

DISASTER CONTRACT IMPROVEMENT ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 3512

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



JULY 12, 2022.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

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DISASTER CONTRACT IMPROVEMENT ACT

JULY 12, 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. 3512]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 3512) 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 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

S. 3512, 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 guid-

ance 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. The bill also requires GAO to 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, fraud, waste, and abuse relating to debris removal programs; and make recommendations for improvements to oversight and fraud prevention across the debris removal program.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Every year, communities in 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.¹ During debris removal operations, FEMA serves two primary roles. First, FEMA provides funding to eligible applicants for eligible debris removal activities.² 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.³ Federal funding for disaster-related debris removal is coordinated and provided by FEMA primarily through its Public Assistance (PA) Grant Program.⁴ 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.⁵

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.⁶ According to FEMA's Public Assistance Debris Monitoring Guide, applicants are primarily responsible for supervising the performance of the contract.⁷ However, FEMA still has responsibility to ensure that federal funds are awarded appropriately. Given the pressure to distribute vast amounts of funds

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

² *Id.* at 9.

³ *Id.* at 9.

⁴ *Id.* at 9.

⁵ *Id.* at 9.

⁶ Federal Emergency Management Agency, *Public Assistance Debris Monitoring Guide: March 2021* (Mar. 2021) (https://www.fema.gov/sites/default/files/documents/fema_debris-monitoring-guide_sop_3-01-2021.pdf) at IV.

⁷ *Id.*

quickly, FEMA's disaster assistance programs are susceptible to fraud, waste, and abuse.

An audit of debris removal operations by the DHS Office of Inspector General (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.⁸ 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.⁹

Specifically, 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.¹⁰ 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.¹¹

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 2006.¹² According to the DHS OIG, 93 percent of FEMA employees failed to complete the mandatory fraud training between April 30, 2017 and May 1, 2018.¹³ Although FEMA said that internal controls are 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."¹⁴

In the report, the 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.¹⁵ FEMA concurred with the DHS OIG's recommendation and said it would "ensure that the training curriculum received

⁸Department of Homeland Security, Office of Inspector General, *FEMA's Procurement and Cost Reimbursement Review Process Needs Improvement* (Mar. 4, 2021) (OIG-21-26) at III.

⁹*Id.* at 5.

¹⁰*Id.* at 5-9.

¹¹*Id.* at 5-6 and 10.

¹²Department 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) (July 2019) at 7-8.

¹³*Id.* at 7-8.

¹⁴*Id.* at 8.

¹⁵*Id.* at 10-11.

from the FEMA Office of the Chief Security Officer (OCSO) is made available to all employees each reporting year.”¹⁶

This bill seeks to improve the disaster contracting process on the federal, state, and local levels of government to mitigate waste, fraud, and abuse of federal assistance. This bill ensures that FEMA is collaborating with state, tribal, and local governments, and 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. 3512, the Disaster Contract Improvement Act, on January 13, 2021, with Senator Peters (D–MI). The bill was referred to the Committee on Homeland Security and Governmental Affairs. Senator Rosen (D–NV) joined as a cosponsor on February 2, 2022.

The Committee considered S. 3512 at a business meeting on February 2, 2022. During the business meeting, Senators Scott and Peters offered a substitute amendment, as modified. The substitute amendment, as modified, added representatives from the Natural Resources Conservation Service of the Department of Agriculture and tribal governments to the advisory working group established by the bill. It also required the FEMA Administrator to develop and implement guidance for streamlining the reimbursement of debris costs overall if the Administrator determines that guidance and procedures in effect on the date this bill’s enactment are insufficient.

The substitute amendment, as modified, was adopted by voice vote en bloc. Senators present for the vote were: Peters, Carper, Hassan, Sinema, Rosen, Padilla, Ossoff, Portman, Lankford, Scott, and Hawley. The bill, as amended, was ordered reported favorably by voice vote en bloc. Senators Peters, Carper, Hassan, Sinema, Rosen, Padilla, Ossoff, Portman, Lankford, Scott, and Hawley were present for the vote.

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

¹⁶*Id.* at 12.

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, states, tribal, and local governments, as well as 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 the 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 states, 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 states 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 program. 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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 1, 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. 3512, the Disaster Contract Improvement Act.

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. 3512, Disaster Contract Improvement Act			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on February 2, 2022			
By Fiscal Year, Millions of Dollars	2022	2022-2027	2022-2032
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
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 2033?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

S. 3512 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. 3512 would cost \$1 million over the 2022–2027 period, most of which would be incurred in 2023 and 2024. 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.

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.