

Calendar No. 402

117TH CONGRESS }
2d Session }

SENATE

{ REPORT
117-120

DHS CONTRACT REPORTING ACT OF 2021

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

H.R. 4363

TO ESTABLISH A DAILY PUBLIC REPORTING REQUIREMENT
FOR COVERED CONTRACT AWARDS OF THE DEPARTMENT OF
HOMELAND SECURITY, AND FOR OTHER PURPOSES



JUNE 9, 2022.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

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

R E P O R T

[To accompany H.R. 4363]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (H.R. 4363) to establish a daily public reporting requirement for covered contract awards of the Department of Homeland Security, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

H.R. 4363, the DHS Contract Reporting Act of 2021, establishes a daily public reporting requirement for contract awards of the Department of Homeland Security (DHS) at or above \$4 million, except for awards relating to classified matters. The report must be posted to a publicly available website and include key information such as contract type and value, name and address of vendor, and place of performance.

The substitute amendment adopted by this committee improves consistency and efficiency in the reporting requirements by making

changes to allow the data to be pulled from existing systems, such as the Federal Procurement Data System. The amendment also removes a subscription requirement that poses information technology and security challenges for DHS. It clarifies the exemption from reporting for those actions for which disclosure would compromise national security. Lastly, it adds a sunset provision of 5 years on the reporting requirements.

II. BACKGROUND AND NEED FOR THE LEGISLATION

Some DHS contract awards are announced through press releases, but many are not, and government websites that contain DHS award notices and spending information can be difficult to navigate and monitor.

H.R. 4363 intends to improve transparency and oversight of DHS contract actions by requiring contracts of \$4 million and above to be posted in an easily accessible format on a public-facing DHS website.¹ The daily report would include the contract type and amount, and certain other contract information.² The legislation would also provide instructions on the handling of undefinitized contract actions and establish an exemption for national security reasons.³ It also makes certain adjustments to ensure DHS can efficiently fulfill the reporting requirements.

III. LEGISLATIVE HISTORY

H.R. 4363 was introduced by Representative Diana Harshbarger (R-TN-1) on July 6, 2021, with Representative Elaine Luria (D-VA-2). Representatives John Katko (R-NY-24) and Elissa Slotkin (D-MI-8) joined as cosponsors on July 26, 2021 and July 27, 2021, respectively. The bill was considered in the House of Representatives under suspension of the rules and passed the House by voice vote on September 29, 2021. The bill was received in the Senate on September 30, 2021 and was referred to the Homeland Security and Governmental Affairs Committee.

The Committee considered H.R. 4363 at a business meeting on November 3, 2021. During the business meeting, a substitute amendment was offered by Chairman Peters and Ranking Member Portman, which was adopted by voice vote *en bloc*. The bill, as amended, was ordered reported favorably by voice vote *en bloc* with Senators Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Portman, Johnson, Lankford, Romney, Scott, and Hawley present.

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

Section 1. Short title

This section provides that the Act may be cited as the “DHS Contract Reporting Act of 2021.”

¹ Committee on Homeland Security, *DHS Contract Reporting Act of 2021*, (Sept. 14, 2021) (H. Rept. 117-121).

² The report would include the contract action number, contract type, amount obligated, total contract value including options, description of work, number of proposals or bids received, name and address of vendor and whether it is a small business, primary place of performance, whether the award is multiyear, and the contracting office making the award.

³ If a covered contract award includes an undefinitized contract action, the report must include the estimated total contract value for the award and the amount obligated upon award. Once there is a definitized amount for the award, the report must be updated with the total contract value and amount obligated.

Sec. 2. Daily public report of covered contract awards

Subsection (a) requires DHS to maintain and update daily a report of all covered contract awards. The information in the report shall include the contract action number, contract type, amount obligated, total contract value including options, description of work, number of proposals or bids received, name and address of vendor and whether it is a small business, primary place of performance, whether the award is multi-year, and the contracting office making the award.

Subsection (b) provides instructions on handling of undefinitized contract actions and definitized amounts.

Subsection (c) provides an exemption from reporting requirements for national security reasons by referencing Federal Acquisition Regulation 5.202(a)(1).

Subsection (d) provides definitions of “covered contract award;” “definitized amount;” “Department;” “Secretary;” “small business;” “total contract value;” and “undefinitized contract action.”

Subsection (e) establishes a sunset on the reporting requirements in Section 2 of 5 years after the date of the Act’s enactment.

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.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 26, 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 H.R. 4363, the DHS Contract Reporting Act of 2021.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 4363, DHS Contract Reporting Act of 2021			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on November 3, 2021			
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)	*	5	not estimated
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
* = between zero and \$500,000.			

H.R. 4363 would require the Department of Homeland Security (DHS) to report daily on most department contract awards that have a value of more than \$4 million, beginning six months after the bill's enactment. The reports would need to include information about each contract award, including the contract value, timeline, and description. The bill would require DHS to maintain this information on a public website and make updates no later than five business days after a new contract is authorized or an existing contract is modified.

Based on information provided by DHS, CBO expects the agency would need two new employees to compile contract information and produce the reports and approximately \$750,000 each year for technology costs to maintain the website. Using historical patterns of spending for similar programs, CBO estimates the agency would spend about \$1 million each year to implement the bill for a total of \$5 million over the 2022–2026 period; such spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Lindsay Wylie. The estimate was reviewed by Leo Lex, Deputy Director of Budget Analysis.

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

This legislation would make no changes in existing law, within the meaning of clauses (a) and (b) of subparagraph 12 of rule XXVI of the Standing Rules of the Senate, because this legislation would not repeal or amend any provision of current law.