

111TH CONGRESS
2D SESSION

S. 3909

To restore accountability and congressional oversight to the defense contracting process.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2010

Mr. WYDEN (for himself and Mr. MERKLEY) introduced the following bill;
which was read twice and referred to the Committee on Armed Services

A BILL

To restore accountability and congressional oversight to the defense contracting process.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Accountability for De-
5 fense Contractors Act”.

6 **SEC. 2. RESTORING CONGRESSIONAL NOTIFICATION OF IN-**
7 **DEMNIFICATION.**

8 Public Law 85–804 is amended by adding at the end
9 the following new section:

1 **“SEC. 5. REPORTS TO CONGRESS.**

2 “(a) REQUIREMENT.—If the Department of Defense
3 takes any action under authority of this Act during any
4 year, the Secretary of Defense shall, by March 15 of the
5 succeeding year, submit to Congress a report on all such
6 actions taken by the Department during that preceding
7 year. With respect to actions that involve actual or poten-
8 tial cost to the United States in excess of \$1,000,000, the
9 report shall—

10 “(1) name the contractor;

11 “(2) state the actual cost or estimated potential
12 cost involved;

13 “(3) describe the property or services involved;
14 and

15 “(4) state further the circumstances justifying
16 the action taken.

17 “(b) OMISSIONS.—There may be omitted in a report
18 under subsection (a) any information the disclosure of
19 which would be detrimental to the national security, if the
20 Secretary of Defense provides justification of such omis-
21 sion to the relevant congressional committees.”.

1 **SEC. 3. PROHIBITION OF INDEMNIFICATION FOR CONTRAC-**
2 **TORS IN CASES INVOLVING GROSS NEG-**
3 **LIGENCE, WILLFUL MISCONDUCT, OR LACK**
4 **OF GOOD FAITH BY CONTRACTORS.**

5 Public Law 85–804, as amended by section 2, is fur-
6 ther amended by adding at the end the following new sec-
7 tion:

8 **“SEC. 6. PROHIBITION OF INDEMNIFICATION IN CERTAIN**
9 **CASES.**

10 “(a) IN GENERAL.—A contractor of the Department
11 of Defense shall not be indemnified for—

12 “(1) government claims against the contractor
13 (other than those arising through subrogation);

14 “(2) a claim, loss, or damage caused by gross
15 negligence, willful misconduct, or lack of good faith
16 on the part of any of the contractor’s principal offi-
17 cials (as defined by part 52.250–1 of the Federal
18 Acquisition Regulation); or

19 “(3) a claim, loss, or damage resulting from an
20 unusually hazardous or nuclear risk not specified in
21 the terms of the contract and discovered on the site
22 where the contract is performed, or that reasonably
23 should have been discovered on the site.

24 “(b) NOTIFICATION.—In the case of an unusually
25 hazardous or nuclear risk referred to in subsection (a)(3),
26 the contractor shall immediately notify the contracting of-

1 fier of such risk upon discovery or when discovery reason-
 2 ably should have been made.”.

3 **SEC. 4. CONGRESSIONAL NOTIFICATION AND THE LOSS OF**
 4 **INDEMNIFICATION IN OTHER CASES.**

5 (a) IN GENERAL.—A contract entered into by the De-
 6 partment of Defense under authority that provides for in-
 7 demnification not authorized by the provisions of law list-
 8 ed in subsection (b) may provide for indemnification of
 9 the contractor as the Secretary of Defense determines to
 10 be necessary only if—

11 (1) the contract complies with the requirements
 12 in section 5 of Public Law 85–804 (as added by sec-
 13 tion 2), relating to notice to Congress; and

14 (2) the contract complies with the requirements
 15 in section 6 of Public Law 85–804 (as added by sec-
 16 tion 3), relating to a prohibition on indemnification
 17 for certain claims and a requirement for notification.

18 (b) PROVISIONS OF LAW LISTED.—The provisions of
 19 laws listed in this subsection are as follows:

20 (1) Section 2354 of title 10, United States
 21 Code.

22 (2) The Comprehensive Environmental Re-
 23 sponse, Compensation, and Liability Act of 1980 (42
 24 U.S.C. 9601 et seq.).

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