

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 3586
OFFERED BY MR. HURD OF TEXAS**

At the appropriate place in the bill, insert the following:

1 **SEC. ____ . PUBLIC PRIVATE PARTNERSHIPS.**

2 (a) IN GENERAL.—Title IV of the Homeland Security Act of 2002 (6 U.S.C. 201 et seq.) is amended by
3 adding at the end the following new subtitle:

4
5 **“Subtitle G—U.S. Customs and Border Protection Public Private Partnerships**
6
7

8 **“SEC. 481. FEE AGREEMENTS FOR CERTAIN SERVICES AT PORTS OF ENTRY.**
9

10 “(a) IN GENERAL.—Notwithstanding section
11 13031(e) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)) and section 451 of
12 the Tariff Act of 1930 (19 U.S.C. 1451), the Commissioner of U.S. Customs and Border Protection for border
13 security, port security, transportation security, or counter-
14 terrorism purposes, may, upon the request of any entity,
15 enter into a fee agreement with such entity under which—
16
17

1 “(1) U.S. Customs and Border Protection shall
2 provide services described in subsection (c) at a
3 United States port of entry or any other facility at
4 which U.S. Customs and Border Protection provides
5 or will provide such services;

6 “(2) such entity shall remit to U.S. Customs
7 and Border Protection a fee imposed under sub-
8 section (e) in an amount equal to the full costs that
9 are incurred or will be incurred in providing such
10 services; and

11 “(3) each facility at which U.S. Customs and
12 Border Protection services are performed shall be
13 provided, maintained, and equipped by such entity,
14 without cost to the Federal Government, in accord-
15 ance with U.S. Customs and Border Protection spec-
16 ifications.

17 “(b) SERVICES DESCRIBED.—The services described
18 in this section are any activities of any employee or con-
19 tractor of U.S. Customs and Border Protection pertaining
20 to, or in support of, customs, agricultural processing, bor-
21 der security, or immigration inspection-related matters at
22 a port of entry or any other facility at which U.S. Customs
23 and Border Protection provides or will provide services.

24 “(c) LIMITATIONS.—

1 “(1) IMPACTS OF SERVICES.—The Commis-
2 sioner of U.S. Customs and Border Protection—

3 “(A) may enter into fee agreements under
4 this section only for services that will increase
5 or enhance the operational capacity of U.S.
6 Customs and Border Protection based on avail-
7 able staffing and workload and that will not
8 shift the cost of services funded in any appro-
9 priations Act, or provided from any account in
10 the Treasury of the United States derived by
11 the collection of fees, to entities under this Act;
12 and

13 “(B) may not enter into a fee agreement
14 under this section if such agreement would un-
15 duly and permanently impact services funded in
16 any appropriations Act, or provided from any
17 account in the Treasury of the United States,
18 derived by the collection of fees.

19 “(2) NUMBER.—There shall be no limit to the
20 number of fee agreements that the Commissioner of
21 U.S. Customs and Border Protection may enter into
22 under this section.

23 “(d) FEE.—

24 “(1) IN GENERAL.—The amount of the fee to
25 be charged pursuant to an agreement authorized

1 under subsection (a) shall be paid by each entity re-
2 questing U.S. Customs and Border Protection serv-
3 ices, and shall be for the full cost of providing such
4 services, including the salaries and expenses of em-
5 ployees and contractors of U.S. Customs and Border
6 Protection, to provide such services and other costs
7 incurred by U.S. Customs and Border Protection re-
8 lating to such services, such as temporary placement
9 or permanent relocation of such employees and con-
10 tractors.

11 “(2) TIMING.—The Commissioner of U.S. Cus-
12 toms and Border Protection may require that the fee
13 referred to in paragraph (1) be paid by each entity
14 that has entered into a fee agreement under sub-
15 section (a) with U.S. Customs and Border Protec-
16 tion in advance of the performance of U.S. Customs
17 and Border Protection services.

18 “(3) OVERSIGHT OF FEES.—The Commissioner
19 of U.S. Customs and Border Protection shall develop
20 a process to oversee the services for which fees are
21 charged pursuant to an agreement under subsection
22 (a), including the following:

23 “(A) A determination and report on the
24 full costs of providing such services, as well as
25 a process for increasing such fees, as necessary.

1 “(B) Establishment of a periodic remit-
2 tance schedule to replenish appropriations, ac-
3 counts, or funds, as necessary.

4 “(C) Identification of costs paid by such
5 fees.

6 “(e) DEPOSIT OF FUNDS.—

7 “(1) ACCOUNT.—Funds collected pursuant to
8 any agreement entered into under subsection (a)
9 shall be deposited as offsetting collections, shall re-
10 main available until expended without fiscal year
11 limitation, and shall be credited to the applicable ap-
12 propriation, account, or fund for the amount paid
13 out of such appropriation, account, or fund for any
14 expenses incurred or to be incurred by U.S. Customs
15 and Border Protection in providing U.S. Customs
16 and Border Protection services under any such
17 agreement and any other costs incurred or to be in-
18 curred by U.S. Customs and Border Protection re-
19 lating to such services.

20 “(2) RETURN OF UNUSED FUNDS.—The Com-
21 missioner of U.S. Customs and Border Protection
22 shall return any unused funds collected and depos-
23 ited into the account described in paragraph (1) in
24 the event that a fee agreement entered into under
25 subsection (a) is terminated for any reason, or in the

1 event that the terms of such fee agreement change
2 by mutual agreement to cause a reduction of U.S.
3 Customs and Border Protections services. No inter-
4 est shall be owed upon the return of any such un-
5 used funds.

6 “(f) TERMINATION.—

7 “(1) IN GENERAL.—The Commissioner of U.S.
8 Customs and Border Protection shall terminate the
9 provision of services pursuant to a fee agreement en-
10 tered into under subsection (a) with an entity that,
11 after receiving notice from the Commissioner that a
12 fee under subsection (d) is due, fails to pay such fee
13 in a timely manner. In the event of such termi-
14 nation, all costs incurred by U.S. Customs and Bor-
15 der Protection which have not been paid shall be-
16 come immediately due and payable. Interest on un-
17 paid fees shall accrue based on the rate and amount
18 established under sections 6621 and 6622 of the In-
19 ternal Revenue Code of 1986.

20 “(2) PENALTY.—Any entity that, after notice
21 and demand for payment of any fee under sub-
22 section (d), fails to pay such fee in a timely manner
23 shall be liable for a penalty or liquidated damage
24 equal to two times the amount of such fee. Any such
25 amount collected pursuant to this paragraph shall be

1 deposited into the appropriate account specified
2 under subsection (e) and shall be available as de-
3 scribed in such subsection.

4 “(g) ANNUAL REPORT.—The Commissioner of U.S.
5 Customs and Border Protection shall submit to the Com-
6 mittee on Homeland Security and the Committee on Ap-
7 propriations of the House of Representatives and the
8 Committee on Homeland Security and Governmental Af-
9 fairs and the Committee on Appropriations of the Senate
10 an annual report identifying the activities undertaken and
11 the agreements entered into pursuant to this section.

12 **“SEC. 482. PORT OF ENTRY DONATION AUTHORITY.**

13 “(a) AGREEMENTS AUTHORIZED.—

14 “(1) IN GENERAL.—The Commissioner of U.S.
15 Customs and Border Protection, in collaboration
16 with the Administrator of the General Services Ad-
17 ministration as applicable under subsection (f), may
18 enter into an agreement with any entity to accept a
19 donation of real or personal property, including
20 monetary donations, or nonpersonal services, for
21 uses described in subsection (c) at a new or existing
22 land, sea, or air port of entry, or any facility or
23 other infrastructure at a location at which U.S. Cus-
24 toms and Border Protection performs or will be per-
25 forming inspection services.

1 “(2) GSA.—If the Administrator of the General
2 Services Administration owns or leases a new or ex-
3 isting land port of entry at a location at which U.S.
4 Customs and Border Protection performs or will be
5 performing inspection services, the Administrator, in
6 collaboration with the Commissioner of U.S. Cus-
7 toms and Border Protection, may enter into an
8 agreement with any entity to accept a donation of
9 real or personal property, including monetary dona-
10 tions, or nonpersonal services, at such location for
11 uses described in subsection (c).

12 “(b) LIMITATION ON MONETARY DONATIONS.—Any
13 monetary donation accepted pursuant to subsection (a)
14 may not be used to pay the salaries of U.S. Customs and
15 Border Protection employees performing inspection serv-
16 ices.

17 “(c) USE.—Donations accepted pursuant to sub-
18 section (a) may be used for activities related to construc-
19 tion, alteration, operation, or maintenance of a new or ex-
20 isting land, sea, or air port of entry, as appropriate, or
21 any facility or other infrastructure at a location at which
22 U.S. Customs and Border Protection performs or will be
23 performing inspections services, including expenses related
24 to—

1 “(1) land acquisition, design, construction, re-
2 pair, or alteration;

3 “(2) furniture, fixtures, equipment, or tech-
4 nology, including installation or the deployment
5 thereof; and

6 “(3) operation and maintenance of such port of
7 entry, facility, infrastructure, equipment, or tech-
8 nology.

9 “(d) TRANSFER.—Notwithstanding any other provi-
10 sion of law, donations accepted by the Commissioner of
11 U.S. Customs and Border Protection or the Administrator
12 of the General Services Administration pursuant to sub-
13 section (a) may be transferred between U.S. Customs and
14 Border Protection and the General Services Administra-
15 tion.

16 “(e) DURATION.—An agreement entered into under
17 subsection (a) may last as long as required to meet the
18 terms of such agreement.

19 “(f) ROLE OF THE ADMINISTRATOR.—The role, in-
20 volvement, and authority of the Administrator of the Gen-
21 eral Services Administration under this section shall be
22 limited to donations made at new or existing land ports
23 of entry, facilities, or other infrastructure owned or leased
24 by the General Services Administration.

1 “(g) COORDINATION.—In carrying out agreements
2 entered into under subsection (a), the Commissioner of
3 U.S. Customs and Border Protection and the Adminis-
4 trator of the General Services Administration shall estab-
5 lish criteria that includes the following:

6 “(1) Selection and evaluation of donors.

7 “(2) Identification of roles and responsibilities
8 between U.S. Customs and Border Protection, the
9 General Services Administration, and donors.

10 “(3) Decision-making and dispute resolution
11 processes.

12 “(4) Processes for U.S. Customs and Border
13 Protection and the General Services Administration
14 to terminate agreements if selected donors are not
15 meeting the terms of any such agreement, including
16 the security standards established by U.S. Customs
17 and Border Protection.

18 “(h) EVALUATION PROCEDURES.—

19 “(1) IN GENERAL.—Not later than 180 days
20 after the date of the enactment of this Act, the
21 Commissioner of U.S. Customs and Border Protec-
22 tion, in consultation with the Administrator of the
23 General Services Administration, as appropriate,
24 shall—

1 “(A) establish criteria for evaluating a pro-
2 posal to enter into an agreement under sub-
3 section (a); and

4 “(B) make such criteria publicly available.

5 “(2) CONSIDERATIONS.—Criteria established
6 pursuant to paragraph (1) shall consider the fol-
7 lowing:

8 “(A) The impact of such proposal on the
9 land, sea, or air port of entry or facility or
10 other infrastructure at issue and other ports of
11 entry or similar facilities or other infrastructure
12 near the location of the proposed donation.

13 “(B) The proposal’s potential to increase
14 trade and travel efficiency through added ca-
15 pacity.

16 “(C) The proposal’s potential to enhance
17 the security of the port of entry or facility or
18 other infrastructure at issue.

19 “(D) The funding available to complete the
20 intended use of a donation under this sub-
21 section, if such donation is real property.

22 “(E) The costs of maintaining and oper-
23 ating such donation.

24 “(F) Whether such donation, if real prop-
25 erty, satisfies the requirements of such pro-

1 posal, or whether additional real property would
2 be required.

3 “(G) The impact of such proposal on U.S.
4 Customs and Border Protection staffing re-
5 quirements.

6 “(H) Other factors that the Commissioner
7 or Administrator determines to be relevant.

8 “(3) DETERMINATION AND NOTIFICATION.—
9 Not later than 180 days after receiving a proposal
10 to enter into an agreement under subsection (a), the
11 Commissioner of U.S. Customs and Border Protec-
12 tion shall make a determination to deny or approve
13 such proposal, and shall notify the entity that sub-
14 mitted such proposal of such determination.

15 “(i) SUPPLEMENTAL FUNDING.—Donations made
16 pursuant to subsection (a) may be used in addition to any
17 other funding for such purpose, including appropriated
18 funds, property, or services.

19 “(j) RETURN OF DONATIONS.—The Commissioner of
20 U.S. Customs and Border Protection or the Administrator
21 of the General Services Administration, as the case may
22 be, may return any donation made pursuant to subsection
23 (a). No interest shall be owed to the donor with respect
24 to any donation provided under such subsection that is
25 returned pursuant to this subsection.

1 “(k) ANNUAL REPORTS.—The Commissioner of U.S.
2 Customs and Border Protection, in collaboration with the
3 Administrator of the General Services Administration, as
4 appropriate, shall submit to the Committee on Homeland
5 Security, the Committee on Transportation and Infra-
6 structure, and the Committee on Appropriations of the
7 House of Representatives and the Committee on Home-
8 land Security and Governmental Affairs, the Committee
9 on Environment and Public Works, and the Committee
10 on Appropriations of the Senate an annual report identi-
11 fying the activities undertaken and agreements entered
12 into pursuant to this section.

13 “(l) RULE OF CONSTRUCTION.—Except as otherwise
14 provided in this section, nothing in this section may be
15 construed as affecting in any manner the responsibilities,
16 duties, or authorities of U.S. Customs and Border Protec-
17 tion or the General Services Administration.

18 **“SEC. 483. CURRENT AND PROPOSED AGREEMENTS.**

19 “Nothing in this subtitle may be construed as affect-
20 ing in any manner—

21 “(1) any agreement entered into pursuant to
22 section 560 of division D of the Consolidated and
23 Further Continuing Appropriations Act, 2013 (Pub-
24 lic Law 113–6) or section 559 of title V of division
25 F of the Consolidated Appropriations Act, 2014 (6

1 U.S.C. 211 note; Public Law 113–76), as in exist-
2 ence on the day before the date of the enactment of
3 this subtitle, and any such agreement shall continue
4 to have full force and effect on and after such date;
5 or

6 “(2) a proposal accepted for consideration by
7 U.S. Customs and Border Protection pursuant to
8 such section 559, as in existence on the day before
9 such date of enactment.

10 **“SEC. 484. DEFINITIONS.**

11 “In this Act:

12 “(1) DONOR.—The term ‘donor’ means any en-
13 tity that is proposing to make a donation under this
14 Act.

15 “(2) ENTITY.—The term ‘entity’ means any—

16 “(A) person;

17 “(B) partnership, corporation, trust, es-
18 tate, cooperative, association, or any other orga-
19 nized group of persons;

20 “(C) Federal, State or local government
21 (including any subdivision, agency or instru-
22 mentality thereof); or

23 “(D) any other private or governmental en-
24 tity.”.

1 (b) CLERICAL AMENDMENT.—The table of contents
2 in section 1(b) of the Homeland Security Act of 2002 is
3 amended by adding at the end of the list of items relating
4 to title IV the following new items:

“Subtitle G—U.S. Customs and Border Protection Public Private
Partnerships

“Sec. 481. Fee agreements for certain services at ports of entry.

“Sec. 482. Port of entry donation authority.

“Sec. 483. Current and proposed agreements.

“Sec. 484. Definitions.”.

5 (c) REPEALS.—Section 560 of division D of the Con-
6 solidated and Further Continuing Appropriations Act,
7 2013 (Public Law 113–6) and section 559 of title V of
8 division F of the Consolidated Appropriations Act, 2014
9 (6 U.S.C. 211 note; Public Law 113–76) are repealed.

