

Calendar No. 64

118TH CONGRESS }
1st Session

SENATE

{ REPORT
118-24

DISASTER CONTRACTING IMPROVEMENT
ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 310

TO ESTABLISH AN ADVISORY GROUP TO
ENCOURAGE AND FOSTER COLLABORATIVE
EFFORTS AMONG INDIVIDUALS AND ENTITIES
ENGAGED IN DISASTER RECOVERY RELATING
TO DEBRIS REMOVAL, AND FOR OTHER PURPOSES



MAY 11, 2023.—Ordered to be printed

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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 S. 310]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 310) to establish an advisory group to encourage and foster collaborative efforts among individuals and entities engaged in disaster recovery relating to debris removal, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

S. 310, the *Disaster Contract Improvement Act*, requires the Federal Emergency Management Agency (FEMA) Administrator to establish an advisory group comprised of individuals and government entities that engage in debris removal in disaster recovery efforts. The advisory group must determine whether current procedures and guidance in place are sufficient to provide debris removal contract oversight. If current procedures are not sufficient, the bill requires FEMA, in consultation with the advisory group, to develop and implement recommendations to improve current guidance and

procedures concerning debris removal contracts. The bill requires FEMA to conduct trainings and outreach on any guidance or support materials developed under this section.

The bill also requires the Government Accountability Office (GAO) to conduct a study about the use, benefits, and challenges of advance contracts that state, local, and tribal governments have entered into for debris removal. GAO would also study the process for setting reimbursement rates for debris removal programs; the use of penalties for violations of law and regulations relating to debris removal; and fraud, waste, and abuse relating to debris removal programs; and would make recommendations for improving oversight and fraud prevention across debris removal programs.¹

II. BACKGROUND AND THE NEED FOR LEGISLATION

Every year, communities across the United States are affected by disasters including hurricanes, earthquakes, tornadoes, volcanoes, floods, wildfires, and winter storms. After a disaster, when a region turns its attention to rebuilding, one of the greatest challenges often involves properly managing disaster-related debris. Post-disaster debris can include trees, limbs, and shrubs; manufactured structures (e.g. collapsed homes, buildings, or bridges); and personal property. Residents' ability to return to the area and live in a safe and healthy environment may depend on how quickly and effectively a community manages its debris.

A number of federal agencies are authorized to support communities with disaster debris removal, including FEMA and the U.S. Army Corps of Engineers.² During debris removal operations, FEMA serves two primary roles. First, FEMA provides funding to eligible applicants for debris removal activities. Second, FEMA may approve direct federal assistance to a state or local government that does not have the capacity to respond to a presidentially declared disaster. Federal funding for disaster-related debris removal is coordinated and provided by FEMA primarily through its Public Assistance (PA) Grant Program. Under that program, FEMA provides grants to reimburse state, tribal, and local governments and certain types of private nonprofit organizations for their response and recovery efforts.³

When a state, local, territorial, or tribal government receives PA grant funding for debris removal services, it is able to procure a contract for those services. According to FEMA's Public Assistance Debris Monitoring Guide, applicants are primarily responsible for supervising the performance of the contract.⁴ However, FEMA still has responsibility to ensure federal funds are awarded appropriately. Given the pressure to distribute vast amounts of funds quickly, FEMA's disaster assistance programs are susceptible to fraud, waste, and abuse.

¹ On July 12, 2022, the Committee approved S. 3512, the Disaster Contract Improvement Act, with an amendment in the nature of a substitute. That bill, as amended, is substantially similar to S. 310. Accordingly, this committee report is, in many respects, similar to the committee report for S. 3512. See S. Rept. 117-128.

² Congressional Research Service, *Disaster Debris Management: Requirements, Challenges, and Federal Agency Roles* (R44941), at 1 (Sept. 6, 2017).

³ *Id.* at 9.

⁴ Federal Emergency Management Agency, *Public Assistance Debris Monitoring Guide: March 2021*, at IV (Mar. 2021) (https://www.fema.gov/sites/default/files/documents/fema_debris-monitoring-guide_sop_3-01-2021.pdf).

An audit of debris removal operations by the Department of Homeland Security Office of Inspector General (DHS OIG) found deficiencies in FEMA's processes. Following the destruction left by Hurricane Irma when it struck Florida in September 2017 as a Category 4 hurricane, the DHS OIG conducted an audit to examine the extent to which FEMA ensured procurements for Monroe County debris removal operations met federal procurement requirements and FEMA guidelines.⁵ The DHS OIG found that, while local entities must meet federal procurement standards when soliciting contracts for debris removal prior to or immediately following an incident, FEMA did not ensure procurements for debris removal operations projects in Monroe County met federal procurement requirements and FEMA guidelines.⁶

Specifically, the DHS OIG found the following: (1) FEMA did not adequately review local entities' debris removal procurements; (2) FEMA reimbursed local entities for questionable removal costs; (3) training and quality assurance weaknesses impeded FEMA from ensuring debris procurements and costs met federal requirements; and (4) FEMA improperly reimbursed debris procurements and approved questionable costs.⁷ The DHS OIG attributed FEMA's inadequate reviews and reimbursement of questionable costs to weaknesses in its training of project review staff and its quality assurance process, and it made recommendations to strengthen and improve training requirements and review processes.⁸

A separate audit performed by the DHS OIG in 2019 found that FEMA's workforce is not compliant with the annual fraud prevention and awareness training required by the Post-Katrina Emergency Management Reform Act of 2006.⁹ According to the DHS OIG, 93 percent of FEMA employees failed to complete the mandatory fraud training between April 30, 2017 and May 1, 2018.¹⁰ Although FEMA stated that internal controls were in place to ensure compliance with all mandatory training, the DHS OIG determined that those internal controls remain inadequate, which "can have a detrimental effect on FEMA's overall fraud prevention efforts, and could lead to delays in detecting and reporting fraud, waste, and abuse of disaster assistance funds."¹¹

In the report, DHS OIG recommended that FEMA's Chief Learning Officer update all guidance, manuals, and training materials to provide consistent direction for reporting fraud and suspected fraudulent activity in the agency's disaster assistance programs.¹² FEMA concurred with DHS OIG's recommendation and said it would "ensure that the training curriculum received from the FEMA Office of the Chief Security Officer (OCSO) is made available to all employees each reporting year."¹³

This bill seeks to improve the disaster contracting process on the federal, state, and local levels of government to mitigate waste,

⁵Department of Homeland Security, Office of Inspector General, *FEMA's Procurement and Cost Reimbursement Review Process Needs Improvement* (OIG-21-26), at III (Mar. 4, 2021).

⁶*Id.* at 5.

⁷*Id.* at 5-9.

⁸*Id.* at 5-6 and 10.

⁹Department of Homeland Security, Office of Inspector General, *FEMA Must Take Additional Steps to Demonstrate the Importance of Fraud Prevention and Awareness in FEMA Disaster Assistance Programs* (OIG-19-55), at 7-8 (July 2019).

¹⁰*Id.* at 7-8.

¹¹*Id.* at 8.

¹²*Id.* at 10-11.

¹³*Id.* at 12.

fraud, and abuse of federal assistance. This bill would ensure FEMA collaborates with state, tribal, and local governments, as well as other subject matter experts, to review and issue necessary guidance and help streamline debris removal efforts. Increased cooperation between FEMA and partners engaged in disaster recovery efforts will help ensure debris cleanup efforts after extreme weather events are more efficient and use taxpayer dollars more effectively. The bill also requires GAO to study and provide decision makers with information on the benefits and challenges of using advance contracts for debris removal and recommendations to improve oversight and fraud prevention across debris removal programs.

III. LEGISLATIVE HISTORY

Senator Rick Scott (R-FL) introduced S. 310, the *Disaster Contract Improvement Act*, on February 9, 2023, with original cosponsors Senator Gary Peters (D-MI) and Senator Jacky Rosen (D-NV). The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 310 at a business meeting on March 29, 2023. The bill was reported favorably by roll call vote of 11 yeas to 0 nays, with Senators Peters, Hassan, Rosen, Padilla, Ossoff, Blumenthal, Paul, Lankford, Romney, Scott, and Hawley voting in the affirmative, and with Senators Carper, Sinema, Johnson, and Marshall voting yea by proxy, for the record only.

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

Section 1. Short title

This section designates the name of the bill as the “Disaster Contract Improvement Act.”

Section 2. Oversight on debris removal

Subsection (a) defines the terms “Administrator” and “debris removal program.”

Subsection (b) requires the FEMA Administrator to establish an advisory working group to encourage and foster collaborative efforts among individuals and entities engaged in disaster recovery relating to debris removal. The working group is to be comprised of representatives from FEMA; the Army Corps of Engineers; the Natural Resources Conservation Service of the Department of Agriculture; state, tribal, and local governments; and subject matter experts in debris removal.

Subsection (c)(1) requires the FEMA Administrator to work with the advisory working group and determine whether the guidance and procedures in effect on the date of enactment of this bill are sufficient to provide debris removal contract oversight.

Subsection (c)(2) requires the FEMA Administrator, in consultation with the advisory working group, to develop and implement additional debris removal contracting, planning, and management guidance and procedures if they determine the guidance and procedures described in subsection (c)(1) are insufficient.

Subsection (d) requires the Administrator to conduct outreach to state, tribal, and local governments about guidance and procedures developed under this bill.

Subsection (e) requires GAO to conduct a study that examines: the adoption rate of advance contracts for debris removal by state and local governments; the benefits of advance contracts for debris removal; processes for reporting and information sharing related to advance contracts for debris removal; reimbursement rates for debris removal programs; use of penalties for violations of law and regulation; and fraud, waste and abuse relating to debris removal programs. The subsection also requires GAO to make recommendations concerning improvements to oversight and fraud prevention.

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 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. 310, Disaster Contract Improvement Act			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on March 29, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	1	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	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 2034?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

S. 310 would direct the Federal Emergency Management Agency (FEMA) to establish an advisory working group, consisting of representatives from FEMA, the Army Corps of Engineers, the Department of Agriculture, state and local governments, and the debris services contractor industry. The working group would review current agency guidance on debris removal and implement revisions designed to streamline the contracting and debris removal process. Under the bill, FEMA also would disseminate the materials developed by the working group to state and local governments.

The bill also would require the Government Accountability Office (GAO) to examine the use and adoption rate of advance contracts

for debris removal and recommend ways to improve the contracting process.

Using information from FEMA and GAO about the cost of similar activities, CBO estimates that implementing S. 310 would cost \$1 million over the 2023–2028 period, most of which would be incurred in 2024 and 2025. Any spending would be subject to the availability of appropriated funds.

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

This legislation would make no change 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.

