

108TH CONGRESS
2D SESSION

S. 2279

To amend title 46, United States Code, with respect to maritime transportation security, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 1, 2004

Mr. HOLLINGS (for himself, Mr. MCCAIN, and Mr. BREAUX) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend title 46, United States Code, with respect to maritime transportation security, 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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Maritime Transportation Security Act of 2004”.

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. In rem liability; enforcement; pier and wharf security costs.
- Sec. 3. Maritime information.
- Sec. 4. Intermodal cargo security plan.
- Sec. 5. Joint operations center for port security.
- Sec. 6. Maritime transportation security plan grants.

- Sec. 7. Assistance for foreign ports.
 Sec. 8. Federal and State commercial maritime transportation training.
 Sec. 9. Port security research and development.
 Sec. 10. Nuclear facilities in maritime areas.
 Sec. 11. Transportation worker background investigation programs.
 Sec. 12. Security service fee.
 Sec. 13. Port security capital fund.

1 **SEC. 2. IN REM LIABILITY; ENFORCEMENT; PIER AND**
 2 **WHARF SECURITY COSTS.**

3 (a) IN GENERAL.—Chapter 701 of title 46, United
 4 States Code, is amended—

5 (1) by redesignating section 70117 as 70120;

6 and

7 (2) by inserting after section 70116 the fol-
 8 lowing:

9 **“§ 70117. In rem liability for civil penalties and cer-**
 10 **tain costs**

11 “(a) IN GENERAL.—Any vessel subject to the provi-
 12 sions of this chapter, which is used in violation of this
 13 chapter or any regulations issued hereunder shall be liable
 14 in rem for any civil penalty assessed pursuant to section
 15 70120 and may be proceeded against in the United States
 16 district court for any district in which such vessel may
 17 be found.

18 “(b) REIMBURSABLE COSTS.—

19 “(1) IN GENERAL.—Any vessel subject to the
 20 provisions of this chapter shall be liable in rem for
 21 the reimbursable costs incurred by any valid claim-
 22 ant related to implementation and enforcement of

1 this chapter with respect to the vessel, including port
2 authorities, facility or terminal operators, shipping
3 agents, Federal, State, or local government agencies,
4 and other persons to whom the management of the
5 vessel at the port of supply is entrusted, and any
6 fine or penalty relating to reporting requirements of
7 the vessel or its cargo, crew, or passengers, and may
8 be proceeded against in the United States district
9 court for any district in which such vessel may be
10 found.

11 “(2) REIMBURSABLE COSTS DEFINED.—In this
12 subsection the term ‘reimbursable costs’ means costs
13 incurred by any service provider, including port au-
14 thorities, facility or terminal operators, shipping
15 agents, Federal, State, or local government agencies,
16 or other person to whom the management of the ves-
17 sel at the port of supply is entrusted, for—

18 “(A) vessel crew on board, or in transit to
19 or from, the vessel under lawful order, including
20 accommodation, detention, transportation, and
21 medical expenses; and

22 “(B) required handling under lawful order
23 of cargo or other items on board the vessel.

1 **“§ 70118. Enforcement by injunction or withholding**
2 **of clearance**

3 “(a) INJUNCTION.—The United States district courts
4 shall have jurisdiction to restrain violations of this chapter
5 or of regulations issued hereunder, for cause shown.

6 “(b) WITHHOLDING OF CLEARANCE.—

7 “(1) If any owner, agent, master, officer, or
8 person in charge of a vessel is liable for a penalty
9 or fine under section 70120, or if reasonable cause
10 exists to believe that the owner, agent, master, offi-
11 cer, or person in charge may be subject to a penalty
12 under section 70120, the Secretary may, with re-
13 spect to such vessel, refuse or revoke any clearance
14 required by section 4197 of the Revised Statutes of
15 the United States (46 U.S.C. App. 91).

16 “(2) Clearance refused or revoked under this
17 subsection may be granted upon filing of a bond or
18 other surety satisfactory to the Secretary.

19 **“§ 70119. Security of piers and wharfs**

20 “(a) IN GENERAL.—Notwithstanding any provision
21 of law, the Secretary shall require any uncleared, imported
22 merchandise remaining on the wharf or pier onto which
23 it was unladen for more than 5 calendar days to be re-
24 moved from the wharf or pier and deposited in the public
25 stores or a general order warehouse, where it shall be in-

1 spected for determination of contents, and thereafter a
2 permit for its delivery may be granted.

3 “(b) PENALTY.—The Secretary may impose an ad-
4 ministrative penalty of \$5,000 for each bill of lading for
5 general order merchandise remaining on a wharf or pier
6 in violation of subsection (a).”.

7 (b) CONFORMING AMENDMENT FOR IN REM LIABIL-
8 ITY PROVISION IN CHAPTER 701.—Section 2 of the Act
9 of June 15, 1917 (50 U.S.C. 192) is amended—

10 (1) by striking “Act,” each place it appears and
11 inserting “title,”; and

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

13 “(d) IN REM LIABILITY.—Any vessel subject to the
14 provisions of this title, which is used in violation of this
15 title, or any regulations issued hereunder, shall be liable
16 in rem for any civil penalty assessed pursuant to sub-
17 section (c) and may be proceeded against in the United
18 States district court for any district in which such vessel
19 may be found.

20 “(e) INJUNCTION.—The United States district courts
21 shall have jurisdiction to restrain violations of this title
22 or of regulations issued hereunder, for cause shown.

23 “(f) WITHHOLDING OF CLEARANCE.—

24 “(1) If any owner, agent, master, officer, or
25 person in charge of a vessel is liable for a penalty

1 or fine under subsection (c), or if reasonable cause
2 exists to believe that the owner, agent, master, offi-
3 cer, or person in charge may be subject to a penalty
4 or fine under subsection (c), the Secretary may, with
5 respect to such vessel, refuse or revoke any clearance
6 required by section 4197 of the Revised Statutes of
7 the United States (46 U.S.C. App. 91).

8 “(2) Clearance refused or revoked under this
9 subsection may be granted upon filing of a bond or
10 other surety satisfactory to the Secretary of the De-
11 partment in which the Coast Guard is operating.”.

12 (c) EMPTY CONTAINERS.—Within 90 days after the
13 date of enactment of this Act, the Secretary of Homeland
14 Security shall review United States ports and transmit to
15 the Senate Committee on Commerce, Science, and Trans-
16 portation and the House of Representatives Committee on
17 Transportation and Infrastructure a report on the prac-
18 tices and policies in place to secure shipment of empty
19 containers. The Secretary shall include in the report rec-
20 ommendations with respect to whether additional regula-
21 tions or legislation is necessary to ensure the safe and se-
22 cure delivery of cargo and to prevent potential acts of ter-
23 rorism involving such containers.

1 (d) CLERICAL AMENDMENT.—The chapter analysis
2 for chapter 701 of title 46, United States Code, is amend-
3 ed by striking the last item and inserting the following:

“70117. In rem liability for civil penalties and certain costs
“70118. Enforcement by injunction or withholding of clearance
“70119. Security of piers and wharfs
“70120. Civil penalty”.

4 **SEC. 3. MARITIME INFORMATION.**

5 Within 90 days after the date of enactment of this
6 Act, the Secretary of Homeland Security shall submit a
7 report to the Senate Committee on Commerce, Science,
8 and Transportation and the House of Representatives
9 Committee on Transportation and Infrastructure that pro-
10 vides a preliminary plan for the implementation of section
11 70113 of title 46, United States Code. The plan shall—

12 (1) provide the identification of Federal agen-
13 cies with maritime information relating to vessels,
14 crew, passengers, cargo, and cargo shippers;

15 (2) establish a timeline for coordinating the ef-
16 forts of those Federal agencies in the collection of
17 maritime information;

18 (3) establish a timeline for the incorporation of
19 information on vessel movements derived through
20 the implementation of sections 70114 and 70115 of
21 title 46, United States Code;

1 (4) include recommendations on co-locating
2 agency personnel in order to maximize expertise,
3 minimize cost, and avoid redundancy;

4 (5) include recommendations on how to leverage
5 information on commercial maritime information col-
6 lected by the Department of the Navy, and identify
7 any legal impediments that would prevent or reduce
8 the utilization of such information outside the De-
9 partment of the Navy;

10 (6) include recommendations on educating Fed-
11 eral officials on commercial maritime operations in
12 order to facilitate the identification of security risks
13 posed through commercial maritime transportation
14 operations;

15 (7) include recommendations on how private
16 sector resources could be utilized to collect or ana-
17 lyze information, along with a preliminary assess-
18 ment of the availability and expertise of private sec-
19 tor resources;

20 (8) include recommendations on how to dissemi-
21 nate information collected and analyzed through
22 Federal maritime security coordinator while consid-
23 ering the need for nondisclosure of sensitive security
24 information and the maximizing of security through

1 the utilization of State, local, and private security
2 personnel; and

3 (9) include recommendations on how the De-
4 partment could help support a maritime information
5 sharing and analysis center for the purpose of col-
6 lecting information from public and private entities,
7 along with recommendations on the appropriate lev-
8 els of funding to help disseminate maritime security
9 information to the private sector.

10 **SEC. 4. INTERMODAL CARGO SECURITY PLAN.**

11 (a) IN GENERAL.—In addition to the plan submitted
12 under section 3, within 180 days after the date of enact-
13 ment of this Act, the Secretary of Homeland Security shall
14 submit a report to the Senate Committee on Commerce,
15 Science, and Transportation and the House of Represent-
16 atives Committee on Transportation and Infrastructure
17 containing the following:

18 (1) SECURE SYSTEMS OF TRANSPORTATION (46
19 U.S.C. 70116).—A plan, along with timelines, for the
20 implementation of section 70116 of title 46, United
21 States Code. The plan shall—

22 (A) provide an update on current efforts
23 by the Department of Homeland Security could
24 be incorporated into the certification process

1 outlined in section 70116 to ensure the physical
2 screening or inspection of imported cargo;

3 (B) provide a preliminary assessment of
4 resources necessary to evaluate and certify “Se-
5 cure Systems of Transportation”, and the re-
6 sources necessary to validate that “Secure Sys-
7 tems of Transportation” are operating in com-
8 pliance with the certification requirements; and

9 (C) contain an analysis of the feasibility of
10 establishing a user fee in order to be able to
11 evaluate, certify, and validate “Secure Systems
12 of Transportation”.

13 (2) RADIATION DETECTORS.—A report on
14 progress in the installation of a system of radiation
15 detection at all major United States seaports, along
16 with a timeline and expected completion date for the
17 system. In the report, the Secretary shall include a
18 preliminary analysis of any issues related to the in-
19 stallation of the radiation detection equipment, as
20 well as a cost estimate for completing installation of
21 the system.

22 (3) NON-INTRUSIVE INSPECTION AT FOREIGN
23 PORTS.—A report—

24 (A) on whether and to what extent foreign
25 seaports have been willing to utilize screening

1 equipment at their ports to screen cargo, includ-
2 ing the number of cargo containers that have
3 been screened at foreign seaports, and the ports
4 where they were screened;

5 (B) indicating which foreign ports may be
6 willing to utilize their screening equipment for
7 cargo exported for import into the United
8 States, and a recommendation as to whether,
9 and to what extent, United States cargo screen-
10 ing equipment will be required to be purchased
11 and stationed at foreign seaports for inspection;
12 and

13 (C) indicating to what extent additional re-
14 sources and program changes will be necessary
15 to maximize scrutiny of cargo in foreign sea-
16 ports.

17 (4) COMPLIANCE WITH SECURITY STANDARD
18 PROGRAMS.—A plan to establish, validate, and en-
19 sure compliance with security standards that would
20 require ports, terminals, vessel operators, and ship-
21 pers to adhere to security standards established by
22 or consistent with the National Transportation Sys-
23 tem Security Plan. The plan shall indicate what re-
24 sources will be utilized, and how they would be uti-

1 lized, to ensure that companies operate in compli-
2 ance with security standards.

3 (b) EVALUATION OF CARGO INSPECTION TARGETING
4 SYSTEM FOR INTERNATIONAL INTERMODAL CARGO CON-
5 TAINERS.—

6 (1) IN GENERAL.—Within 6 months after the
7 date of enactment of this Act, and annually there-
8 after, the Inspector General of the Department of
9 Homeland Security shall evaluate the system used
10 by the Department to target international inter-
11 modal containers for inspection and report the re-
12 sults of the evaluation to the Senate Committee on
13 Commerce, Science, and Transportation and the
14 House of Representatives Committee on Transpor-
15 tation and Infrastructure. In conducting the evalua-
16 tion, the Inspector General shall assess—

17 (A) the effectiveness of the current track-
18 ing system to determine whether it is adequate
19 to prevent international intermodal containers
20 from being used for purposes of terrorism;

21 (B) the sources of information used by the
22 system to determine whether targeting informa-
23 tion is collected from the best and most credible
24 sources and evaluate data sources to determine
25 information gaps and weaknesses;

1 (C) the targeting system for reporting and
2 analyzing inspection statistics, as well as testing
3 effectiveness;

4 (D) the competence and training of em-
5 ployees operating the system to determine
6 whether they are sufficiently capable to detect
7 potential terrorist threats; and

8 (E) whether the system is an effective sys-
9 tem to detect potential acts of terrorism and
10 whether additional steps need to be taken in
11 order to remedy deficiencies in targeting inter-
12 national intermodal containers for inspection.

13 (2) INCREASE IN INSPECTIONS.—If the Inspec-
14 tor General determines in any of the reports re-
15 quired by paragraph (1) that the targeting system is
16 insufficiently effective as a means of detecting poten-
17 tial acts of terrorism utilizing international inter-
18 modal containers, then within 12 months after that
19 report, the Secretary of Homeland Security shall
20 double the number of containers subjected to intru-
21 sive or non-intrusive inspection at United States
22 ports or to be shipped to the United States at for-
23 eign seaports.

24 (c) REPORT AND PLAN FORMATS.—The Secretary
25 and the Inspector General may submit any plan or report

1 required by this section in both classified and redacted for-
2 mats if the Secretary determines that it is appropriate or
3 necessary.

4 **SEC. 5. JOINT OPERATIONS CENTER FOR PORT SECURITY.**

5 The Commandant of the United States Coast Guard
6 shall report to Congress, within 180 days after the date
7 of enactment of this Act, on the potential benefits of estab-
8 lishing joint operational centers for port security at certain
9 United States seaports. The report shall consider the 3
10 Joint Operational Centers that have been established at
11 Norfolk, Charleston, San Diego, and elsewhere and com-
12 pare and contrast their composition and operational char-
13 acteristics. The report shall consider—

14 (1) whether it would be beneficial to establish
15 linkages to Federal maritime information systems
16 established pursuant to section 70113 of title 46,
17 United States Code;

18 (2) whether the operational centers could be
19 beneficially utilized to track vessel movements under
20 sections 70114 and 70115 of title 46, United States
21 Code;

22 (3) whether the operational centers could be
23 beneficial in the facilitation of intermodal cargo se-
24 curity programs such as the “Secure Systems of
25 Transportation Program”;

1 (4) the extent to which such operational centers
2 could be beneficial in the operation of maritime area
3 security plans and maritime area contingency re-
4 sponse plans and in coordinating the port security
5 activities of Federal, State, and local officials; and

6 (5) include recommendations for the number of
7 centers and their possible location, as well as pre-
8 liminary cost estimates for the operation of the cen-
9 ters.

10 **SEC. 6. MARITIME TRANSPORTATION SECURITY PLAN**
11 **GRANTS.**

12 Section 70107(a) of title 46, United States Code, is
13 amended to read as follows:

14 “(a) IN GENERAL.—The Under Secretary of Home-
15 land Security for Border and Transportation Security
16 shall establish a grant program for making a fair and eq-
17 uitable allocation of funds to implement Area Maritime
18 Transportation Security Plans and to help fund compli-
19 ance with Federal security plans among port authorities,
20 facility operators, and State and local agencies required
21 to provide security services. Grants shall be made on the
22 basis of the need to address vulnerabilities in security sub-
23 ject to review and comment by the appropriate Federal
24 Maritime Security Coordinators and the Maritime Admin-
25 istration. The grant program shall take into account na-

1 tional economic and strategic defense concerns and shall
2 be coordinated with the Director of the Office of Domestic
3 Preparedness to ensure that the grant process is con-
4 sistent with other Department of Homeland Security
5 grant programs.”.

6 **SEC. 7. ASSISTANCE FOR FOREIGN PORTS.**

7 Section 70109 of title 46, United States Code, is
8 amended—

9 (1) by striking “The Secretary” in subsection
10 (b) and inserting “The Administrator of the Mari-
11 time Administration”; and

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

13 “(c) FOREIGN ASSISTANCE PROGRAMS.—The Ad-
14 ministrator of the Maritime Administration, in coordina-
15 tion with the Secretary of State, shall identify foreign as-
16 sistance programs that could facilitate implementation of
17 port security antiterrorism measures in foreign countries.
18 The Administrator and the Secretary shall establish a pro-
19 gram to utilize those programs that are capable of imple-
20 menting port security antiterrorism measures at ports in
21 foreign countries that the Secretary finds, under section
22 70108, to lack effective antiterrorism measures.”.

1 **SEC. 8. FEDERAL AND STATE COMMERCIAL MARITIME**
2 **TRANSPORTATION TRAINING.**

3 Section 109 of the Maritime Transportation Security
4 Act of 2002 (46 U.S.C. 70101 note) is amended—

5 (1) by redesignating subsections (e) through (f)
6 as subsections (d) through (g), respectively; and

7 (2) by inserting after subsection (b) the fol-
8 lowing:

9 “(c) **FEDERAL AND STATE COMMERCIAL MARITIME**
10 **TRANSPORTATION TRAINING.**—The Secretary of Trans-
11 portation shall establish a curriculum, to be incorporated
12 into the curriculum developed under subsection (a)(1), to
13 educate and instruct Federal and State officials on com-
14 mercial maritime and intermodal transportation. The cur-
15 riculum shall be designed to familiarize those officials with
16 commercial maritime transportation in order to facilitate
17 performance of their commercial maritime and intermodal
18 transportation security responsibilities. In developing the
19 standards for the curriculum, the Secretary shall consult
20 with each agency in the Department of Homeland Security
21 with maritime security responsibilities to determine areas
22 of educational need. The Secretary shall also coordinate
23 with the Federal Law Enforcement Training Center in the
24 development of the curriculum and the provision of train-
25 ing opportunities for Federal and State law enforcement
26 officials at appropriate law enforcement training facilities.

1 **SEC. 9. RESEARCH AND DEVELOPMENT.**

2 (a) IN GENERAL.—Section 70107 of title 46, United
3 States Code, is amended by striking subsection (i) and in-
4 serting the following:

5 “(i) RESEARCH AND DEVELOPMENT.—

6 “(1) IN GENERAL.—As part of the research and
7 development program within the Science and Tech-
8 nology directorate, the Secretary of Homeland Secu-
9 rity shall conduct investigations, fund pilot pro-
10 grams, award grants, and otherwise conduct re-
11 search and development across the various portfolios
12 focused on making United States ports safer and
13 more secure. Research conducted under this sub-
14 section may include—

15 “(A) methods or programs to increase the
16 ability to target for inspection vessels, cargo,
17 crewmembers, or passengers that will arrive or
18 have arrived at any port or place in the United
19 States;

20 “(B) equipment to detect accurately explo-
21 sives, chemical, or biological agents that could
22 be used to commit terrorist acts against the
23 United States;

24 “(C) equipment to detect accurately nu-
25 clear or radiological materials, including scin-
26 tillation-based detection equipment capable of

1 signalling the presence of nuclear or radio-
2 logical materials;

3 “(D) improved tags and seal designed for
4 use on shipping containers to track the trans-
5 portation of the merchandise in such con-
6 tainers, including ‘smart sensors’ that are able
7 to track a container throughout its entire sup-
8 ply chain, detect hazardous and radioactive ma-
9 terials within that container, and transmit that
10 information to the appropriate law enforcement
11 authorities;

12 “(E) tools, including the use of satellite
13 tracking systems, to increase the awareness of
14 maritime areas and to identify potential ter-
15 rorist threats that could have an impact on fa-
16 cilities, vessels, and infrastructure on or adja-
17 cent to navigable waterways, including under-
18 water access;

19 “(F) tools to mitigate the consequences of
20 a terrorist act on, adjacent to, or under navi-
21 gable waters of the United States, including
22 sensor equipment, and other tools to help co-
23 ordinate effective response to a terrorist action;
24 and

1 “(G) applications to apply existing tech-
2 nologies from other areas or industries to in-
3 crease overall port security.

4 “(2) IMPLEMENTATION OF TECHNOLOGY.—

5 “(A) IN GENERAL.—In conjunction with
6 ongoing efforts to improve security at United
7 States ports, the Director of the Science and
8 Technology Directorate, in consultation with
9 other Department of Homeland Security agen-
10 cies with responsibility for port security, may
11 conduct pilot projects at United States ports to
12 test the effectiveness and applicability of new
13 port security projects, including—

14 “(i) testing of new detection and
15 screening technologies;

16 “(ii) projects to protect United States
17 ports and infrastructure on or adjacent to
18 the navigable waters of the United States,
19 including underwater access; and

20 “(iii) tools for responding to a ter-
21 rorist threat or incident at United States
22 ports and infrastructure on or adjacent to
23 the navigable waters of the United States,
24 including underwater access.

1 “(B) AUTHORIZATION OF APPROPRIA-
2 TIONS.—There are authorized to be appro-
3 priated to the Secretary of Homeland Security
4 \$35,000,000 for each of fiscal years 2005
5 through 2009 to carry out pilot projects under
6 subparagraph (A).

7 “(3) ADMINISTRATIVE PROVISIONS.—

8 “(A) NO DUPLICATION OF EFFORT.—Be-
9 fore making any grant, the Secretary of Home-
10 land Security shall coordinate with other Fed-
11 eral agencies to ensure the grant will not be
12 used for research and development that is al-
13 ready being conducted with Federal funding.

14 “(B) ACCOUNTING.—The Secretary of
15 Homeland Security shall by regulation establish
16 accounting, reporting, and review procedures to
17 ensure that funds made available under para-
18 graph (1) are used for the purpose for which
19 they were made available, that all expenditures
20 are properly accounted for, and that amounts
21 not used for such purposes and amounts not ex-
22 pended are recovered.

23 “(C) RECORDKEEPING.—Recipients of
24 grants shall keep all records related to expendi-
25 tures and obligations of funds provided under

1 paragraph (1) and make them available upon
2 request to the Inspector General of the Depart-
3 ment of Homeland Security and the Secretary
4 of Homeland Security for audit and examina-
5 tion.”.

6 (b) ANNUAL REPORT.—Within 30 days after the be-
7 ginning of each fiscal year from fiscal year 2005 through
8 fiscal year 2009, the Director of the Science and Tech-
9 nology Directorate shall submit a report describing its re-
10 search that can be applied to port security to the Senate
11 Committee on Commerce, Science, and Transportation,
12 the House of Representatives Committee on Science, and
13 the House of Representatives Select Committee on Home-
14 land Security. The report shall—

15 (1) describe any port security-related research,
16 including grants and pilot projects, that were con-
17 ducted in the preceding fiscal year;

18 (2) describe the amount of Department of
19 Homeland Security resources dedicated to research
20 that can be applied to port security;

21 (3) describe the steps taken to coordinate with
22 other agencies within the Department to ensure that
23 research efforts are coordinated with port security
24 efforts;

1 (4) describe how the results of the Depart-
2 ment’s research, as well as port security related re-
3 search of the Department of Defense, will be imple-
4 mented in the field, including predicted timetables;

5 (5) lay out the plans for research in the current
6 fiscal year; and

7 (6) include a description of the funding levels
8 for the research in the preceding, current, and next
9 fiscal years.

10 **SEC. 10. NUCLEAR FACILITIES IN MARITIME AREAS.**

11 (a) WATERWAYS.—Section 70103(b) is amended by
12 adding at the end thereof the following:

13 “(5) WATERWAYS LOCATED NEAR NUCLEAR FACILI-
14 TIES.—

15 “(A) IDENTIFICATION AND SECURITY EVALUA-
16 TION.—The Secretary shall—

17 “(i) identify all nuclear facilities on, adja-
18 cent to, or in close proximity to navigable wa-
19 terways that might be damaged by a transpor-
20 tation security incident;

21 “(ii) in coordination with the Secretary of
22 Energy, evaluate the security plans of each
23 such nuclear facility for its adequacy to protect
24 the facility from damage or disruption from a
25 transportation security incident originating in

1 the navigable waterway, including threats posed
2 by navigation, underwater access, and the intro-
3 duction of harmful substances into water cool-
4 ant systems.

5 “(B) RECTIFICATION OF DEFICIENCIES.—The
6 Secretary, in coordination with the Secretary of En-
7 ergy, shall take such steps as may be necessary or
8 appropriate to correct any deficiencies in security
9 identified in the evaluations conducted under sub-
10 paragraph (A).

11 “(C) REPORT.—As soon as practicable after
12 completion of the evaluation under subparagraph
13 (A), the Secretary shall transmit a report, in both
14 classified and redacted format, to the Senate Com-
15 mittee on Commerce, Science, and Transportation,
16 the House of Representatives Committee on Trans-
17 portation and Infrastructure, and the House of Rep-
18 resentatives Select Committee on Homeland Secu-
19 rity—

20 “(i) describing the results of the identifica-
21 tion and evaluation required by subparagraph
22 (A);

23 “(ii) describing the actions taken under
24 subparagraph (B); and

1 “(iii) evaluating the technology utilized in
2 the protection of nuclear facilities (including
3 any such technology under development).”.

4 (b) VESSELS.—Section 70103(c)(3) of title 46,
5 United States Code, is amended—

6 (1) by striking “and” after the semicolon in
7 subparagraph (F);

8 (2) by striking “facility.” in subparagraph (G)
9 and inserting “facility; and”; and

10 (3) by adding at the end the following:

11 “(H) establish a requirement, coordinated with
12 the Department of Energy, for criminal background
13 checks of all United States and foreign seamen em-
14 ployed on vessels transporting nuclear materials in
15 the navigable waters of the United States.”.

16 **SEC. 11. TRANSPORTATION WORKER BACKGROUND INVES-**
17 **TIGATION PROGRAMS.**

18 Within 120 days after the date of enactment of this
19 Act, the Secretary of Homeland Security, after consulta-
20 tion with the Secretary of Transportation, shall transmit
21 a report to the Senate Committee on Commerce, Science,
22 and Transportation and the House of Representatives
23 Committee on Transportation and Infrastructure—

24 (1) making recommendations (including legisla-
25 tive recommendations, if appropriate or necessary)

1 for harmonizing, combining, or coordinating require-
2 ments, procedures, and programs for conducting
3 background checks under section 70105 of title 46,
4 United States Code, section 5103a(c) of title 49,
5 United States Code, section 44936 of title 49,
6 United States Code, and other provisions of Federal
7 law or regulations requiring background checks for
8 individuals engaged in transportation or transpor-
9 tation-related activities; and

10 (2) setting forth a detailed timeline for imple-
11 mentation of such harmonization, combination, or
12 coordination.

13 **SEC. 12. SECURITY SERVICE FEE.**

14 (a) IN GENERAL.—Chapter 701 of title 46, United
15 States Code, as amended by section 2, is further amended
16 by adding at the end the following:

17 **“§ 70121. Security service fee**

18 “(a) IN GENERAL.—

19 “(1) SECURITY FEE.—Within 90 days after the
20 date of enactment of the Maritime Transportation
21 Security Act of 2004, the Secretary of Homeland
22 Security shall assess and collect an international
23 port security service fee on commercial maritime
24 transportation entities that benefit from a secure
25 system of international maritime transportation to

1 pay for the costs of providing port security services.
2 The amount of the fees assessed and collected under
3 this paragraph and paragraph (2) shall, in the ag-
4 gregate, be sufficient to provide the services and lev-
5 els of funding described in section 70122(c).

6 “(2) INTERNATIONAL TRANSSHIPMENT SECUR-
7 RITY FEE.—The Secretary shall also assess and col-
8 lect an international maritime transshipment secu-
9 rity user fee for providing security services for ship-
10 ments of cargo and transportation of passengers en-
11 tering the United States as part of an international
12 transportation movement by water through Cana-
13 dian or Mexican ports at the same rates as the fee
14 imposed under paragraph (1). The fee authorized by
15 this paragraph shall not be assessed or collected on
16 transshipments from—

17 (A) Canada after the date on which the
18 Secretary determines that an agreement be-
19 tween the United States and Canada, or

20 (B) Mexico after the date on which the
21 Secretary determines that an agreement be-
22 tween the United States and Mexico,

23 has entered into force that will provide equivalent se-
24 curity regimes and international maritime security

1 user fees of the United States and that country for
2 transshipments between the countries.

3 “(b) SCHEDULE OF FEES.—In imposing fees under
4 subsection (a), the Secretary shall ensure that the fees are
5 reasonably related to the costs of providing services ren-
6 dered and the value of the benefit derived from the con-
7 tinuation of secure international maritime transportation.

8 “(c) IMPOSITION OF FEE.—

9 “(1) IN GENERAL.—Notwithstanding section
10 9701 of title 31 and the procedural requirements of
11 section 553 of title 5, the Secretary shall impose the
12 fees under subsection (a) through the publication of
13 notice in the Federal Register and begin collection of
14 the fee within 60 days of the date of enactment of
15 the Maritime Transportation Security Act of 2004,
16 or as soon as possible thereafter. No fee shall be as-
17 sessed more than once, and no fee shall be assessed
18 for international ferry voyages.

19 “(2) MEANS OF COLLECTION.—The Secretary
20 shall prescribe procedures to collect fees under this
21 section. The Secretary may use a department, agen-
22 cy, or instrumentality of the United States Govern-
23 ment or of a State or local government to collect the
24 fee and may reimburse the department, agency, or
25 instrumentality a reasonable amount for its services.

1 “(3) SUBSEQUENT MODIFICATION OF FEE.—
2 After imposing a fee under subsection (a), the Sec-
3 retary may modify, from time to time through publi-
4 cation of notice in the Federal Register, the imposi-
5 tion or collection of such fee, or both. The Secretary
6 shall evaluate the fee annually to determine whether
7 it is necessary and appropriate to pay the cost of ac-
8 tivities and services, and shall adjust the amount of
9 the fee accordingly.

10 “(4) LIMITATION ON COLLECTION.—No fee
11 may be collected under this section except to the ex-
12 tent that the expenditure of the fee to pay the costs
13 of activities and services for which the fee is imposed
14 is provided for in advance in an appropriations Act.

15 “(d) ADMINISTRATION OF FEES.—

16 “(1) FEES PAYABLE TO SECRETARY.—All fees
17 imposed and amounts collected under this section
18 are payable to the Secretary.

19 “(2) INFORMATION.—The Secretary may re-
20 quire the provision of such information as the Sec-
21 retary decides is necessary to verify that fees have
22 been collected and remitted at the proper times and
23 in the proper amounts.

1 “(e) RECEIPTS CREDITED AS OFFSETTING COLLEC-
 2 TIONS.—Notwithstanding section 3302 of title 31, any fee
 3 collected under this section—

4 “(1) shall be credited as offsetting collections to
 5 the account that finances the activities and services
 6 for which the fee is imposed;

7 “(2) shall be available for expenditure only to
 8 pay the costs of activities and services for which the
 9 fee is imposed; and

10 “(3) shall remain available until expended.

11 “(f) REFUNDS.—The Secretary may refund any fee
 12 paid by mistake or any amount paid in excess of that re-
 13 quired.

14 “(g) SUNSET.—The fees authorized by subsection (a)
 15 may not be assessed after September 31, 2009.”.

16 (b) CONFORMING AMENDMENT.—The chapter anal-
 17 ysis for chapter 701 of title 46, United States Code, as
 18 amended by section 2, is amended by adding at the end
 19 the following:

“70121. Security service fee.”.

20 **SEC. 13. PORT SECURITY CAPITAL FUND.**

21 (a) IN GENERAL.—Chapter 701 of title 46, United
 22 States Code, as amended by section 11, is further amend-
 23 ed by adding at the end the following:

1 **“§ 70122. Port security capital fund.**

2 “(a) IN GENERAL.—There is established within the
3 Department of Homeland Security a fund to be known
4 as the Port Security Capital Fund. There are appropriated
5 to the Fund such sums as may be derived from the fees
6 authorized by section 70121(a).

7 “(b) PURPOSE.—Amounts in the Fund shall be avail-
8 able to the Secretary of Homeland Security—

9 “(1) to provide financial assistance to port au-
10 thorities, facility operators, and State and local
11 agencies required to provide security services to de-
12 fray capital investment in transportation security at
13 port facilities in accordance with the provisions of
14 this chapter;

15 “(2) to provide financial assistance to those en-
16 tities required to provide security services to help en-
17 sure compliance with Federal area maritime security
18 plans; and

19 “(3) to help defray the costs of Federal port se-
20 curity programs.

21 “(c) ALLOCATION OF FUNDS.—

22 “(1) FUNDS DERIVED FROM SECURITY FEES.—
23 From amounts in the Fund attributable to fees col-
24 lected under section 70121(a)(1) and (2)—

25 “(A) no less than \$400,000,000 (or such
26 amount as may be appropriate to reflect any

1 modification of the fees under section
2 70121(c)(3)) shall be made available each fiscal
3 year for grants under section 70107 to help en-
4 sure compliance with facility security plans or
5 to help implement Area Maritime Transpor-
6 tation Security Plans;

7 “(B) funds shall be made available to the
8 Coast Guard for the costs of implementing sec-
9 tions 70114 and 70115 fully by the end of fis-
10 cal year 2006;

11 “(C) funds shall be made available to the
12 Coast Guard for the costs of establishing com-
13 mand and control centers at United States
14 ports to help coordinate port security law en-
15 forcement activities and implementing Area
16 Maritime Security Plans, and may be trans-
17 ferred, as appropriate, to port authorities, facil-
18 ity operators, and State and local government
19 agencies to help them defray costs associated
20 with port security services;

21 “(D) funds shall be made available to the
22 Under Secretary of Homeland Security for Bor-
23 der and Transportation Security for the costs of
24 implementing cargo security programs, includ-

1 ing the costs of certifying secure systems of
2 transportation under section 70116;

3 “(E) funds shall be made available to the
4 Under Secretary of Homeland Security for Bor-
5 der and Transportation Security for the costs of
6 acquiring and operating nonintrusive screening
7 equipment at United States ports; and

8 “(F) funds shall be made available to the
9 Transportation Security Administration for the
10 costs of implementing of section 70113 and the
11 collection of commercial maritime intelligence
12 (including the collection of commercial maritime
13 transportation information from the private sec-
14 tor), of which a portion shall be made available
15 to the Coast Guard and the Customs Service
16 only for the purpose of coordinating the system
17 of collecting and analyzing information on ves-
18 sels, crew, passengers, cargo, and intermodal
19 shipments.

20 “(2) TRANSSHIPMENT FEES.—Amounts in the
21 Fund attributable to fees collected under section
22 70121(a)(3), shall be made available to the Sec-
23 retary to defray the costs of providing international
24 maritime transshipment security at the United
25 States borders with Canada and Mexico.

1 “(d) UTILIZATION REPORTS.—The Commandant of
2 the Coast Guard and the Secretary of Homeland Security
3 shall report annually to the Senate Committee on Com-
4 merce, Science, and Transportation and the House of Rep-
5 resentatives Committee on Transportation and Infrastruc-
6 ture on utilization of amounts received from the Fund.

7 “(e) LETTERS OF INTENT.—The Secretary of Home-
8 land Security, or his delegate, may execute letters of intent
9 to commit funding to port sponsors from the Fund.”.

10 (f) CONFORMING AMENDMENT.—The chapter anal-
11 ysis for chapter 701 of title 46, United States Code, as
12 amended by section 11, is amended by adding at the end
13 the following:

“70122. Port security capital fund.”.

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