

FIRST RESPONDER ACCESS TO INNOVATIVE
 TECHNOLOGIES ACT

SEPTEMBER 26, 2016.—Committed to the Committee of the Whole House on the
 State of the Union and ordered to be printed

Mr. McCAUL, from the Committee on Homeland Security,
 submitted the following

R E P O R T

[To accompany H.R. 5460]

The Committee on Homeland Security, to whom was referred the bill (H.R. 5460) to amend the Homeland Security Act of 2002 to establish a review process to review applications for certain grants to purchase equipment or systems that do not meet or exceed any applicable national voluntary consensus standards, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:
 Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “First Responder Access to Innovative Technologies Act”.

SEC. 2. APPROVAL OF CERTAIN EQUIPMENT.

(a) IN GENERAL.—Subsection (f) of section 2008 of the Homeland Security Act of 2002 (6 U.S.C. 609) is amended—

(1) by striking “If an applicant” and inserting the following:

“(1) APPLICATION REQUIREMENT.—If an applicant”; and

(2) by adding at the end the following new paragraphs:

“(2) REVIEW PROCESS.—The Administrator shall implement a uniform process for reviewing applications that, in accordance with paragraph (1), contain explanations to use grants provided under section 2003 or 2004 to purchase equipment or systems that do not meet or exceed any applicable national voluntary consensus standards developed under section 647 of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 747).

“(3) FACTORS.—In carrying out the review process under paragraph (2), the Administrator shall consider the following:

“(A) Current or past use of proposed equipment or systems by Federal agencies or the Armed Forces.

“(B) The absence of a national voluntary consensus standard for such equipment or systems.

“(C) The existence of an international consensus standard for such equipment or systems, and whether such equipment or systems meets such standard.

“(D) The nature of the capability gap identified by the applicant and how such equipment or systems will address such gap.

“(E) The degree to which such equipment or systems will serve the needs of the applicant better than equipment or systems that meet or exceed existing consensus standards.

“(F) Any other factor determined appropriate by the Administrator.”.

(b) INSPECTOR GENERAL REPORT.—Not later than three years after the date of the enactment of this Act, the Inspector General of the Department of Homeland Security shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report assessing the implementation of the review process established under paragraph (2) of subsection (f) of section 2008 of the Homeland Security Act of 2002 (as added by subsection (a) of this section), including information on the following:

(1) The number of requests to purchase equipment or systems that do not meet or exceed any applicable consensus standard evaluated under such review process.

(2) The capability gaps identified by applicants and the number of such requests granted or denied.

(3) The processing time for the review of such requests.

PURPOSE AND SUMMARY

The purpose of H.R. 5460 is to amend the Homeland Security Act of 2002 to establish a process to review applications for certain grants to purchase equipment or systems that do not meet or exceed any applicable national voluntary consensus standards, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

As the threats that confront communities across the nation evolve, so too do the events first responders are called upon to tackle. Advancements in first responder technology are making it possible for first responders to do their jobs better and safer. Unfortunately, some first responders are unable to acquire innovative, modern technologies. Section 2008(f) of the Homeland Security Act requires applications for State Homeland Security Grant Program (SHSGP) and the Urban Area Security Initiative (UASI) funds to include an explanation should the applicant propose to purchase or upgrade equipment that does not meet or exceed applicable na-

tional voluntary consensus standards. Although FEMA does review such requests, stakeholders have complained that the process lacks uniformity, predictability, and transparency. Moreover, FEMA does not have a process in place to review requests to purchase equipment or systems for which no consensus standards exist. H.R. 5460 would help first responders use grant funds to purchase innovative technology by directing FEMA to develop a uniform, transparent process for reviewing these requests.

HEARINGS

No hearings were held on H.R. 5460 in the 114th Congress.

COMMITTEE CONSIDERATION

The Committee met on September 13, 2016, to consider H.R. 5460, and ordered the measure to be reported to the House with a favorable recommendation, as amended, by voice vote. The Committee took the following actions:

The following amendment was offered:

An Amendment by MR. DONOVAN (#1); was AGREED TO by voice vote.

In subsection (b), in the matter preceding paragraph (1), strike “review process” and insert “the processes”.

Amend paragraph (2) of subsection (b) to read as follows:

(2) The capability gaps identified by applicants and the number of such requests granted or denied.

The Subcommittee on Emergency Preparedness, Response, and Communications met on June 16, 2016, to consider H.R. 5460, and ordered the measure reported to the Full Committee with a favorable recommendation, without amendment, by voice vote.

COMMITTEE VOTES

Clause 3(b) of Rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

No recorded votes were requested during consideration of H.R. 5460.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 5460, the First Responder Access to Innovative Technologies Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional

Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, H.R. 5460 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

Under this legislation, the Committee intends FEMA to implement a uniform process for reviewing applications to use SHSGP and UASI funds to purchase equipment or systems that do not meet or exceed national voluntary consensus standards. Additionally, H.R. 5460 would require the Inspector General of the Department of Homeland Security to submit a report to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate assessing FEMA's implementation of the review process. The report is required not later than three years after the date of enactment of this bill. Further, it would include the number of requests to purchase the type of equipment or systems mentioned above; the capability gaps identified in applications to purchase such equipment or systems; the number of requests granted and denied, and the processing time for the review of such requests.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of Rule XIII, the Committee finds that H.R. 5460 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with Rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the Rule XXI.

FEDERAL MANDATES STATEMENT

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or Tribal law,

the Committee finds that H.R. 5460 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 5460 would require no directed rule makings.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short Title.

This section provides that this bill may be cited as the “First Responder Access to Innovative Technologies Act”.

Sec. 2. Approval of Certain Equipment.

This section amends Subsection (f) of section 2008 of the Homeland Security Act of 2002 (6 U.S.C. 609) by adding at the end a review process for applications seeking to purchase equipment or systems that do not meet or exceed applicable national voluntary consensus standards using funds from the Urban Area Security Initiative or the State Homeland Security Grant Program. The Administrator is required to implement a uniform process for reviewing such applications against the following criteria:

1. current or past use of proposed equipment or systems by Federal agencies or the Armed Forces;
2. the absence of a national voluntary consensus standard for such equipment or systems;
3. the existence of an international consensus standard for such equipment or systems, and whether such equipment or systems meets such standard;
4. the nature of the capability gap identified by the applicant and how such equipment or systems will address such gap;
5. the degree to which such equipment or systems will serve the needs of the applicant better than that which meets or exceeds existing consensus standards; and
6. any other factor determined appropriate by the Administrator.

This section also requires the Inspector General to report to Congress, no later than three years after enactment of this Act, on the implementation of the review process established under this Act, which includes the number of requests to purchase equipment or systems that do not meet or exceed any applicable consensus standard evaluated under such review process; the number of such requests granted and denied; and how long it takes to review such requests.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002

* * * * *

TITLE XX—HOMELAND SECURITY GRANTS

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Subtitle A—Grants to States and High-Risk Urban Areas

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SEC. 2008. USE OF FUNDS.

(a) **PERMITTED USES.**—The Administrator shall permit the recipient of a grant under section 2003 or 2004 to use grant funds to achieve target capabilities related to preventing, preparing for, protecting against, and responding to acts of terrorism, consistent with a State homeland security plan and relevant local, tribal, and regional homeland security plans, including by working in conjunction with a National Laboratory (as defined in section 2(3) of the Energy Policy Act of 2005 (42 U.S.C. 15801(3))), through—

- (1) developing and enhancing homeland security, emergency management, or other relevant plans, assessments, or mutual aid agreements;
- (2) designing, conducting, and evaluating training and exercises, including training and exercises conducted under section 512 of this Act and section 648 of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 748);
- (3) protecting a system or asset included on the prioritized critical infrastructure list established under section 210E(a)(2);
- (4) purchasing, upgrading, storing, or maintaining equipment, including computer hardware and software;
- (5) ensuring operability and achieving interoperability of emergency communications;
- (6) responding to an increase in the threat level under the Homeland Security Advisory System, or to the needs resulting from a National Special Security Event;
- (7) establishing, enhancing, and staffing with appropriately qualified personnel State, local, and regional fusion centers that comply with the guidelines established under section 210A(i);
- (8) enhancing school preparedness;

(9) enhancing the security and preparedness of secure and nonsecure areas of eligible airports and surface transportation systems;

(10) supporting public safety answering points;

(11) paying salaries and benefits for personnel, including individuals employed by the grant recipient on the date of the relevant grant application, to serve as qualified intelligence analysts, regardless of whether such analysts are current or new full-time employees or contract employees;

(12) paying expenses directly related to administration of the grant, except that such expenses may not exceed 3 percent of the amount of the grant;

(13) any activity permitted under the Fiscal Year 2007 Program Guidance of the Department for the State Homeland Security Grant Program, the Urban Area Security Initiative (including activities permitted under the full-time counterterrorism staffing pilot), or the Law Enforcement Terrorism Prevention Program; and

(14) any other appropriate activity, as determined by the Administrator.

(b) LIMITATIONS ON USE OF FUNDS.—

(1) IN GENERAL.—Funds provided under section 2003 or 2004 may not be used—

(A) to supplant State or local funds, except that nothing in this paragraph shall prohibit the use of grant funds provided to a State or high-risk urban area for otherwise permissible uses under subsection (a) on the basis that a State or high-risk urban area has previously used State or local funds to support the same or similar uses; or

(B) for any State or local government cost-sharing contribution.

(2) PERSONNEL.—

(A) IN GENERAL.—Not more than 50 percent of the amount awarded to a grant recipient under section 2003 or 2004 in any fiscal year may be used to pay for personnel, including overtime and backfill costs, in support of the permitted uses under subsection (a).

(B) WAIVER.—At the request of the recipient of a grant under section 2003 or 2004, the Administrator may grant a waiver of the limitation under subparagraph (A).

(3) LIMITATIONS ON DISCRETION.—

(A) IN GENERAL.—With respect to the use of amounts awarded to a grant recipient under section 2003 or 2004 for personnel costs in accordance with paragraph (2) of this subsection, the Administrator may not—

(i) impose a limit on the amount of the award that may be used to pay for personnel, or personnel-related, costs that is higher or lower than the percent limit imposed in paragraph (2)(A); or

(ii) impose any additional limitation on the portion of the funds of a recipient that may be used for a specific type, purpose, or category of personnel, or personnel-related, costs.

(B) ANALYSTS.—If amounts awarded to a grant recipient under section 2003 or 2004 are used for paying salary or

benefits of a qualified intelligence analyst under subsection (a)(10), the Administrator shall make such amounts available without time limitations placed on the period of time that the analyst can serve under the grant.

(4) CONSTRUCTION.—

(A) IN GENERAL.—A grant awarded under section 2003 or 2004 may not be used to acquire land or to construct buildings or other physical facilities.

(B) EXCEPTIONS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), nothing in this paragraph shall prohibit the use of a grant awarded under section 2003 or 2004 to achieve target capabilities related to preventing, preparing for, protecting against, or responding to acts of terrorism, including through the alteration or remodeling of existing buildings for the purpose of making such buildings secure against acts of terrorism.

(ii) REQUIREMENTS FOR EXCEPTION.—No grant awarded under section 2003 or 2004 may be used for a purpose described in clause (i) unless—

(I) specifically approved by the Administrator;

(II) any construction work occurs under terms and conditions consistent with the requirements under section 611(j)(9) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196(j)(9)); and

(III) the amount allocated for purposes under clause (i) does not exceed the greater of \$1,000,000 or 15 percent of the grant award.

(5) RECREATION.—Grants awarded under this subtitle may not be used for recreational or social purposes.

(c) MULTIPLE-PURPOSE FUNDS.—Nothing in this subtitle shall be construed to prohibit State, local, or tribal governments from using grant funds under sections 2003 and 2004 in a manner that enhances preparedness for disasters unrelated to acts of terrorism, if such use assists such governments in achieving target capabilities related to preventing, preparing for, protecting against, or responding to acts of terrorism.

(d) REIMBURSEMENT OF COSTS.—

(1) PAID-ON-CALL OR VOLUNTEER REIMBURSEMENT.—In addition to the activities described in subsection (a), a grant under section 2003 or 2004 may be used to provide a reasonable stipend to paid-on-call or volunteer emergency response providers who are not otherwise compensated for travel to or participation in training or exercises related to the purposes of this subtitle. Any such reimbursement shall not be considered compensation for purposes of rendering an emergency response provider an employee under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

(2) PERFORMANCE OF FEDERAL DUTY.—An applicant for a grant under section 2003 or 2004 may petition the Administrator to use the funds from its grants under those sections for the reimbursement of the cost of any activity relating to preventing, preparing for, protecting against, or responding to acts of terrorism that is a Federal duty and usually performed by

a Federal agency, and that is being performed by a State or local government under agreement with a Federal agency.

(e) FLEXIBILITY IN UNSPENT HOMELAND SECURITY GRANT FUNDS.—Upon request by the recipient of a grant under section 2003 or 2004, the Administrator may authorize the grant recipient to transfer all or part of the grant funds from uses specified in the grant agreement to other uses authorized under this section, if the Administrator determines that such transfer is in the interests of homeland security.

(f) EQUIPMENT STANDARDS.—**[If an applicant]**

(1) APPLICATION REQUIREMENT.—*If an applicant for a grant under section 2003 or 2004 proposes to upgrade or purchase, with assistance provided under that grant, new equipment or systems that do not meet or exceed any applicable national voluntary consensus standards developed under section 647 of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 747), the applicant shall include in its application an explanation of why such equipment or systems will serve the needs of the applicant better than equipment or systems that meet or exceed such standards.*

(2) REVIEW PROCESS.—*The Administrator shall implement a uniform process for reviewing applications that, in accordance with paragraph (1), contain explanations to use grants provided under section 2003 or 2004 to purchase equipment or systems that do not meet or exceed any applicable national voluntary consensus standards developed under section 647 of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 747).*

(3) FACTORS.—*In carrying out the review process under paragraph (2), the Administrator shall consider the following:*

(A) *Current or past use of proposed equipment or systems by Federal agencies or the Armed Forces.*

(B) *The absence of a national voluntary consensus standard for such equipment or systems.*

(C) *The existence of an international consensus standard for such equipment or systems, and whether such equipment or systems meets such standard.*

(D) *The nature of the capability gap identified by the applicant and how such equipment or systems will address such gap.*

(E) *The degree to which such equipment or systems will serve the needs of the applicant better than equipment or systems that meet or exceed existing consensus standards.*

(F) *Any other factor determined appropriate by the Administrator.*

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