

116TH CONGRESS
1ST SESSION

S. ■ ■

To amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to improve accountability of disaster contracts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

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Mr. SCOTT of Florida (for himself and Mr. LANKFORD) introduced the following bill; which was read twice and referred to the Committee on

■ ■ ■ ■ ■ ■ ■ ■

A BILL

To amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to improve accountability of disaster contracts, and for other purposes.

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 “Disaster Contract
5 Transparency Act of 2019”.

6 **SEC. 2. DEBRIS REMOVAL CONTRACT OVERSIGHT.**

7 (a) IN GENERAL.—Title IV of the Robert T. Stafford
8 Disaster Relief and Emergency Assistance Act (42 U.S.C.

1 5170 et seq.) is amended by adding at the end the fol-
2 lowing:

3 **“SEC. 431. PUBLIC ASSISTANCE GRANT PROGRAM ELIGI-**
4 **BILITY AND OVERSIGHT FOR DEBRIS RE-**
5 **MOVAL.**

6 “(a) DEFINITIONS.—In this section—

7 “(1) the term ‘Administrator’ means the Ad-
8 ministrator of the Federal Emergency Management
9 Agency;

10 “(2) the term ‘Agency’ means the Federal
11 Emergency Management Agency;

12 “(3) the term ‘covered State’ means a State for
13 which a major disaster or emergency was declared
14 under this Act during the 5-year period preceding
15 the date on which the State requests assistance for
16 debris removal under the public assistance grant
17 program;

18 “(4) the term ‘covered unit of local government’
19 means a unit of local government for which a major
20 disaster or emergency was declared under this Act
21 during the 5-year period preceding the date on
22 which the State requests assistance for debris re-
23 moval under the public assistance grant program;
24 and

1 “(5) the term ‘public assistance grant program’
2 means the public assistance grant program author-
3 ized under sections 403, 406, 407, 418, 419, 428, 4
and 502(a).

5 “(b) ELIGIBILITY.—

6 “(1) IN GENERAL.—

7 “(A) ADVANCE CONTRACT REQUIRED.—It is the
intent of this act to encourage
preparedness and planning among States
or covered units of local government prior
to a disaster affecting an area or region.
Ex-

8 Except as provided in subparagraph (B), a covered
9 State or covered unit of local government shall
10 not be eligible for assistance for debris removal
11 under the public assistance grant program, in-
12 cluding direct Federal assistance for debris re-
13 moval provided by the Corps of Engineers, un-
14 less the covered State or covered unit of local
15 government has in effect, or has access to through a
cooperative purchasing agreement or other
competitive solicitation, prior to the major
16 disaster or emergency declaration under this
17 Act for which the covered State or covered unit
18 of local government is seeking debris removal
19 assistance, an advance contract for debris re-
20 moval services that collectively provides ade-
21 quate coverage, as determined by the Adminis-
22 trator, for debris removal for the entire State.

23 “(B) GRACE PERIOD.—Subparagraph (A)

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24 shall not apply during the 1-year period begin-
25 ning on the date on which a State or unit of

1 local government becomes a covered State or
2 covered unit of local government.

3 “(2) REPORTING.—For purposes of deter-
4 mining eligibility under paragraph (1), each covered
5 State shall submit, on an annual basis, a report to
6 the Administrator on all advanced contracts in effect
7 for the covered State or covered units of local gov-
8 ernment within the State, including, for each ad-
9 vanced contract—

10 “(A) the name of the contractor;

11 “(B) the contract terms and conditions;

12 “(C) the reimbursement rates;

13 “(D) verification and oversight agree-
14 ments;

15 “(E) geographic coverage of the contract;

16 “(F) capacity of contractor; and

17 “(G) debris removal assets owned by the
18 contractor.

19 “(c) REIMBURSEMENT OF DEBRIS REMOVAL CON-

20 TRACTS.—With respect to reimbursing advance contracts

21 for debris removal services described in subsection (b), the

22 Administrator shall reimburse for such services based on the magnitude of the disaster and the market conditions affecting supply and demand. In the interest of public safety and for the protection of large population centers, States and units of local government must determine what is in the best interest of its citizens and if market conditions necessitate financial deviations in excess of pricing of an advance contract for debris removal services. These financial deviations shall not be reimbursed by the federal government unless States or

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units of local government can justify the additional expense. Justification shall include social media and local media reports of the disaster's impact, the impacted area's vulnerable or elderly population statistics, procurement professionals' documentation of excessive resource and heightened citizen demand for debris removal services, at the

~~2322~~ lower of—

~~24~~ ————“(1) the rate of the Federal contract, if any;

1 ~~“(2) the rate of the State advance contract, if~~
 2 ~~any; or~~
 3 ~~“(3) the rate of the unit of local government~~
 4 ~~advance contract.~~

51 “(d) PENALTIES FOR CONTRACTORS.—

62 “(1) IN GENERAL.—Except as provided in para-
 73 graph (3), any contractor who breaches or otherwise
 84 fails to honor an advance contract for debris removal
 95 service entered into with a State or unit of local gov-
 106 ernment shall not be eligible for any Federal reim-
 117 bursement funds for debris removal services for not
 128 less than 10 years after the date on which the ad-
 139 vance contract is breached.

1410 “(2) DETERMINATION OF BREACH.—A deter-
 1411 mination of whether an advance contract for debris
 1412 removal service is breached or otherwise not honored
 1413 under paragraph (1) shall be made by a court of
 14 competent jurisdiction. Prior to a dispute being filed in a
court of competent jurisdiction, States shall serve as
arbiters of disputes between the contract entity and units
of local government and the federal government shall
serve as arbiters between States and the contract entity.
Under no circumstances shall the Administrator attempt
to resolve the dispute, to assure impartial and objective
alternative dispute resolution.

1415

1416 “(3) WAIVER OF PENALTY.—The Administrator
 20 may waive paragraph (1) if the Administrator deter-
 21 mines such waiver is necessary due to established
market conditions of a disaster affecting an impacted

area. Waivers of penalties shall be granted based on justification from affected parties for reasons up to and including —

22 “(A) a labor or supply shortage; or

23 “(B) no alternative contractors being avail-

24 able to perform the necessary services.

25 “(e) ~~O~~VERSIGHT.—

1 “(1) ~~IN GENERAL.—~~It is the best interests of citizens in
2 an impacted area for the federal government to
3 encourage and foster collaborative efforts among
4 stakeholders engaged in disaster recovery. To that
5 end, the Administrator shall convene an advisory
6 workgroup consisting of debris services contractors,
7 representatives from States and units of local
8 government, academicians and other subject matter
9 experts, selected by the Administrator, who can
10 facilitate meaningful debris services public policy.

Not later than 180 days

2 after the date of enactment of this section, the Ad-
3 ministrator, in conjunction with the advisory workgroup,-
4 shall develop and implement guidance

5 and procedures, including clear and unambiguous
6 rules, with respect to the oversight of debris removal
7 contracts entered into under the public assistance
8 grant program, including, at a minimum—

9 “(A) a requirement that—

10 “(i) all States and units of local gov-
11 ernment receiving debris removal assist-
12 ance under the public assistance grant pro-
13 gram take the primary role in the over-
14 sight function of debris removal; and

15 “(ii) the Agency shall verify compli-
16 ance with the requirements of this section
17 and any regulations promulgated under
18 this section;

19 “(B) guidance for State and local debris
20 monitors regarding debris removal operations,
debris operations oversight, and contractor

21 oversight, including contractor monitoring;
22 “(C) checklists, job aids, eligibility require-
23 ments, contract requirements, debris manage-
24 ment planning guidance, and other items, as

1 determined necessary by the Administrator, for
2 State and local debris monitors;

3 “(D) guidance for State and local debris
4 monitors on how to ensure that subgrant recipi-
5 ents meet the grant requirements and eligibility
6 criteria for the public assistance grant program
7 under which the grant was awarded in all areas
8 of the debris removal operation;

9 “(E) a list of the specific debris removal
10 monitoring responsibilities expected to be com-
11 pleted by a State for which a public assistance
12 grant program grant is awarded; and

13 “(F) a list of the specific debris removal
14 monitoring responsibilities expected to be com-
15 pleted by recipients of a subgrant of a grant
16 from a public assistance grant program.

17 “(2) REVIEW AND UPDATE OF GUIDANCE AND
18 PROCEDURES.—The Administrator shall review and
19 update the guidance and procedures required under
20 paragraph (1) as appropriate, but not less frequently
21 than once every 3 years. If the Administrator is
presented with justification that the guidance and
procedures need revision, the Administrator shall
convene an advisory workgroup to participate in the
revision process.

22 “(3) REQUIREMENTS.—

23 “(A) IN GENERAL.—In developing the
24 guidance and procedures required under para-
25 graph (1), the Administrator shall—

1 “(i) except as provided in subpara-
2 graph (B), require that not later than 45
3 days after a grant is awarded under the
4 public assistance grant program for debris
5 removal, and once every 45 days thereafter
6 for the duration of the grant, the State
7 shall submit a report to the Administrator
8 on the progress of the debris removal;

9 “(ii) ensure that oversight of debris
10 removal operations can be accomplished in
11 all units of local government of a State in
12 which debris removal operations are being
13 carried out, such as through real-time re-
14 porting on operations.

1415 (iii) The Administrator shall review the reports
 and if warranted, contact the States and the
 debris operations contractor to clarify report
 statistics, confirm report status, and other
 validation efforts to ensure the quality and
 validity of the report representations.

1516 “(B) WAIVER OF REPORTING REQUIRE-
1617 MENT.—The Administrator may waive the re-
1718 porting requirement described in subparagraph
1819 (A)(i), if the Administrator determines, on a
1920 case-by-case basis, that such reporting require-
2021 ment would negatively impact disaster recovery
2122 efforts.

2223 “(f) TRAINING.—The Administrator shall provide
2324 training on appropriate debris removal guidance and pro-

²⁴~~25~~cedures, [developed in conjunction with the advisory
workgroup](#), to—

²⁵~~26~~_____“(1) Agency debris monitors; and

1 “(2) appropriate State and private entities.

2 “(g) FIELD PRESENCE OF FEDERAL COORDINATING
3 OFFICERS.—

4 “(1) IN GENERAL.—The Administrator shall
5 Develop [in conjunction with the advisory workgroup.](#) a
6 documented risk-based approach for
7 grants awarded under the public assistance grant
8 program that Federal coordinating officers ap-
9 pointed under section 302 can use to determine ap-
10 propriate cost-effective field presence required for
11 debris removal oversight.

12 “(2) VERIFYING DEBRIS AMOUNTS AND REIM-
13 BURSEMENT.—

14 “(A) IN GENERAL.—The Administrator
15 shall require that any entity applying for debris
16 removal assistance under the public assistance
17 grant program shall, as part of the assistance
18 application, enter into a debris removal moni-
19 toring contract to conduct oversight and
20 verification of debris removal by contractors,
21 which shall require that one of the verification
22 methods approved by the Administrator under
23 subparagraph (B) be used to conduct the over-
24 sight and verification.

25 “(B) VERIFICATION METHODS.—For pur-
poses of subparagraph (A), the Administrator

1 shall, on an annual basis and in conjunction with
2 the advisory workgroup, develop and publish
3 a list of approved verification methods, which
4 may include—

5 “(i) a digital photograph of each load
6 of debris to validate load tickets; or,

7 “(ii) a digital photograph of each
8 truck used to haul debris to verify truck
9 certifications; and

10 “(iii) measurements of debris piles
11 and mulch piles for comparison and
12 verification against a photograph described
13 in clauses (i) and (ii); and;

14 (iv) other technological advances that allow for
15 verification of debris operations.

16 “(3) PENALTIES FOR INACCURATE ACCOUNTING

17 OF DEBRIS REMOVAL AMOUNTS.—Any discrepancy and
18 confirmed negligence

19 between the reported amount of debris collected by
20 a contractor and the verified amount, as determined
21 using an approved verification method under para-
22 graph (2)(B), shall incur a penalty at 2 times the
23 reimbursement rate of the documented discrep-
24 ancy and negligence.”:

25 (b) ADVANCE CONTRACTING.—Section 691 of the
26 Post-Katrina Emergency Management Reform Act of
27 2006 (6 U.S.C. 791) is amended—

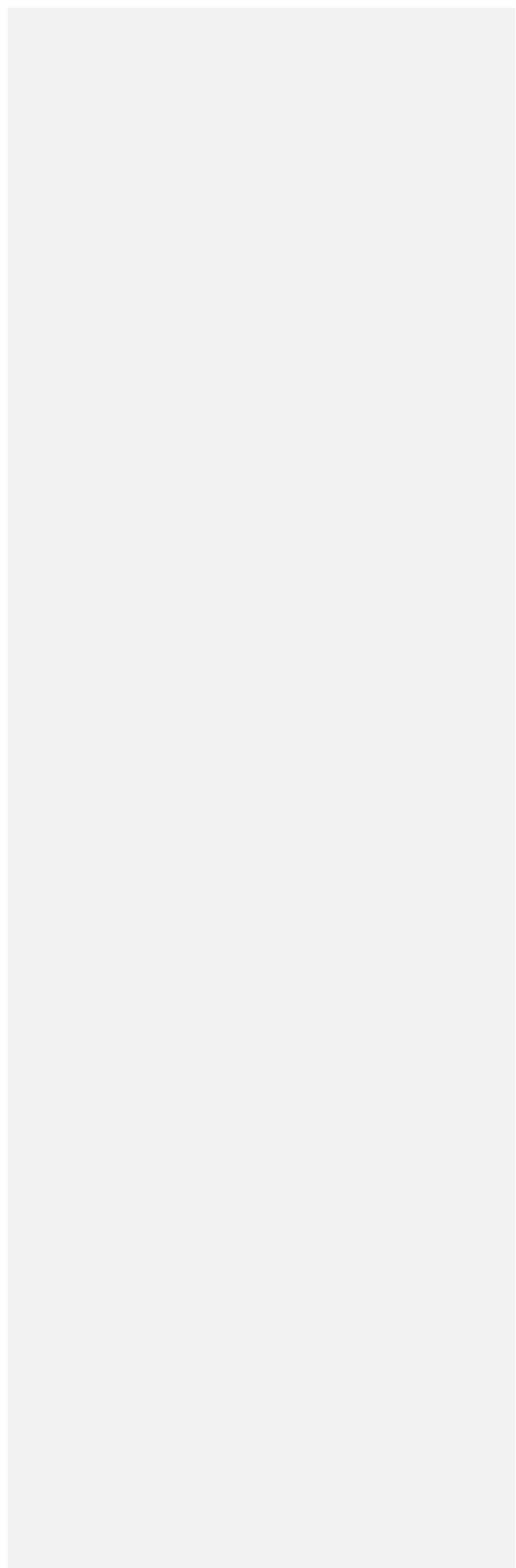
28 (1) in subsection (b), by adding at the end the

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25 following:



1 “(5) ADDITIONAL CONTRACTS.—If it is deter-
2 mined under subsection (e)(2) that an advanced con-
3 tract is needed for a good or service described in
4 such subsection, the Administrator shall, to the
5 greatest extent possible, enter into 1 or more ad-
6 vance contracts for that good or service. The
Administrator shall rely on the advisory workgroup to
maintain a working knowledge of market dynamics
including encouraging small and minority owned
businesses to participate in pooling arrangements to
provide additional debris services capacity.

7 “(6) PRIORITY.—To the greatest extent pos-
8 sible, the Administrator shall use advance contracts
9 for goods and services before making new post-dis-
10 aster contract awards for the same or similar goods
11 and services.”; and

12 (2) by adding at the end the following:

13 “(e) ANNUAL REPORTS.—Not later than 180 days
14 after the date of enactment of this subsection, the Admin-
15 istrator shall submit to the appropriate committees of
16 Congress a report on advanced contracts that contains—

17 “(1) a comprehensive list of advance contracts
18 in effect as of the date the report, which shall in-
19 clude—

20 “(A) the contracting entity;

21 “(B) the award amount;

22 “(C) the good or service being provided
23 under the contract; and

24 “(D) the duration of the contract; and

1 “(2) a review of the need for advance contracts
2 that may be lacking as of the date of the report
3 for—

4 “(A) debris removal services;

5 “(B) repair and temporary emergency housing
6 programs; prefabricated and portable buildings

7 ”;

8 “(C) inspection services;

9 “(D) installation of power transmission

10 equipment; ~~and~~

11 “(E) immediate needs commodities;

12 “(E) other goods and services determined

13 by the Administrator to be appropriate for ad-

14 vance contracts.”.

15 (c) EFFECTIVE DATE.—Subsections (b) and (c) of

16 section 431 of the Robert T. Stafford Disaster Relief and

17 Emergency Assistance Act, as added by subsection (a) of

18 this section, shall not take effect until the date that is

19 1 year after the date of enactment of this Act.

Commented [MOU1]: Adding this language broadens emergency housing solutions necessary post disaster