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CARTER #1

Committee on Appropriations
Subcommittee on Homeland Security

FY 2017 Department of Homeland Security Appropriations Bill
Full Committee Markup

AC 12/15/17
VV

MANAGER'S AMENDMENT
Offered by Mr. Carter of Texas
(Carter #1)

In the BILL:

On page 11, line 23, strike "\$6,987,815,000" and insert "\$6,977,815,000".

On page 12, line 23, strike "\$1,277,155,000" and insert "\$1,257,155,000".

On page 25, line 16, strike "\$10,393,987,000" and insert "\$10,442,987,000".

On page 28, line 7, strike "\$2,540,000,000" and insert "\$2,589,000,000".

On page 29, line 15, insert the following paragraph and re-designate the subsequent paragraphs, accordingly:

"(E) \$49,000,000, to remain available until September 30, 2018, shall be for emergent threats from violent extremism and from complex, coordinated terrorist attacks."

On page 67, line 16, strike "\$751,700,000" and insert "\$770,700,000".

At the appropriate place in the bill, insert:

"SEC. ____ . Section 118 of the Treasury and General Government Appropriations Act, 2001 (as enacted into law by section 1(3) of Public Law 106-554; 114 Stat. 2763A-134) is amended, in the first sentence, by striking "for the year would" and

inserting “for calendar years 2016, would exceed the rate of basic pay payable for level III of the Executive Schedule, and for any other year, would”.”

At the appropriate place in the bill, insert:

“SEC. _____. Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit the report on ICE detention costs described in the report accompanying this Act.”

At the appropriate place in the bill, insert:

“SEC. _____. The Secretary of Homeland Security shall submit to the Committees on Appropriations of the House of Representatives and the Senate, the Committee on Homeland Security of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate, at the time the President’s budget proposal for fiscal year 2018 is submitted pursuant to section 1105(a) of title 31, United States Code, a classified report on the assessment of the relative threat, vulnerability, and consequences from acts of terrorism faced by each eligible metropolitan area, required by section 2003 of Public Law 110-53 (6 U.S.C. 604).”

In the REPORT:

On page 14, after the third full paragraph, insert the following:

“The Committee continues to be concerned about hiring across the Department. While departmental components have taken steps to make their hiring processes more efficient and take less time, most components are still unable to meet their hiring goals, particularly when faced with continued high attrition levels. Despite the improvements already made, the length of the hiring process continues to result in losing the most capable applicants to other employers and discouraging potential recruits from applying for employment at DHS in the first place.

The Committee directs DHS to take the following actions to help improve its hiring processes:

- a. Conduct any necessary polygraph examinations as early as possible in the personnel security process in order to avoid unnecessary background investigation, medical clearance, and other hiring-related expenses;
- b. Reevaluate current polygraph disqualifiers;
- c. Maximize the use of existing background investigations for applicants who are current federal employees or members of the U.S. Military unless specific fitness factors precluded the acceptance of a previous suitability/fitness determination;
- d. Reevaluate fitness factors to improve consistency across the Department, as appropriate, and better promote current reciprocity in acceptance of existing security clearances.

The Under Secretary for Management shall brief the Committees within 90 days of the day of enactment of this Act on the progress it has made towards meeting these requirements; on other steps the Department is taking or plans to take to improve hiring under its existing authorities; and on any new authorities that would further improve the ability to hire.”

On page 25, strike the third full paragraph and insert the following:

“The statement accompanying Division F of Public Law 114–113 included by reference directives from House Report 114–215 requiring CBP to provide a report on its search and rescue efforts during fiscal year 2015 and to brief the Committee on the feasibility and cost effectiveness of using commercially available services, including airships and fixed wing or rotary-wing aircraft to complement border surveillance activities. CBP is directed to comply immediately with these directives. In addition, CBP is directed to provide a report on its search and rescue activities during fiscal year 2016 within 60 days of enactment of this Act, as detailed in House Report 114–215. In addition, the report should address, to the extent possible, the cause of death for each migrant and the federal costs related to search and rescue efforts, including any costs related to the identification of deceased individuals; the return or transfer of remains; and the notification of family members.”

On page 26, strike the fifth full paragraph that continues onto page 28 and insert the following:

“Under Section 1313(j)(2) of title 19 of the U.S. Code, CBP is required to refund any duties, taxes, and fees imposed on imported products if they are later exported or destroyed, or if commercially interchangeable products manufactured in the United States are subsequently exported. The Committee is concerned that the agency has adopted a policy that disallows drawback claims under Section 1313(j)(2) for refund of taxes imposed on certain imported products on the pretext that such claims must be filed exclusively under title 26 of the U.S. Code, and that similarly disallows such drawback where the taxes are collected by a federal agency other than CPB. Not later than 60 days after the date of enactment of this Act, CBP shall provide a report to the Committee explaining why drawback claims for taxes imposed on certain imported products, whether paid to CBP or to another federal agency, are disallowed under section 1313(j)(2) of title 19 and why drawback claims are not treated consistently across all categories of imported merchandise.

Section 559 of Division F of Public Law 113-76 provided CBP with the authority, in partnership with the General Services Administration, to engage in a pilot program to accept donations, including real or personal property, from private sector and government entities to facilitate the construction, alteration, operation, or maintenance of a new or existing land port of entry. The Committee reminds CBP that this authorization requires the agencies to take into account the impact of each donation proposal on other ports of entry on the same border; the costs of maintaining and operating such donation; and the impact of the proposed donation on staffing requirements. In particular, the Committee does not intend that this pilot program have the effect of diverting resources, including CBP officers, to one port of entry at the expense of another.

The Committee recognizes that the CBP’s fee for service regime was originally meant to facilitate international passengers who fly into or out of small airports. However, in some instances, fee for service has been used for many years by medium-sized airports that have a consistently large volume of international passengers, despite their attempts to receive port of entry designation. This situation is of particular concern to the Committee because these airports’ passengers are essentially charged twice for the same service: once through federal fees paid when their airline ticket is purchased, and again through the CPB fee for service costs that are charged directly to the airport and inevitably passed along to

the passengers. The Committee strongly encourages CBP to address this issue by giving priority consideration to an application for port of entry status submitted by any commercial airport if such airport served at least 75,000 deplaned international passengers in the previous calendar year.

Within 180 days of the date of enactment of this Act, CBP shall report to the Committee on the following for all ports of entry: the methodology for allocating officer overtime resources; the overtime funding levels for fiscal years 2014, 2015, and 2016 at the national, field office, and port of entry levels; the number of officers who received overtime pay in those years; and the number that reached overtime caps in those years, at the national, field office, and port of entry levels. The report should also address the process for determining official hours of operation at a port of entry, and any process for changing the allocation of overtime hours to accommodate airport and airline schedules.”

On page 31, strike the second paragraph under the heading “Enforcement and Removal Operations” and insert the following:

“In November 2014, the Department replaced Secure Communities with the Priority Enforcement Program (PEP). PEP was designed to alleviate many of the concerns and legal uncertainties of Secure Communities and enable DHS to better work with state and local law enforcement to take custody of criminal aliens who pose a danger to public safety before they are released into our communities. Prior to establishing PEP, 377 jurisdictions refused to honor some or all ICE detainers. As of June 2016, according to ICE, 280 of those jurisdictions (74 percent) have agreed to participate in the PEP program by responding to ICE requests for notification, honoring detainer requests, or both. The Committee is encouraged by these results and urges continued public outreach by senior ICE and DHS officials and ICE’s field-based senior managers to further expand the number of jurisdictions participating in the program. The Committee directs ICE to provide monthly data on PEP, including the numbers of custody transfers to ICE by jurisdiction, immigration status, gender, country of citizenship, enforcement priority category and subcategory, and type of I-247 form used, and encourages the agency to make this information publicly available on its website.”

On page 32 and continuing on to page 33, strike the sixth paragraph and insert the following:

“The Committee understands that much of ICE’s detention bed capacity is provided by contract or through Inter-Governmental Service Agreements (IGSAs) with state and local governments and law enforcement agencies. The Committee is concerned that ICE is not managing its detainee population in the most fiscally responsible manner possible; therefore, ICE is directed to provide a report not later than 90 days after enactment of this Act detailing the number and type of detention contracts and IGSAs in effect, and all costs associated with them. The data provided should include, but not be limited to, transportation, including ground transportation options and travel from the point of apprehension to and from all detention centers; health care; construction; maintenance; security; education services; personnel; and all other costs that are relevant to the performance of the IGSA or contract. The report shall specify all so-called "burdened costs" and shall support those claims with specific billing information from detention providers. The report shall also determine and apply standardized methodologies, which ensure that the same costs are measured in the same ways across various IGSA’s and contracts.

Further, ICE is encouraged to utilize facilities in locations with a cost per detainee that is below the average of the previous fiscal year.

ICE is directed to notify the Committee prior to releasing any illegal immigrants in custody due to budgetary reasons, including an explanation of how ICE assessed the potential risk to the community and the risk of absconding associated with the release.”

On page 33, insert the following under the second full paragraph:

“The Committee is aware of concerns that a significant proportion of detention facility inspection results have been considered “pending” for lengthy periods of time over the last several years. ICE is reminded that it must comply with the requirements of section 211 of this Act regarding substandard performance by contract detention facilities. Within 90 days of enactment of this

Act, ICE shall brief the Committee on its processes for ensuring that it does not continue to contract with detention facilities with repeated substandard performance.

The Committee urges DHS and ICE to submit all immigration detention facility inspections and reviews – including inspections and reviews following the death of a detainee in ICE custody – directly to the OIG prior to any changes, corrections, or edits made by ICE personnel, including inspections conducted by ERO, the Office of Detention Oversight, and private contractors. The Committee also directs ICE to post links to the contracts and contract modifications for contract detention facilities on its web site.”

On page 36, in the paragraph entitled “Domestic Investigations”, strike the second sentence and insert the following:

“The recommendation includes \$5,000,000 above the request for Operation Angel Watch and the Child Exploitation Investigations Unit at the Cyber Crimes Center, of which not less than \$2,000,000 shall be for training, hiring, innovation, and technology for the Child Victim Identification Section.”

On page 42, at the end of the first full paragraph, insert the following: “Pending the results of this pilot, TSA should further examine the benefit of utilizing private sector canine teams for screening in the cargo environment, including the feasibility and costs of conducting a pilot program in this environment.”

On page 43, under the heading entitled “Management and Administration”, insert the following after the first full paragraph:

“The TSA Contact Center is an important tool for interacting with the traveling public. As passenger volume and wait times at the checkpoint have increased, call volumes to the TSA Contact Center have also increased dramatically without a commensurate growth in staff, resulting in long hold times and unanswered calls. TSA must ensure adequate resources to support Contact

Center activities, including the timely credentialing of new personnel, and enable appropriate and timely responses to increasing call volume.”

On page 44, in the last full paragraph, strike the sentence: “The Committee continues to await the submission of this overdue plan.”

On page 44, before the paragraph entitled “Vetting Programs”, insert the following:

“The Committee recognizes the significant investments made by the private sector to assist in reducing TSA security checkpoint wait times this summer, such as installation of innovative new checkpoint technologies and processes intended to improve both security and passenger throughput. The Committee encourages TSA to leverage its partnerships with private sector entities, including airports and airlines, and take these investments into consideration when making deployment decisions for new and innovative checkpoint equipment.”

On page 45, strike the last paragraph on the page and insert the following:

The Committee recommends a total appropriation of \$6,977,815,000 for Operating Expenses, \$9,000,000 below the amount requested and \$83,675,000 below the amount provided in fiscal year 2016. The total includes a reduction of \$10,000,000 to reflect a more realistic funding level for Military Pay and Allowances. ”

On page 47, before the heading “Environmental Compliance and Restoration”, insert the following paragraph:

“The Committee is aware of the Coast Guard’s plans to shift from year round operations of some Great Lakes boat stations to seasonal operations, maintaining a shore-based response capability as weather and boating activity warrants. Not later than 60 days prior to initiating seasonal operations for current, fulltime boat stations, the Coast Guard is directed to brief the Committee on plans to ensure there is no reduction in service or response times for affected communities. The briefing should detail resources that will be available, both civil

and Coast Guard assets, such as law enforcement, search and rescue, and aviation units, and include projected response times.”

On page 50, strike the third full paragraph and insert the following:

“Major/Minor Construction; Housing; ATON; and survey and Design. The Committee recommends \$38,489,000 for Major/Minor Construction, Housing, Aids to Navigation, and Survey and Design, \$20,389,000 above the request and \$86,111,000 below the amount provided in fiscal year 2016. The amount above the request is for construction, improvement, and relocation projects on the Coast Guard’s unfunded priorities list.”

On page 71, under the heading entitled “Mitigation”, strike the period at the end of the first full paragraph and insert the following: “, including its progress in implementing recommendations by the Office of Inspector General (OIG-16-47) and the status of complying with section 100224 of Public Law 112-141 (the Biggert-Waters Flood Insurance Reform Act of 2012), concerning appropriate expense reimbursement for WYO companies.”

On page 72, under the heading entitled “Preparedness and Protection”, strike the third full paragraph and insert the following:

“In fiscal year 2016, Congress appropriated \$49,000,000 for countering violent extremism (CVE) and preparing for complex, coordinated, terrorist attacks (CCTA) – initiatives that were not part of the initial budget request. This funding was provided with two-year availability to enable DHS and FEMA to develop comprehensive execution plans to ensure the benefits of this investment could be effectively leveraged to reach the greatest number of communities and have a long-term, sustaining impact. The Committee is concerned, however, that DHS is rapidly charging ahead to execute funds provided for CVE without developing and articulating a clear strategy and evaluation framework, or understanding how the initiative will complement other CVE efforts within the Department and across the federal government. The recommendation includes \$49,000,000 for FEMA for CCTA/CVE, but directs the Department to defer additional investments in CVE during fiscal year 2017 until it can rigorously demonstrate how federal CVE

investments are aligned with the DHS mission and can result in effective strategies that can be broadly applied to prevent radicalization. The Committee further notes that the activities funded through these grants are also eligible expenses under the State Homeland Security Grant Program and the Urban Areas Security Initiative (UASI).”

On page 73, after the first full paragraph, insert the following:

“The Implementing Recommendations of the 9/11 Commission Act of 2007 requires the Administrator of FEMA to conduct an annual assessment of the relative threat, vulnerabilities, and consequences from acts of terrorism faced by each of the 100 most populous metropolitan statistical areas (MSA) in the U.S. Based on this assessment, the Administrator designates high-risk urban areas that are eligible for UASI grants. While the factors included in this assessment are defined in statute, the specific criteria that inform these factors and the methodology used to carry out the assessment are at the discretion of the Secretary and the Administrator, who review them on an annual basis. The Committee is aware of the Secretary's commitment to conduct a thorough review of the methodology and criteria used to support the assessment and designation of high-risk urban areas, and includes language in the bill requiring the Secretary to submit a classified report on the assessment of the relative threat, vulnerability, and consequences from acts of terrorism faced by each MSA. The Committee expects this report will reflect any changes, as appropriate, resulting from the Secretary's review, and that the assessment outlined in the report will be applied to the risk determinations for urban areas eligible for UASI grants.”

On page 73, after the paragraph entitled “Firefighter Assistance Grants”, insert the following:

“Today, crude-by-rail communities and their first responders lack the equipment, training, and operational support they need to meet the public safety challenges posed by derailments. FEMA is encouraged to give high priority consideration to grants providing for planning, training, and equipment to firefighters for crude oil-by-rail and ethanol-by-rail derailment and incident

response to help meet the needs of our most vulnerable communities and first responders.”

On page 84, under the heading entitled “Chemical, Biological, and Emerging Infectious Diseases Capability”, at the end of the first paragraph, insert the following: “The Committee has been encouraged by NBIC’s efforts to pilot programs that employ novel data sets and information, advanced analytic approaches and tools, and improved methods of collaboration.”