose.

Title VIII: Unlawful Internet Gambling Enforcement

- Modifies the definition “bets or wagers” to mean “the staking of risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game predominantly subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome” and specifies that purchasing a chance to win a lottery ticket or other prize is *within* the definition;
- Provides that the U.S. District Courts have original and exclusive jurisdiction to prevent and restrain violations of the Wire Act, including issuing injunctive or declarative relief and temporary restraining orders against persons in order to prevent or restrain a violation;
- Allows the U.S. Attorney General to direct insured depository institutions to seize funds of gambling businesses that violate the Wire Act;
Example: These provisions would allow law enforcement to take action injunctive action against an internet service provider to remove advertisements or shut down accounts for illegal gambling websites;
- Stipulates that nothing in the Act supersedes or prohibits activity that is allowed under the Interstate Horseracing Act (15 U.S.C. 3001 et seq.); and
- States the sense of Congress that “this Act does not change which activities related to horse racing may or may not be allowed under federal law.” Further states that the Act “is not intended to resolve any existing disagreements over how to interpret the relationship between the Interstate Horseracing Act and other federal statutes.”
- Defines various terms in the U.S. Code, such as creditor, credit card, card issuer, electronic fund transfer, restricted transaction, unlawful gambling, etc.) to facilitate the new prohibitions against payment to unlawful gambling entities; key terms include:
 - Financial Transaction Provider – a creditor, credit card issuer, or financial institution (such as Visa or Paypal) which may be utilized to effect a credit transaction, electronic fund transfer or other type of payment or credit.
 - Unlawful Gambling – to place, receive, or knowingly transmit a bet or wager using a communication facility in any way where the bet is unlawful under any applicable federal or state law where the bet took place.
- Prohibits any person engaged in a gambling business from knowingly accepting credit, electronic fund transfer, check, draft or proceeds from any other form of financial transaction in connection with another person engaged in unlawful internet gambling (known as a ‘restricted transaction’ in the definitions section). This section defines the various types of transactions that will be blocked or prevented, which may be expanded by the Treasury Secretary or the Federal Reserve Board of Governors through additional regulations;
- Directs the Treasury Secretary and Federal Reserve Board of Governors (in consultation with the Attorney General) to prescribe regulations requiring each designated payment system to identify and block or otherwise prevent restricted transactions through the establishment of policies reasonably designed to prevent such transactions (by coding transactions or other means);

- Provides that a financial transaction provider be considered in compliance with these regulations if such persons rely on and comply with the applicable policies and procedures set forth by the designated payment system of which it is a member;
- Provides immunity from liability for any person that identifies and blocks or prevents a transaction that is reasonably believed to be a restricted transaction; and
- Provides that the requirements of this section (regarding blocking restricted transactions) be enforced exclusively by the federal functional regulations and the Federal Trade Commission.
- Provides that the U.S. government should:
 - 1) encourage cooperation by foreign governments and relevant international entities in identifying whether internet gambling operations are being used for money laundering, corruption, or other crimes;
 - 2) advance policies that promote the cooperation of foreign governments, through information sharing and other measures; and
 - 3) encourage the Financial Action Task Force on Money Laundering to study the extent to which internet gambling operations are being used for money laundering purposes.
- Directs the Treasury Secretary to submit an annual report to Congress on any deliberations between the U.S. government and other countries on issues relating to internet gambling.

Possible Conservative Concerns: Some conservatives may be concerned that during a time of deficit spending, this bill creates several new federal programs at an unknown cost 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 House passed this bill on May 4, 2006, by a vote of 421-2. The Senate passed their version of the bill on September 14, 2006 by a vote of 98-0.

Cost to Taxpayers: An updated CBO score is not available for the updated version of this legislation. However, according to CBO, the original House-passed version of H.R. 4954 authorized \$8.9 billion in appropriations from 2007-2011. In addition, the bill also authorized \$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 Comply with House Rules Regarding Earmarks? The Conference Report includes the following regarding “airdropped” (not passed by either the House or the Senate) earmarks contained in the bill:

Compliance With House Resolution 1000

In compliance with H. Res. 1000, (109th Congress), the following provisions have been included in H.R. 4954:

The bill contains language requiring disclosure under House Resolution 1000 on page 46, lines 16 through page 47, line 10. This section requires the establishment of an intermodal rail radiation detection test center to be located at a port with the majority of its cargo leaving the facility using on-dock, intermodal rail. The language is from an amendment offered by Senator Cantwell.

The bill also contains language requiring disclosure on page 50, lines 1 through 10. This section requires the establishment of a Border Patrol unit in the United State Virgin Islands. The language is from an amendment offered by Delegate Christensen.

The bill also contains language requiring disclosure on page 190, line 16 through page 191, line 3. This section authorizes such sums as may be necessary for the Northern Border Air Wing Branch located in Great Falls, Montana. The language is from an amendment offered by Senator Baucus.

The bill also contains language requiring disclosure on page 193, lines 8 through 12. This section amends the conveyance date for United States Coast Guard Property in Portland, Maine. The language is from an amendment offered by Senator Collins.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. The bill **creates several 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?: An updated CBO score is not available for this legislation.

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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