

Calendar No. 364

117TH CONGRESS }
2d Session }

SENATE

{ REPORT
117-107 }

TO AMEND THE POST-KATRINA EMERGENCY
MANAGEMENT REFORM ACT OF 2006 TO
REPEAL CERTAIN OBSOLETE REQUIRE-
MENTS, AND FOR OTHER PURPOSES

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 3499



MAY 9, 2022.—Ordered to be printed

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MENT REFORM ACT OF 2006 TO REPEAL CERTAIN OB-
SOLETE REQUIREMENTS, AND FOR OTHER PURPOSES

MAY 9, 2022.—Ordered to be printed

Mr. PETERS, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 3499]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs,
to which was referred the bill (S. 3499) to amend the Post-Katrina
Emergency Management Reform Act of 2006 to repeal certain obso-
lete requirements, and for other purposes, having considered the
same, reports favorably thereon without amendment and recom-
mends that the bill do pass.

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I. PURPOSE AND SUMMARY

S. 3499 repeals Section 692 of the Post-Katrina Emergency Man-
agement Reform Act of 2006 (PKEMRA) to conform with govern-
ment-wide requirements. Section 692 of PKEMRA placed a limita-
tion on certain Department of Homeland Security (DHS) emergency
response and recovery contracts to prevent excessive subcon-
tracting. Subsequently, a provision in the Duncan Hunter National
Defense Authorization Act for Fiscal Year 2009 resulted in govern-

ment-wide changes to the Federal Acquisition Regulation to prevent excessive subcontracting, making Section 692 unnecessary.

II. BACKGROUND AND NEED FOR THE LEGISLATION

Section 692 of PKEMRA required DHS to preclude the use of subcontracts for more than 65% of the cost of certain emergency response and recovery contracts, to prevent excessive subcontracting.¹ However, Section 866 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 directed the Federal Acquisition Regulatory Council to institute a government-wide limitation to prevent excessive subcontracting, which is 70% of contract cost.² This change put the DHS-specific requirements in conflict with government-wide rules.

The Committee on Homeland Security and Governmental Affairs recognized in 2012 that Section 692 was rendered obsolete with the issuance of these FAR changes when the Committee included repeal of this section in its reauthorization bill for DHS.³ However, the DHS reauthorization bill did not pass for other reasons. The repeal of Section 692 was taken up by the Committee again in the 116th Congress as S. 4165 and was reported favorably to the Senate in December 2020.⁴ Time ran out in the legislative session before this bill could be brought to a Senate vote.

III. LEGISLATIVE HISTORY

S. 3499 was introduced by Chairman Gary Peters (D–MI) on January 13, 2022, with Ranking Member Rob Portman (R–OH) as cosponsor. The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 3499 at a business meeting on February 2, 2022. The bill was ordered reported favorably by voice vote *en bloc* with Senators Peters, Carper, Hassan, Sinema, Rosen, Padilla, Ossoff, Portman, Lankford, Scott, and Hawley present.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Repeal of obsolete DHS contracting requirements

This section repeals Section 692 of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 792).

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s (CBO) statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

¹ Pub. L. No. 109–295 (2006).

² Duncan Hunter National Defense Authorization Act of 2009, Pub. L. 110–417 (2008).

³ S. Rept. 112–249, Sec. 112.

⁴ Senate Committee on Homeland Security and Governmental Affairs, *To Repeal Section 692 of the Post-Katrina Emergency Management Reform Act of 2006* (Dec. 14, 2020) (S. Rept. 116–320).

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 2, 2022.

Hon. GARY PETERS,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 3499, a bill to amend the Post-Katrina Emergency Management Reform Act of 2006 to repeal certain obsolete requirements, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jon Sperl.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

S. 3499, a bill to amend the Post-Katrina Emergency Management Reform Act of 2006 to repeal certain obsolete requirements, and for other purposes			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on February 2, 2022			
By Fiscal Year, Millions of Dollars	2022	2022-2026	2022-2031
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	0	0
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

S. 3499 would repeal a provision concerning limits on tiered subcontracting of disaster assistance provided by the Federal Emergency Management Agency (FEMA). The provision was enacted as part of the Post-Katrina Emergency Management Reform Act of 2006. However, since the passage of that law, FEMA has not implemented the provision.

On that basis, CBO estimates that repealing the provision would have no effect on the federal budget.

The CBO staff contact for this estimate is Jon Sperl. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted

is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

TITLE 6—DOMESTIC SECURITY

* * * * *

CHAPTER 2—NATIONAL EMERGENCY MANAGEMENT

* * * * *

Subchapter II—Comprehensive Preparedness System

* * * * *

PART D—PREVENTION OF FRAUD, WASTE, AND ABUSE

* * * * *

[SEC. 792. LIMITATIONS ON TIERING OF SUBCONTRACTORS.

[(a) REGULATIONS.—The Secretary shall promulgate regulations applicable to contracts described in subsection (c) to minimize the excessive use by contractors of subcontractors or tiers of subcontractors to perform the principal work of the contract.

[(b) SPECIFIC REQUIREMENT.—At a minimum, the regulations promulgated under subsection (a) shall preclude a contractor from using subcontracts for more than 65 percent of the cost of the contract or the cost of any individual task or delivery order (not including overhead and profit), unless the Secretary determines that such requirement is not feasible or practicable.

[(c) COVERED CONTRACTS.—This section applies to any cost reimbursement type contract or task or delivery order in an amount greater than the simplified acquisition threshold (as defined by section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)) entered into by the Department to facilitate response to or recovery from a natural disaster or act of terrorism or other man-made disaster.]