

Calendar No. 348

118TH CONGRESS }
2d Session }

SENATE

{ REPORT
118-161 }

HELPING ELIMINATE LIMITATIONS FOR
PROMPT RESPONSE AND RECOVERY ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 3648

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



MARCH 14, 2024.—Ordered to be printed

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**HELPING ELIMINATE LIMITATIONS FOR PROMPT
RESPONSE AND RECOVERY ACT**

MARCH 14, 2024.—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. 3648]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 3648) to amend the Post-Katrina Management Reform Act of 2006 to repeal certain obsolete requirements, 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.

CONTENTS

	Page
I. Purpose and Summary	1
II. Background and Need for the Legislation	2
III. Legislative History	2
IV. Section-by-Section Analysis of the Bill, as Reported	3
V. Evaluation of Regulatory Impact	3
VI. Congressional Budget Office Cost Estimate	3
VII. Changes in Existing Law Made by the Bill, as Reported	4

I. PURPOSE AND SUMMARY

S. 3648, the *Helping Eliminate Limitations for Prompt (HELP) Response and Recovery Act*, repeals section 695 of the *Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA)* to conform certain Department of Homeland Security (DHS) procurement procedures to government-wide requirements. Section 695 of PKEMRA placed a limitation on the length of certain non-competitive DHS emergency response and recovery contracts. Subsequently, a provision in the *Duncan Hunter National Defense Authorization Act for*

Fiscal Year 2009 resulted in government-wide changes to the Federal Acquisition Regulation (FAR) to limit the length of non-competitive contracts based on urgent and compelling needs, making section 695 more restrictive than the government-wide rules.

II. BACKGROUND AND NEED FOR THE LEGISLATION

Section 695 of PKEMRA required DHS to issue regulations to limit the length of non-competitive contracts awarded based on urgent and compelling needs to facilitate disaster response and recovery efforts to no longer than 150 days.¹ Subsequently, however, section 862 of the *Duncan Hunter National Defense Authorization Act for Fiscal Year 2009* (NDAA) placed a government-wide limitation of one year on the length of non-competitive contracts awarded based on urgent and compelling needs.² This change made the DHS-specific requirement more restrictive than the government-wide limitation, constraining DHS's ability to better meet the needs of disaster survivors. Repealing section 695 will allow DHS to follow the same rules for disaster contracting as other federal agencies implemented in the Federal Acquisition Regulation based on the 2009 NDAA.

This Committee recognized in 2012 that section 695 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 become law.

III. LEGISLATIVE HISTORY

Senator Gary Peters (D–MI) introduced S. 3648, the *HELP Response and Recovery Act*, on January 24, 2024, with original co-sponsor Senator John Kennedy (R–LA). The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 3648 at a business meeting on January 31, 2024. During the business meeting, Senator Peters offered a substitute amendment to the bill, as well as a modification to the substitute amendment. The Peters substitute amendment, as modified, removed the sense of Congress provision and added a 5-year reporting requirement after enactment of the legislation. The Committee adopted the modification to the Peters substitute amendment, and the Peters substitute amendment as modified, by unanimous consent, with Senators Peters, Carper, Hassan, Rosen, Ossoff, Paul, Lankford, Romney, Scott, and Marshall present. The bill, as amended by the Peters substitute amendment as modified, was ordered reported favorably by roll call vote of 10 yeas to 0 nays, with Senators Peters, Carper, Hassan, Rosen, Ossoff, Paul, Lankford, Romney, Scott, and Marshall voting in the affirmative. Senators Sinema, Blumenthal, Butler, Johnson, and Hawley voted yea by proxy, for the record only. Consistent with Committee Rule 3(G), the Committee reports the bill with a technical amendment by mutual agreement of the Chairman and Ranking Member.

¹Pub. L. No. 109–295 (2006).

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

³Department of Homeland Security Reauthorization Act of 2012, S. 1546, 112th Cong. § 112 (2012).

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

Section 1. Short title

This section establishes the short title of the bill as the “Helping Eliminate Limitations for Prompt Response and Recovery Act” or the “HELP Response and Recovery Act.”

Section 2. Repeal of obsolete DHS contracting requirements

This section repeals section 695 of the *Post-Katrina Emergency Management Reform Act of 2006* (6 U.S.C. 794).

Section 3. Reports

This section requires the Secretary of Homeland Security to submit a report to the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Transportation and Infrastructure, that reviews how the repeal of section 695 has prevented waste, fraud, and abuse and promoted taxpayer savings, and includes certain data on non-competitive contracts for urgent and compelling circumstances placed by the Federal Emergency Management Agency. The report must be submitted no later than 540 days after the date of enactment, and annually thereafter for five years.

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

S. 3648, HELP Response and Recovery Act			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on January 31, 2024			
By Fiscal Year, Millions of Dollars	2024	2024-2029	2024-2034
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2035?	No	Statutory pay-as-you-go procedures apply? No	
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2035?	No	Contains intergovernmental mandate? No	
		Contains private-sector mandate? No	
* = between -\$500,000 and \$500,000.			

S. 3648 would extend the length of time that the Department of Homeland Security (DHS) may enter into noncompetitive contracts following disasters and other emergencies. Under the Post-Katrina Emergency Management Reform Act of 2006, DHS is generally prohibited from entering into those types of contracts for a duration greater than 150 days. S. 3648 would repeal that limitation and allow DHS to enter into such contracts for up to one year (the general limit on noncompetitive contracts). The bill also would require DHS to report to the Congress, within 540 days of enactment and annually thereafter for five years, on the details of noncompetitive contracts entered into by the department, and on the extent to which the repeal of the limitation results in any savings to the government or prevents waste, fraud, or abuse.

CBO expects that implementing S. 3648 would affect administrative and contracting costs for DHS. Based on the cost of similar reporting requirements, CBO estimates that the required reports would cost less than \$500,000 over the 2024–2029 period; any spending would be subject to the availability of appropriated funds.

CBO also estimates that implementing S. 3648 would reduce some administrative and contracting costs for DHS; those reductions would total less than \$500,000 over the 2024–2029 period. Under current law, DHS can extend the duration of the affected contracts beyond 150 days if the department certifies that exceptional circumstances justify doing so; that process typically takes several days. By allowing contracts to exceed the current limit, CBO expects that the bill would eliminate the need for agency employees to perform that certification. In addition, based on conversations with DHS officials and private-sector experts in the disaster response industry, CBO expects that, on net, the legislation could reduce the cost of some contracts because contractors might be willing to bid prices that are marginally lower when the period of a contract is longer. Those savings would be offset to the extent that contractors charge higher amounts to cover their fixed costs in cases where the duration of work is shorter than originally contracted for. Any savings would depend on reductions in future appropriations by the estimated amount.

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

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

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):

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2007

* * * * *

**TITLE VI—NATIONAL EMERGENCY
MANAGEMENT**

* * * * *

Subtitle F—Prevention of Fraud, Waste, and Abuse

* * * * *

**[SEC. 695. LIMITATION ON LENGTH OF CERTAIN NONCOMPETITIVE
CONTRACTS.**

[(a) REGULATIONS.—The Secretary shall promulgate regulations applicable to contracts described in subsection (c) to restrict the contract period of any such contract entered into using procedures other than competitive procedures pursuant to the exception provided in paragraph (2) of section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)) to the minimum contract period necessary—

- [(1) to meet the urgent and compelling requirements of the work to be performed under the contract; and
- [(2) to enter into another contract for the required goods or services through the use of competitive procedures.

[(b) SPECIFIC CONTRACT PERIOD.—The regulations promulgated under subsection (a) shall require the contract period to not to exceed 150 days, unless the Secretary determines that exceptional circumstances apply.

[(c) COVERED CONTRACTS.—This section applies to any contract 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, act of terrorism, or other man-made disaster.]

* * * * *

