

117TH CONGRESS  
2D SESSION

# S. 4775

To establish and authorize funding for a Border Patrol Reserve, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

AUGUST 4, 2022

Mr. PORTMAN (for himself, Ms. SINEMA, Mr. KELLY, and Mr. LANKFORD) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To establish and authorize funding for a Border Patrol Reserve, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. BORDER PATROL RESERVE.**

7 (a) ESTABLISHMENT.—There is established within  
8 the United States Border Patrol, the Border Patrol Re-  
9 serve, which shall be organized, administered, trained, and  
10 supplied under the direction of the Commissioner of U.S.

1 Customs and Border Protection (referred to in this Act  
2 as the “Commissioner”).

3 (b) PURPOSE.—The purpose of the Border Patrol Re-  
4 serve is to augment and support the mission of the United  
5 States Border Patrol.

6 (c) AUTHORIZED SIZE.—

7 (1) IN GENERAL.—Subject to paragraph (2),  
8 the Secretary of Homeland Security shall—

9 (A) prescribe the initial authorized size of  
10 the Border Patrol Reserve; and

11 (B) not less frequently than annually, re-  
12 view and adjust, if necessary, the authorized  
13 size of the Border Patrol Reserve.

14 (2) LIMITATION.—The number of Border Pa-  
15 trol Reserve agents may not exceed 2,500 at any  
16 time.

17 (3) RESOURCES.—The Commissioner shall  
18 make available to the United States Border Patrol  
19 such services, facilities, and appropriations that may  
20 be necessary to activate and effectuate the purposes  
21 of the Border Patrol Reserve.

22 (d) QUALIFICATIONS.—Each Border Patrol Reserve  
23 agent—

1           (1) shall have previously served as a full-time  
2           United States Border Patrol agent for at least 5  
3           years;

4           (2) may not have been subject to any discipli-  
5           nary actions described in section 7512 of title 5,  
6           United States Code, during their tenure with the  
7           United States Border Patrol;

8           (3) shall be serving as—

9                   (A) a Federal law enforcement officer (as  
10                  defined in section 115(e) of title 18, United  
11                  States Code); or

12                   (B) a law enforcement officer (as defined  
13                  in section 2503 of the Omnibus Crime Control  
14                  and Safe Streets Act of 1968 (34 U.S.C.  
15                  10533));

16           (4) shall be subject to the mandatory separation  
17           requirements under section 8335(b) or 8425(b) of  
18           title 5, United States Code; and

19           (5) shall meet any other qualifications estab-  
20           lished by the Commissioner.

21           (e) POWERS; DUTIES; COMPENSATION.—

22                   (1) IN GENERAL.—The Commissioner shall—

23                           (A) specify the law enforcement powers  
24                           and duties that will be given to Border Patrol  
25                           Reserve agents, which powers and duties shall

1           only be effective while such agents are on acti-  
2           vated status;

3           (B) confer upon such agents the same  
4           grades as provided for other Border Patrol  
5           agents, to the extent warranted based on their  
6           respective qualifications and experience; and

7           (C) provide such agents with the pay and  
8           allowances associated with their rank, grade, or  
9           rating while they are in active duty with the  
10          basic border patrol rate of pay, as adjusted  
11          under this Act, including matching funds under  
12          the Thrift Savings Plan for pay received during  
13          such duty.

14          (2) EXCEPTION.—Notwithstanding paragraph  
15          (1)(C), Border Patrol Reserve agents may not be re-  
16          quired to work the minimum number of hours or  
17          days set forth in section 5550(b)(4) of title 5,  
18          United States Code.

19          (3) COMPENSATION FROM EMPLOYER.—Any  
20          Border Patrol Reserve agent who, immediately be-  
21          fore beginning duty as a Border Patrol Reserve  
22          agent, was receiving compensation as a law enforce-  
23          ment officer (as defined in section 2503 of the Om-  
24          nibus Crime Control and Safe Streets Act of 1968  
25          (34 U.S.C. 10533)), and did not resign from such

1 position, may continue to receive such compensation  
2 from a law enforcement agency while on such duty.

3 (4) EFFECT ON CREDITABLE SERVICE.—

4 (A) IN GENERAL.—Any Border Patrol Re-  
5 serve agent who is not described in subpara-  
6 graph (B) or (C) shall receive creditable service  
7 under the Federal Employees Retirement Sys-  
8 tem upon the commencement of active duty.

9 (B) FEDERAL LAW ENFORCEMENT  
10 AGENT.—Any Border Patrol Reserve agent  
11 who, immediately before such duty, was serving  
12 as a Federal law enforcement agent and did not  
13 resign from such position, shall not receive ad-  
14 ditional creditable service under the Federal  
15 Employees Retirement System or the Civil  
16 Service Retirement System while on such duty.

17 (f) EFFECT OF INJURY OR DEATH.—

18 (1) IN GENERAL.—Any Border Patrol Reserve  
19 agent who sustains a physical injury, contracts a  
20 disease or sickness, or dies as a result of service  
21 while performing duty under this section, or while  
22 engaged in authorized travel to or from such duty is  
23 entitled to compensation as a Federal employee in  
24 accordance with chapter 81 of title 5, United States,  
25 Code.

1           (2) WORKERS' COMPENSATION CLAIMS.—For  
2           the purposes of workers' compensation claims relat-  
3           ing to performing duty as a Border Patrol Reserve  
4           agent, such agents shall be considered employees (as  
5           defined in section 8101 of title 5, United States  
6           Code).

7           (g) RATES OF PAY; TRAVEL COSTS.—The Commis-  
8           sioner shall—

9           (1) provide all Border Patrol Reserve agents  
10          hourly pay at a rate equivalent to the rate paid to  
11          an employee classified at the grade level conferred  
12          by the Commissioner under subsection (e)(1)(B) for  
13          any time spent by such agents to fulfill applicable  
14          training requirements; and

15          (2) reimburse such agents for the costs associ-  
16          ated with travel to and from in-person training.

17          (h) REPORT.—Not later than 1 year after the date  
18          of the enactment of this Act, and each fiscal year there-  
19          after through fiscal year 2028, the Secretary of Homeland  
20          Security shall submit a report to the Committee on Home-  
21          land Security and Governmental Affairs of the Senate and  
22          the Committee on Homeland Security of the House of  
23          Representatives regarding the utilization of Border Patrol  
24          Reserve agents that describes—

1 (1) the powers, duties, and compensation of  
2 Border Patrol Reserve agents;

3 (2) the number of Border Patrol Reserve agents  
4 who were activated during the report period,  
5 disaggregated by U.S. Border Patrol sector;

6 (3) the compliance rate for completing the  
7 training courses required of Border Patrol Reserve  
8 agents and the training provided to Border Patrol  
9 Reserve agents during the report period; and

10 (4) the total costs incurred during the reporting  
11 period by the Border Patrol Reserve.

12 **SEC. 3. AUTHORIZED STAFFING LEVEL FOR THE UNITED**  
13 **STATES BORDER PATROL.**

14 (a) DEFINITIONS.—In this section:

15 (1) QUALIFIED RESEARCH ENTITY.—The term  
16 “qualified research entity” means an independent,  
17 not-for-profit, federally funded research entity with  
18 appropriate expertise and analytical capability to  
19 analyze and validate the personnel requirements de-  
20 termination model.

21 (2) VALIDATED PERSONNEL REQUIREMENTS  
22 DETERMINATION MODEL.—The term “validated per-  
23 sonnel requirements determination model” means a  
24 determination of the number of United States Bor-  
25 der Patrol agents needed to meet the critical mission

1 requirements of the United States Border Patrol to  
2 maintain an orderly process for migrants entering  
3 the United States, that has been validated by a  
4 qualified research entity pursuant to subsection (d).

5 (b) IN GENERAL.—The authorized personnel level for  
6 United States Border Patrol agents on the date of the en-  
7 actment of this Act is 20,500.

8 (c) UNITED STATES BORDER PATROL PERSONNEL  
9 REQUIREMENTS DETERMINATION MODEL.—

10 (1) COMPLETION; NOTICE.—Not later than 180  
11 days after the date of the enactment of this Act, the  
12 Commissioner shall complete a personnel require-  
13 ments determination model for United States Border  
14 Patrol that builds on the 5-year United States Bor-  
15 der Patrol staffing and deployment plan referred to  
16 on page 33 of House of Representatives Report  
17 112–91 (May 26, 2011) and submit a notice of com-  
18 pletion to—

19 (A) the appropriate congressional commit-  
20 tees;

21 (B) the Director of the Office of Personnel  
22 Management; and

23 (C) the Comptroller General of the United  
24 States.



1           (2) CERTIFICATION.—Not later than 30 days  
2 after the completion of the personnel requirements  
3 determination model described in paragraph (1), the  
4 Commissioner shall submit a copy of such model and  
5 a strategy for obtaining third-party validation of  
6 such model, to—

7                   (A) the appropriate congressional commit-  
8 tees;

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

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

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

15           (1) REQUIREMENT FOR STUDY.—Not later than  
16 90 days after the completion of the personnel re-  
17 quirements determination model pursuant to sub-  
18 section (c)(1), the Secretary of Homeland Security  
19 shall enter into a contract with a qualified research  
20 entity to conduct a study that analyzes the validity  
21 of the model.

22           (2) REPORTS.—

23                   (A) TO SECRETARY.—Not later than 1  
24 year after the completion of the personnel re-  
25 quirements determination model under sub-

1 section (c)(1), the qualified research entity shall  
2 submit a report to the Secretary of Homeland  
3 Security that includes—

4 (i) the results of the study required  
5 under paragraph (1); and

6 (ii) any recommendations regarding  
7 the model that the qualified research entity  
8 considers to be appropriate.

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

19 (e) AUTHORITY TO ADJUST AUTHORIZED PER-  
20 SONNEL LEVEL.—Beginning on the date that is 180 days  
21 after receiving a report pursuant to subsection (d)(2) that  
22 validates the personnel requirements determination model,  
23 the Secretary of Homeland Security may adjust the au-  
24 thorized personnel level for the United States Border Pa-  
25 trol to a level that does not exceed the level recommended

1 by the validated personnel requirements determination  
2 model.

3 **SEC. 4. ESTABLISHMENT OF HIGHER MINIMUM RATES OF**  
4 **PAY FOR UNITED STATES BORDER PATROL**  
5 **AGENTS.**

6 (a) HIGHER MINIMUM RATE OF PAY.—Not later  
7 than January 1, 2023, the Director of the Office of Per-  
8 sonnel Management—

9 (1) shall, in accordance with section 5305 of  
10 title 5, United States Code—

11 (A) increase the minimum rate of pay for  
12 United States Border Patrol agents at the  
13 grade GS–12 of the General Schedule by not  
14 less than 14 percent; and

15 (B) increase other grades or levels, occupa-  
16 tional groups, series, classes, or subdivisions  
17 thereof, as determined by the Secretary of  
18 Homeland Security; and

19 (2) may make increases in all rates in the pay  
20 range for each such grade or level, in accordance  
21 with such section 5305.

22 (b) INAPPLICABILITY.—The discretion granted to  
23 agency heads under section 5305(a)(2) of title 5, United  
24 States Code, shall not apply to increase in rates of pay  
25 authorized under subsection (a).

1 **SEC. 5. CONTINUING TRAINING.**

2 (a) IN GENERAL.—The Commissioner shall require  
3 all United States Border Patrol agents, including Border  
4 Patrol Reserve agents and other employees or contracted  
5 employees designated by the Commissioner, to participate  
6 in annual continuing training to maintain and update  
7 their understanding of—

8 (1) Department of Homeland Security policies,  
9 procedures, and guidelines;

10 (2) the fundamentals of law, ethics, and profes-  
11 sional conduct;

12 (3) applicable Federal law and regulations;

13 (4) precedential legal rulings, including Federal  
14 Circuit Court and United States Supreme Court  
15 opinions relating to the duty of care and treatment  
16 of persons in the custody of the United States Bor-  
17 der Patrol that the Commissioner determines are  
18 relevant to active duty agents;

19 (5) applicable migration trends that the Com-  
20 missioner determines are relevant;

21 (6) best practices for coordinating with commu-  
22 nity stakeholders; and

23 (7) any other information that the Commis-  
24 sioner determines to be relevant to active duty  
25 agents.

1 (b) TRAINING SUBJECTS.—Continuing training  
2 under this subsection shall include training regarding—

3 (1) non-lethal use of force policies available to  
4 United States Border Patrol agents and de-escala-  
5 tion strategies and methods;

6 (2) identifying, screening, and responding to  
7 vulnerable populations, such as children, persons  
8 with diminished mental capacity, victims of human  
9 trafficking, victims of gender-based violence, victims  
10 of torture or abuse, and the acutely ill;

11 (3) trends in transnational criminal organiza-  
12 tion activities that impact border security and mi-  
13 gration;

14 (4) policies, strategies, and programs—

15 (A) to protect due process, the civil,  
16 human, and privacy rights of individuals, and  
17 the private property rights of land owners;

18 (B) to reduce the number of migrant and  
19 agent deaths; and

20 (C) to improve the safety of agents on pa-  
21 trol;

22 (5) personal resilience;

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

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

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

6                   (B) encountered at a United States inter-  
7 national boundary while attempting to enter  
8 without inspection;

9           (8) the impact of border security operations on  
10 natural resources and the environment, including  
11 strategies to limit the impact of border security op-  
12 erations on natural resources and the environment;

13           (9) relevant cultural, societal, racial, and reli-  
14 gious training, including cross-cultural communica-  
15 tion skills;

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

18           (11) risk management and safety training that  
19 includes agency protocols for ensuring public safety,  
20 personal safety, and the safety of persons in the cus-  
21 tody of the Department of Homeland Security;

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

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

1           (c) COURSE REQUIREMENTS.—Courses offered under  
2 this section—

3           (1) shall be administered by the United States  
4 Border Patrol, in consultation with the Federal Law  
5 Enforcement Training Center; and

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

10          (d) ASSESSMENT.—Not later than 2 years after the  
11 date of the enactment of this Act, the Comptroller General  
12 of the United States shall submit a report to the Com-  
13 mittee on Homeland Security and Governmental Affairs  
14 of the Senate and the Committee on Homeland Security  
15 of the House of Representatives that assesses the training  
16 and education provided pursuant to this section, including  
17 continuing education.

18          (e) FREQUENCY REQUIREMENTS.—Training offered  
19 as part of continuing education under this section shall  
20 include—

21           (1) annual courses focusing on the curriculum  
22 described in paragraphs (1) through (6) of sub-  
23 section (b); and

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

4           (f) BORDER PATROL RESERVE TRAINING.—The  
5           Commissioner shall—

6           (1) establish such requirements as may be nec-  
7           essary for the training and familiarization of Border  
8           Patrol Reserve agents, which shall include—

9                   (A) medical fitness screenings and the con-  
10                  tinuing training described in this section;

11                  (B) requirements for in-person or virtual  
12                  training to ensure that such agents maintain  
13                  the capabilities necessary to perform their du-  
14                  ties; and

15                  (C) firearms training and qualification,  
16                  commensurate with the requirements for United  
17                  States Border Patrol agents;

18           (2) establish and require completion of a com-  
19           prehensive in-person training and familiarization  
20           program for Border Patrol Reserve Agents upon ac-  
21           tivation before utilizing those Reserve agents in  
22           operational roles; and

23           (3) take actions necessary, up to and including  
24           separation for any Border Patrol Reserve Agent who



- 1 does not adhere to the requirements established by
- 2 the Commissioner for training and familiarization.

○