

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—116th Cong., 1st Sess.

S. 2162

To require the Commissioner of U.S. Customs and Border Protection to annually hire at least 600 new Border Patrol agents, to report quarterly to Congress on the status of the Border Patrol workforce, and to conduct a comprehensive staffing analysis.

Referred to the Committee on _____ 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. JOHNSON (for himself and Mr.
PETERS)

Viz:

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Securing America’s Borders Act of 2019”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Hiring additional U.S. Customs and Border Protection personnel.
- Sec. 3. Border Patrol processing coordinators.
- Sec. 4. Medical training for border patrol agents.
- Sec. 5. Workforce staffing model.

Sec. 6. Promoting flexibility in employment authorities for rural or remote areas.

Sec. 7. CBP Hiring and Retention Innovation Council.

Sec. 8. Authorization of appropriations.

1 **SEC. 2. HIRING ADDITIONAL U.S. CUSTOMS AND BORDER**
2 **PROTECTION PERSONNEL.**

3 (a) AGENTS.—The Commissioner of U.S. Customs
4 and Border Protection shall hire, train, and assign not
5 fewer than 600 new Border Patrol agents above the cur-
6 rent attrition level during every fiscal year until the total
7 number of Border Patrol agents equals 26,370 full-time
8 equivalent agents.

9 (b) SUPPORT STAFF.—The Commissioner is author-
10 ized to hire, train, and assign support staff to perform
11 non-law enforcement administrative functions to support
12 the new Border Patrol agents hired pursuant to subsection
13 (a).

14 (c) REPORTS TO CONGRESS.—Not later than 90 days
15 after the date of the enactment of this Act, and every 90
16 days thereafter, the Commissioner shall submit a report
17 to the Committee on Homeland Security and Govern-
18 mental Affairs of the Senate and the Committee on Home-
19 land Security of the House of Representatives that de-
20 scribes the status of the Border Patrol workforce, includ-
21 ing—

22 (1) the total number of Border Patrol agents;

1 (2) the total number of Border Patrol support
2 staff, including Border Patrol processing coordina-
3 tors;

4 (3) the number of Border Patrol agents and
5 support staff hired during the reporting period, bro-
6 ken down by Border Patrol duty location;

7 (4) the number of Border Patrol agents and
8 support staff lost to attrition, broken down by Bor-
9 der Patrol duty location;

10 (5) any hiring authorities, incentive pay, or
11 other special pay incentives utilized during the re-
12 porting period; and

13 (6) an analysis of the overall effectiveness of
14 the hiring authorities, incentive pay, and other spe-
15 cial pay incentives utilized during the reporting pe-
16 riod.

17 **SEC. 3. BORDER PATROL PROCESSING COORDINATORS.**

18 (a) IN GENERAL.—Section 411(e) of the Homeland
19 Security Act of 2002 (6 U.S.C. 211(e)) is amended by
20 adding at the end the following:

21 “(4) BORDER PATROL PROCESSING COORDINA-
22 TORS.—

23 “(A) AUTHORIZATION.—The Chief of the
24 U.S. Border Patrol is authorized to hire Border

1 Patrol processing coordinators, who shall be
2 stationed at Border Patrol facilities.

3 “(B) DUTIES.—Border Patrol processing
4 coordinators—

5 “(i) shall assist Border Patrol agents
6 to efficiently and expeditiously intake and
7 process apprehended persons;

8 “(ii) shall perform necessary technical
9 and clerical tasks related to the duties set
10 forth in paragraph (3);

11 “(iii) shall be classified as non-law en-
12 forcement personnel; and

13 “(iv) may not be authorized or des-
14 ignated to exercise powers conferred under
15 section 287(a) of the Immigration and Na-
16 tionality Act (8 U.S.C. 1357(a)).”.

17 (b) TRAINING.—The Commissioner of U.S. Customs
18 and Border Protection, in coordination with the Chief of
19 U.S. Border Patrol and in consultation with the Director
20 of the Federal Law Enforcement Training Centers, shall
21 develop tailored training for Border Patrol processing co-
22 ordinators hired pursuant to section 411(e)(4) of the
23 Homeland Security Act of 2002, as added by subsection
24 (a).

1 (c) REPORTS TO CONGRESS.—Not later than 90 days
2 after the date of the enactment of this Act, and quarterly
3 for the following 2 years, the Secretary of Homeland Secu-
4 rity shall submit a report to the Committee on Homeland
5 Security and Governmental Affairs of the Senate and the
6 Committee on Homeland Security of the House of Rep-
7 resentatives regarding each U.S. Border Patrol sector that
8 includes information regarding the number of U.S. Border
9 Patrol agents who returned to field operations as a result
10 of increased hiring of U.S. Border Patrol processing coor-
11 dinators.

12 **SEC. 4. MEDICAL TRAINING FOR BORDER PATROL AGENTS.**

13 (a) IN GENERAL.—Section 411(l) of the Homeland
14 Security Act of 2002 (6 U.S.C. 211(l)) is amended—

15 (1) by striking “The Commissioner” and insert-
16 ing the following:

17 “(1) CONTINUING EDUCATION.—The Commis-
18 sioner”; and

19 (2) by adding at the end the following:

20 “(2) MEDICAL TRAINING FOR BORDER PATROL
21 AGENTS.—

22 “(A) IN GENERAL.—

23 “(i) AVAILABILITY.—Beginning not
24 later than 6 months after the date of the
25 enactment of this paragraph, the Commis-

1 sioner, in his or her sole and exclusive dis-
2 cretion, shall make available in each U.S.
3 Border Patrol sector, at no cost to U.S.
4 Border Patrol agents selected for such
5 training, emergency medical technician (re-
6 ferred to in this paragraph as ‘EMT’) and
7 paramedic training, including pediatric
8 medical training, which shall utilize nation-
9 ally recognized pediatric training curricula
10 that includes emergency pediatric care, and
11 training identifying and treating individ-
12 uals experiencing medical distress.

13 “(ii) USE OF OFFICIAL DUTY TIME.—
14 A U.S. Border Patrol agent shall be cred-
15 ited with work time for any EMT or para-
16 medic training provided to such agent
17 under clause (i) in order to achieve or
18 maintain an EMT or paramedic certifi-
19 cation.

20 “(iii) LODGING AND PER DIEM.—
21 Lodging and per diem shall be made avail-
22 able to U.S. Border Patrol agents attend-
23 ing training described in clause (ii) if such
24 training is not available at a location with-

1 in commuting distance of the agent’s resi-
2 dence or worksite.

3 “(iv) SERVICE COMMITMENT.—Any
4 U.S. Border Patrol agent who completes a
5 certification preparation program pursuant
6 to clause (i) shall—

7 “(I) complete 1 year of service as
8 a U.S. Border Patrol agent following
9 the completion of EMT training;

10 “(II) complete 3 years of service
11 as a U.S. Border Patrol agent fol-
12 lowing the completion of paramedic
13 training; or

14 “(III) reimburse U.S. Customs
15 and Border Protection in an amount
16 equal to the product of—

17 “(aa) the cost of providing
18 such training to such agent; mul-
19 tiplied by

20 “(bb) the percentage of the
21 service required under subclauses
22 (I) and (II) that the agent failed
23 to complete.

24 “(v) OBLIGATED OVERTIME.—For any
25 debt of obligated overtime hours that the

1 agent may have incurred, pursuant to sec-
2 tion 5550(b) of title 5, United States
3 Code, in order to achieve or maintain an
4 EMT or paramedic certification, the agent
5 shall select, not later than 1 pay period be-
6 fore the commencement of the EMT or
7 paramedic training

8 “(I) to satisfy the debt of obli-
9 gated overtime hours; or

10 “(II) to receive a reduction of
11 pay commensurate to what the agent
12 would have received for performance
13 of the overtime hours.

14 “(B) AVAILABILITY OF MEDICALLY
15 TRAINED BORDER PATROL AGENTS.—Not later
16 than 6 months after the date of the enactment
17 of this paragraph, the Commissioner of U.S.
18 Customs and Border Protection shall undertake
19 an agency-wide effort—

20 “(i) to encourage, promote, and en-
21 sure, to the greatest extent possible, that—

22 “(I) U.S. Border Patrol agents
23 with current EMT or paramedic cer-
24 tifications are stationed at each U.S.
25 Border Patrol sector and remote sta-

1 tion along the southern border of the
2 United States to the greatest extent
3 possible; and

4 “(II) 10 percent of all Border
5 Patrol agents have EMT certifications
6 and comprise not fewer than 10 per-
7 cent of all Border Patrol agents as-
8 signed to each U.S. Border Patrol
9 sector; and

10 “(ii) in determining the assigned posts
11 of Border Patrol agents who have received
12 training under subparagraph (A)(i), to give
13 priority to remote stations and forward op-
14 erating bases.

15 “(C) MEDICAL SUPPLIES.—

16 “(i) IN GENERAL.—The Commissioner
17 of U.S. Customs and Border Protection
18 shall provide minimum medical supplies to
19 each Border Patrol agent with an EMT or
20 paramedic certification and to each U.S.
21 Border Patrol sector, including all remote
22 stations and forward operating bases, for
23 use while on patrol. Such supplies shall in-
24 clude—

1 “(I) supplies designed for chil-
2 dren;

3 “(II) first aid kits; and

4 “(III) oral hydration, such as
5 water.

6 “(ii) CONSULTATION.—In developing
7 the minimum list of medical supplies re-
8 quired under clause (i), the Commissioner
9 shall consult national organizations with
10 expertise in emergency medical care, in-
11 cluding emergency medical care of chil-
12 dren, at no cost to the Government.

13 “(D) GAO REPORT.—Not later than 3
14 years after the date of the enactment of this
15 paragraph, the Comptroller General of the
16 United States shall—

17 “(i) review the success of the U.S.
18 Customs and Border Protection’s efforts to
19 reach the goal of 10 percent of all U.S.
20 Border Patrol agents having EMT or para-
21 medic certifications; and

22 “(ii) provide a recommendation to
23 Congress as to whether—

24 “(I) the Commissioner of U.S.
25 Customs and Border Protection has

1 effectively and vigorously undertaken
2 an agency-wide effort to encourage
3 and promote the mandate for medical
4 training for Border Patrol agents
5 under subparagraph (B);

6 “(II) additional incentive modi-
7 fications are needed to achieve or
8 maintain the 10 percent goal, includ-
9 ing pay differentials;

10 “(III) the 10 percent goal is
11 properly scoped to materially con-
12 tribute to the preservation of life and
13 the effectiveness and efficiency of U.S.
14 Border Patrol operations, including
15 whether the number is too high or too
16 low; and

17 “(IV) the addition of a distinct
18 benchmark for Border Patrol agents
19 holding paramedic certifications would
20 materially contribute to the preserva-
21 tion of life and the effectiveness and
22 efficiency of U.S. Border Patrol oper-
23 ations, and, if so, what a proper
24 benchmark would be.”.

1 (b) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated such sums as may be
3 necessary to carry out section 411(l)(2) of the Homeland
4 Security Act of 2002, as added by subsection (a).

5 **SEC. 5. WORKFORCE STAFFING MODEL.**

6 (a) IMPROVING DATA QUALITY.—In order to improve
7 the quality of data needed to develop a workforce staffing
8 model, the Chief of U.S. Border Patrol shall—

9 (1) develop standard operating procedures for
10 the Border Patrol Enforcement Tracking System
11 (referred to in this subsection as “BPETS”);

12 (2) train agents on the use, capabilities, and
13 purposes of BPETS; and

14 (3) implement and monitor internal controls for
15 BPETS to ensure timely and accurate scheduling
16 and reporting on agents’ actual and completed work
17 hours and activities.

18 (b) COMPREHENSIVE STAFFING ANALYSIS FOR DE-
19 VELOPING A WORKFORCE STAFFING MODEL.—The Com-
20 missioner of U.S. Customs and Border Protection shall—

21 (1) not later than 60 days after the date of the
22 enactment of this Act, amend the comprehensive
23 staffing analysis required under section 2(e) of the
24 Border Patrol Agent Pay Reform Act of 2014
25 (Pubic Law 113–277) based on any changes to

1 workload demands since the date of the enactment
2 of such Act; and

3 (2) not later than 90 days after the date of the
4 enactment of this Act, submit a report to the Comp-
5 troller General of the United States that includes
6 the results of such amended comprehensive staffing
7 analysis.

8 (c) REPORT TO CONGRESS.—Not later than 180 days
9 after the date of the enactment of this Act, the Secretary
10 of Homeland Security shall submit a report to the Com-
11 mittee on Homeland Security and Governmental Affairs
12 of the Senate and the Committee on Homeland Security
13 of the House of Representatives that describes—

14 (1) how U.S. Customs and Border Protection
15 has used the comprehensive staffing analysis in its
16 development of a workforce staffing model; and

17 (2) the process used by U.S. Border Patrol to
18 create such model, including—

19 (A) the steps and associated timelines
20 taken to create the model;

21 (B) the resources assigned to develop the
22 model; and

23 (C) the data sources and methodology used
24 to generate the model.

1 (d) COMPREHENSIVE STAFFING ANALYSIS FOR DE-
2 VELOPING A WORKFORCE STAFFING MODEL.—Section
3 2(e) of the Border Patrol Agent Pay Reform Act of 2014
4 (Public Law 113–277) is amended by adding at the end
5 the following:

6 “(3) UPDATES.—

7 “(A) IN GENERAL.—The Commissioner of
8 U.S. Customs and Border Protection shall—

9 “(i) update the comprehensive staffing
10 analysis required under paragraph (1)
11 whenever the Commissioner determines
12 that an update is required to better meet
13 the needs of U.S. Border Patrol; and

14 “(ii) include, as part of the updated
15 comprehensive staffing analysis, an update
16 to the assessment of force multiplier tech-
17 nologies required under section 5(e) of the
18 Securing America’s Borders Act of 2019.

19 “(B) SUBMISSION OF UPDATED ANAL-
20 YSIS.—The Commissioner shall submit each up-
21 date to the comprehensive staffing analysis to
22 the appropriate committees of Congress and to
23 the Comptroller General of the United States.

24 “(C) INDEPENDENT VALIDATOR.—Not
25 later than 90 days after receiving each update

1 under subparagraph (B), the Comptroller Gen-
2 eral shall submit a report to the appropriate
3 committees of Congress that contains the infor-
4 mation required in the report required under
5 paragraph (2).”.

6 (e) ASSESSMENT OF FORCE MULTIPLIER TECH-
7 NOLOGIES.—Not later than 180 days after the date of the
8 enactment of this Act, the Commissioner of U.S. Customs
9 and Border Protection shall—

10 (1) conduct an assessment of the impact on
11 Border Patrol effectiveness of force multiplier tech-
12 nologies, including—

13 (A) air and marine assets;

14 (B) surveillance equipment; and

15 (C) fixed and mobile surveillance tech-
16 nologies; and

17 (2) consider the assessment conducted under
18 paragraph (1) when estimating projected staffing
19 needs under the workforce staffing model referred to
20 in subsection (c)(1).

21 **SEC. 6. PROMOTING FLEXIBILITY IN EMPLOYMENT AU-**
22 **THORITIES FOR RURAL OR REMOTE AREAS.**

23 (a) IN GENERAL.—Chapter 97 of title 5, United
24 States Code, is amended by adding at the end the fol-
25 lowing:

1 **“§ 9702. U.S. Customs and Border Protection employ-**
2 **ment authorities**

3 “(a) DEFINITIONS.—In this section—

4 “(1) the term ‘CBP employee’ means an em-
5 ployee of U.S. Customs and Border Protection;

6 “(2) the term ‘Commissioner’ means the Com-
7 missioner of U.S. Customs and Border Protection;

8 “(3) the term ‘Director’ means the Director of
9 the Office of Personnel Management;

10 “(4) the term ‘rural or remote area’ means an
11 area within the United States that is not within an
12 area defined and designated as an urbanized area by
13 the Bureau of the Census in the most recently com-
14 pleted decennial census; and

15 “(5) the term ‘Secretary’ means the Secretary
16 of Homeland Security.

17 “(b) DEMONSTRATION OF RECRUITMENT AND RE-
18 TENTION DIFFICULTIES IN RURAL OR REMOTE AREAS.—

19 “(1) IN GENERAL.—For purposes of sub-
20 sections (c) and (d), the Secretary shall determine,
21 for each rural or remote area, whether there is—

22 “(A) a critical hiring need in the area; and

23 “(B) a direct relationship between—

24 “(i) the rural or remote nature of the
25 area; and

1 “(ii) difficulty in the recruitment and
2 retention of CBP employees in the area.

3 “(2) FACTORS.—In determining whether there
4 is a direct relationship described in paragraph
5 (1)(B), the Secretary may consider evidence—

6 “(A) that the Secretary—

7 “(i) is unable to efficiently and effec-
8 tively recruit individuals for positions as
9 CBP employees, which may be dem-
10 onstrated with various types of evidence,
11 including—

12 “(I) evidence that multiple posi-
13 tions have been continuously vacant
14 for significantly longer than the na-
15 tional average period for which similar
16 positions in U.S. Customs and Border
17 Protection are vacant; and

18 “(II) recruitment studies that
19 demonstrate the inability of the Sec-
20 retary to efficiently and effectively re-
21 cruit CBP employees for positions in
22 the area; or

23 “(ii) experiences a consistent inability
24 to retain CBP employees that negatively

1 impacts agency operations at a local or re-
2 gional level; or

3 “(B) of any other inability, directly related
4 to recruitment or retention difficulties, that the
5 Secretary determines to be sufficient.

6 “(c) DIRECT HIRE AUTHORITY; RECRUITMENT AND
7 RELOCATION BONUSES; RETENTION BONUSES.—

8 “(1) DIRECT HIRE AUTHORITY.—

9 “(A) IN GENERAL.—The Secretary may
10 appoint, without regard to the requirements
11 under sections 3309 through 3319, candidates
12 to positions in the competitive service as CBP
13 employees, in a rural or remote area, if the Sec-
14 retary—

15 “(i) determines that—

16 “(I) there is a critical hiring
17 need; and

18 “(II) there exists a severe short-
19 age of qualified candidates because of
20 the direct relationship identified by
21 the Secretary under subsection
22 (b)(1)(B); and

23 “(ii) has given public notice for such
24 positions.

1 “(B) PRIORITIZATION OF HIRING VET-
2 ERANS.—If the Secretary uses the direct hiring
3 authority under subparagraph (A), the Sec-
4 retary shall apply the principles of preference
5 for the hiring of veterans established under sub-
6 chapter I of chapter 33.

7 “(2) RECRUITMENT AND RELOCATION BO-
8 NUSES.—The Secretary may pay a bonus to an indi-
9 vidual (other than an individual described in section
10 5753(a)(2)) if—

11 “(A) the Secretary determines that—

12 “(i) conditions consistent with those
13 described in paragraphs (1) and (2) of sec-
14 tion 5753(b) are satisfied with respect to
15 the individual (without regard to any other
16 provision of that section); and

17 “(ii) the position to which the indi-
18 vidual is appointed or to which the indi-
19 vidual moves or must relocate—

20 “(I) is that of a CBP employee;

21 and

22 “(II) is in a rural or remote area
23 for which the Secretary has identified
24 a direct relationship under subsection
25 (b)(1)(B); and

1 “(B) the individual enters into a written
2 service agreement with the Secretary—

3 “(i) under which the individual is re-
4 quired to complete a period of employment
5 as a CBP employee of not less than 2
6 years; and

7 “(ii) that includes—

8 “(I) the commencement and ter-
9 mination dates of the required service
10 period (or provisions for determining
11 such dates);

12 “(II) the amount of the bonus;
13 and

14 “(III) other terms and conditions
15 under which the bonus is payable, in-
16 cluding—

17 “(aa) the requirements
18 under this subsection;

19 “(bb) the conditions under
20 which the agreement may be ter-
21 minated before the agreed-upon
22 service period has been com-
23 pleted; and

24 “(cc) the effect of a termi-
25 nation described in item (bb).

1 “(i) under which the individual is re-
2 quired to complete a period of employment
3 as a CBP employee of not less than 2
4 years; and

5 “(ii) that includes—

6 “(I) the commencement and ter-
7 mination dates of the required service
8 period (or provisions for determining
9 such dates);

10 “(II) the amount of the bonus;
11 and

12 “(III) other terms and conditions
13 under which the bonus is payable, in-
14 cluding—

15 “(aa) the requirements
16 under this subsection;

17 “(bb) the conditions under
18 which the agreement may be ter-
19 minated before the agreed-upon
20 service period has been com-
21 pleted; and

22 “(cc) the effect of a termi-
23 nation described in item (bb).

24 “(4) RULES FOR BONUSES.—

25 “(A) MAXIMUM BONUSES.—

1 “(i) RECRUITMENT AND RELOCATION
2 BONUSES.—A bonus paid to an employee
3 under paragraph (2) may not exceed 100
4 percent of the annual rate of basic pay of
5 the employee as of the commencement date
6 of the applicable service period.

7 “(ii) RETENTION BONUSES.—A bonus
8 paid to an employee under paragraph (3)
9 may not exceed 50 percent of the annual
10 rate of basic pay of the employee as of the
11 commencement date of the applicable serv-
12 ice period.

13 “(B) RELATION TO BASIC PAY.—A bonus
14 paid to an employee under paragraph (2) or (3)
15 shall not be considered part of the basic pay of
16 the employee for any purpose.

17 “(5) OFFICE OF PERSONAL MANAGEMENT
18 OVERSIGHT.—The Director, to the extent prac-
19 ticable, shall—

20 “(A) set aside a determination of the Sec-
21 retary under this subsection if the Director
22 finds substantial evidence that the Secretary
23 abused his or her discretion in making the de-
24 termination; and

1 “(B) oversee the compliance of the Sec-
2 retary with this subsection.

3 “(d) SPECIAL PAY AUTHORITY.—In addition to the
4 circumstances described in section 5305(b), the Director
5 may establish special rates of pay in accordance with that
6 section if the Director finds that the recruitment or reten-
7 tion efforts of the Secretary with respect to positions for
8 CBP employees in an area or location are, or are likely
9 to become, significantly handicapped because the positions
10 are located in a rural or remote area for which the Sec-
11 retary has identified a direct relationship under subsection
12 (b)(1)(B).

13 “(e) REGULAR CBP REVIEW.—

14 “(1) ENSURING FLEXIBILITIES MEET CBP
15 NEEDS.—The Secretary shall annually review the
16 use of hiring flexibilities under subsections (c) and
17 (d) to fill positions at a location in a rural or remote
18 area to determine—

19 “(A) the impact of the use of such flexibili-
20 ties on solving hiring and retention challenges
21 at the location;

22 “(B) whether hiring and retention chal-
23 lenges still exist at the location; and

24 “(C) whether the Secretary needs to con-
25 tinue to use such flexibilities at the location.

1 “(2) CONSIDERATION.—In conducting the re-
2 view under paragraph (1), the Secretary shall con-
3 sider—

4 “(A) whether any CBP employee—

5 “(i) accepted an employment incentive
6 under subsection (c) or (d); and

7 “(ii) later transferred to a new loca-
8 tion or left the employment of U.S. Cus-
9 toms and Border Protection; and

10 “(B) the period during which each em-
11 ployee identified under subparagraph (A) re-
12 mained at the original location before transfer-
13 ring to a new location or leaving the employ-
14 ment of U.S. Customs and Border Protection.

15 “(3) DISTRIBUTION.—The Secretary shall sub-
16 mit a report to Congress describing each review re-
17 quired under paragraph (1).

18 “(f) IMPROVING CBP HIRING AND RETENTION.—

19 “(1) EDUCATION OF CBP HIRING OFFICIALS.—

20 Not later than 180 days after the date of the enact-
21 ment of the Securing America’s Borders Act of
22 2019, the Secretary, in conjunction with the Chief
23 Human Capital Officer of the Department of Home-
24 land Security, shall develop and implement a strat-
25 egy to improve education regarding hiring and

1 human resources flexibilities (including hiring and
2 human resources flexibilities for locations in rural or
3 remote areas) for all employees serving in agency
4 headquarters or field offices who are involved in the
5 recruitment, hiring, assessment, or selection of can-
6 didates for locations in a rural or remote area and
7 the retention of current employees.

8 “(2) ELEMENTS.—The strategy required under
9 paragraph (1) shall include—

10 “(A) developing or updating training and
11 educational materials on hiring and human re-
12 sources flexibilities for employees who are in-
13 volved in the recruitment, hiring, assessment, or
14 selection of candidates and the retention of cur-
15 rent employees;

16 “(B) regular training sessions for per-
17 sonnel who are critical to filling open positions
18 in rural or remote areas;

19 “(C) developing pilot programs or other
20 programs, as appropriate, to address identified
21 hiring challenges in rural or remote areas;

22 “(D) developing and enhancing strategic
23 recruiting efforts through relationships with in-
24 stitutions of higher education (as defined in sec-
25 tion 102 of the Higher Education Act of 1965

1 (20 U.S.C. 1002)), veterans transition and em-
2 ployment centers, and job placement program
3 in regions that could assist in filling positions
4 in rural or remote areas;

5 “(E) examining existing programs for ef-
6 fectively aiding spouses and families of individ-
7 uals who are candidates or new hires in a rural
8 or remote area;

9 “(F) soliciting feedback from individuals
10 who are candidates or new hires at locations in
11 a rural or remote area, including feedback on
12 the quality of life in rural or remote areas for
13 new hires and their families;

14 “(G) soliciting feedback from CBP employ-
15 ees who are not new hires and are stationed at
16 locations in a rural or remote area, including
17 feedback on the quality of life in rural or re-
18 mote areas for those CBP employees and their
19 families; and

20 “(H) evaluating Department of Homeland
21 Security internship programs and the useful-
22 ness of such programs in improving hiring by
23 the Secretary in rural or remote areas.

24 “(3) EVALUATION.—

1 “(A) IN GENERAL.—The Secretary shall
2 annually—

3 “(i) evaluate the extent to which the
4 strategy developed and implemented under
5 paragraph (1) has improved the hiring and
6 retention ability of the Secretary; and

7 “(ii) make any appropriate updates to
8 the strategy under paragraph (1).

9 “(B) INFORMATION.—The evaluation con-
10 ducted under subparagraph (A) shall include—

11 “(i) any reduction in the time taken
12 by the Secretary to fill mission-critical po-
13 sitions in rural or remote areas;

14 “(ii) a general assessment of the im-
15 pact of the strategy developed and imple-
16 mented under paragraph (1) on hiring
17 challenges in rural or remote areas; and

18 “(iii) other information the Secretary
19 determines relevant.

20 “(g) INSPECTOR GENERAL REVIEW.—Not later than
21 2 years after the date of the enactment of the Securing
22 America’s Borders Act of 2019, the Inspector General of
23 the Department of Homeland Security shall review the use
24 of hiring flexibilities by the Secretary under subsections
25 (c) and (d) to determine whether the use of such flexibili-

1 ties is helping the Secretary meet hiring and retention
2 needs in rural and remote areas.

3 “(h) REPORT ON POLYGRAPH REQUESTS.—The Sec-
4 retary shall report to Congress regarding the number of
5 requests the Secretary receives from any other Federal
6 agency for the file of an applicant for a position in U.S.
7 Customs and Border Protection that includes the results
8 of a polygraph examination.

9 “(i) EXERCISE OF AUTHORITY.—

10 “(1) SOLE DISCRETION.—Notwithstanding
11 chapter 71, the exercise of authority under sub-
12 section (c) shall be subject to the sole and exclusive
13 discretion of the Secretary (or of the Commissioner,
14 if such authority is delegated pursuant to paragraph
15 (2)).

16 “(2) DELEGATION.—

17 “(A) IN GENERAL.—Subject to subpara-
18 graph (B), the Secretary may delegate any au-
19 thority under this section to the Commissioner.

20 “(B) OVERSIGHT.—The Commissioner
21 may not make a determination under subsection
22 (b)(1) unless the Secretary approves the deter-
23 mination.

24 “(j) RULE OF CONSTRUCTION.—Nothing in this sec-
25 tion may be construed to exempt the Secretary or the Di-

1 rector from the applicability of the merit system principles
2 under section 2301.”.

3 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—

4 The table of sections for chapter 97 of title 5, United
5 States Code, is amended by adding at the end the fol-
6 lowing:

“9702. U.S. Customs and Border Protection employment authorities.”.

7 **SEC. 7. CBP HIRING AND RETENTION INNOVATION COUN-**
8 **CIL.**

9 (a) **ESTABLISHMENT.**—Not later than 180 days after
10 the date of the enactment of this Act, the Secretary of
11 Homeland Security, in conjunction with the Chief Human
12 Capital Officer of the Department of Homeland Security,
13 shall establish a CBP Hiring and Retention Innovation
14 Council (referred to in this section as the “Council”) to
15 develop strategies and initiatives to improve U.S. Customs
16 and Border Protection hiring and retention efforts and ca-
17 pabilities.

18 (b) **COMPOSITION.**—The Council shall be composed
19 of—

20 (1) the Secretary of Homeland Security, or the
21 Secretary’s designee, who shall serve as the Chair of
22 the Council;

23 (2) the Commissioner of U.S. Customs and
24 Border Protection, or the Commissioner’s designee;

1 (3) the Assistant Commissioner, Office of
2 Human Resources Management, Enterprise Services,
3 or the Assistant Commissioner’s designee;

4 (4) the Assistant Commissioner, Office of Fi-
5 nance, Enterprise Services, or the Assistant Com-
6 missioner’s designee;

7 (5) appropriate representatives from labor
8 groups representing U.S. Customs and Border Pro-
9 tection employees;

10 (6) other members, selected by the Secretary,
11 who have the requisite knowledge or expertise to
12 help U.S. Customs and Border Protection develop
13 new hiring and retention strategies, initiatives, and
14 innovations, including—

15 (A) private sector human resource experts;

16 and

17 (B) chief human capital officers, or their
18 designees, from other Federal agencies; and

19 (7) U.S. Customs and Border Protection offi-
20 cials who have experience related to the hiring and
21 retention of employees, including at least 1 rep-
22 resentative of each of the following groups:

23 (A) Border Patrol officials with experience
24 along the southwest border of the United
25 States.

1 (B) Border Patrol officials with experience
2 working along the northern border of the
3 United States.

4 (C) Office of Field Operations officials
5 with experience along the southwest border of
6 the United States.

7 (D) Office of Field Operations officials
8 with experience along the northern border of
9 the United States.

10 (E) Air and Marine Operations officials
11 with experience along the land borders of the
12 United States.

13 (F) Air and Marine Operations officials
14 with experience along the marine borders of the
15 United States.

16 (G) Office of Field Operations officials
17 with experience at ports of entry in the interior
18 of the United States.

19 (H) U.S. Customs and Border Protection
20 officials with experience working along the mar-
21 itime borders in the southeastern region of the
22 United States.

23 (c) BORDER PATROL HIRING AND RETENTION IM-
24 PROVEMENT ANALYSIS.—

1 (1) IN GENERAL.—Not later than 2 years after
2 the date of the enactment of this Act, the Council
3 shall submit a report to Congress that analyzes
4 whether Border Patrol workforce hiring and reten-
5 tion would be improved by a new pay and employee
6 classification system, without regard to provisions of
7 any other law relating to the appointment, number,
8 classification, or compensation of U.S. Border Patrol
9 employees.

10 (2) REQUIREMENTS.—The analysis conducted
11 by the Council pursuant to paragraph (1) shall ad-
12 dress any hiring, retention, and attrition challenges
13 that exist in U.S. Border Patrol as a result of—

14 (A) pay structure, including basic and pre-
15 mium pay, incentives, and allowances for Bor-
16 der Patrol agents and support staff;

17 (B) staffing schedules, including those gov-
18 erned by collective bargaining agreements;

19 (C) staffing levels, including the com-
20 prehensive staffing analysis required under the
21 Border Patrol Agent Pay Reform Act of 2014
22 (Public Law 113–277);

23 (D) geographic and socioeconomic factors
24 surrounding each duty location;

1 (E) barriers to effective recruitment of
2 U.S. Border Patrol applicants;

3 (F) barriers to entry for U.S. Border Pa-
4 trol applicants, including polygraph examina-
5 tions; and

6 (G) any other considerations determined to
7 be appropriate by the Council.

8 (d) CBP HIRING AND RETENTION PILOT PRO-
9 GRAMS.—

10 (1) IN GENERAL.—During the 5-year period be-
11 ginning on the date of the enactment of this Act, the
12 Secretary of Homeland Security shall carry out pilot
13 programs to develop improved strategies to improve
14 U.S. Customs and Border Protection hiring and re-
15 tention capabilities and programs in order to meet
16 its staffing needs.

17 (2) REQUIRED PILOT PROGRAMS.—Of the pilot
18 programs carried out under paragraph (1)—

19 (A) at least 1 pilot program shall focus on
20 ports of entry or other duty stations experi-
21 encing severe workforce shortages, critical hir-
22 ing needs, or retention challenges; and

23 (B) at least 1 pilot program shall focus on
24 U.S. Border Patrol duty locations experiencing

1 severe workforce shortages, critical hiring
2 needs, or retention challenges.

3 (3) REQUIREMENTS.—In carrying out pilot pro-
4 grams under this subsection, the Secretary shall—

5 (A) examine the findings of the Council to
6 determine which initiatives or strategies devel-
7 oped by the Council should be tested in a pilot
8 program;

9 (B) examine the data collected through the
10 exit survey given to all departing U.S. Customs
11 and Border Protection employees to inform the
12 development of pilot programs;

13 (C) beginning not later than 180 days
14 after the establishment of the Council, com-
15 mence at least 1 U.S. Customs and Border Pro-
16 tection hiring or retention pilot program every
17 fiscal year; and

18 (D) execute pilot programs in the locations
19 that the Secretary determines will provide the
20 most accurate assessment of the effectiveness of
21 the pilot programs.

22 (4) CONSIDERATIONS.—The Secretary shall
23 consider, in accordance with existing law, developing
24 pilot programs under this subsection that examine—

1 (A) the effectiveness of alternative or non-
2 traditional work schedules on hiring and reten-
3 tion;

4 (B) the impact on hiring and retention of
5 providing employees transportation between
6 their residences and their work sites;

7 (C) using existing pay authorities, includ-
8 ing recruitment and retention incentive pay, on
9 hiring and retention efforts;

10 (D) improving the morale of the overall
11 workforce or the workforce at specific U.S. Cus-
12 toms and Border Protection locations;

13 (E) providing of additional training to em-
14 ployees to allow them to better execute chang-
15 ing job requirements; and

16 (F) consumer demand at each port of
17 entry.

18 (5) OTHER MATTERS.—The Secretary is au-
19 thorized to implement pilot projects under this sub-
20 section using the authorities granted to the Office of
21 Personnel Management under section 4703 of title
22 5, United States Code.

23 (6) ANNUAL REPORT.—Not later than 180 days
24 after the date on which the first pilot program is es-
25 tablished under this subsection, and annually there-

1 after, the Secretary shall submit a report to the
2 Committee on Homeland Security and Governmental
3 Affairs of the Senate and the Committee on Home-
4 land Security of the House of Representatives
5 that—

6 (A) evaluates the effectiveness of the pilot
7 programs established under this section; and

8 (B) analyzes how current or completed
9 pilot programs are expected to improve hiring
10 and retention capabilities and programs at U.S.
11 Customs and Border Protection to meet its
12 staffing needs.

13 (e) SUNSET.—This section is repealed on the date
14 that is 5 years after the date of the enactment of this
15 Act.

16 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

17 There are authorized to be appropriated such sums
18 as may be necessary to carry out this Act.