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Calendar No. 953

110TH CONGRESS, 2d Session | SENATE | REPORT 110–455

FEDERAL PROTECTIVE SERVICE GUARD CONTRACTING REFORM ACT OF 2008

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

H.R. 3068

TO PROHIBIT THE AWARD OF CONTRACTS TO PROVIDE GUARD SERVICES UNDER THE CONTRACT SECURITY GUARD PROGRAM OF THE FEDERAL PROTECTIVE SERVICE TO A BUSINESS CONCERN THAT IS OWNED, CONTROLLED, OR OPERATED BY AN INDIVIDUAL WHO HAS BEEN CONVICTED OF A FELONY

SEPTEMBER 11, 2008.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
69–010 WASHINGTON : 2008

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Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

[To accompany H.R. 3068]

The Committee on Homeland Security and Governmental Affairs, having considered H.R. 3068, a bill to prohibit the award of contracts to provide guard services under the contract security guard program of the Federal Protective Service to a business concern that is owned, controlled, or operated by an individual who has been convicted of a felony, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

I. PURPOSE AND SUMMARY

The purpose of this legislation is to prevent the Federal Protective Service from awarding contracts for guard services to companies owned, controlled or operated by individuals convicted of serious felonies who may present a risk to the security of federal employees and federal property.

II. BACKGROUND AND NEED FOR THE LEGISLATION

This legislation was developed in response to two oversight hearings of the Federal Protective Service conducted by the House Committee on Transportation and Infrastructure on April 17, 2007, and June 21, 2007. While examining the role that contract security guards have in protecting federal personnel and property, the House Committee on Transportation and Infrastructure learned that one contract guard services company was operated by an individual who had been convicted of fraud and had failed to pay its security guard employees. As a result, this may have created a security risk for federal employees and federal buildings. Legislation subsequently introduced by Representative Eleanor Holmes Norton

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to address this vulnerability, H.R. 3068, was passed by the House of Representatives on October 2, 2007.

The bill reported by the Senate Committee on Homeland Security and Governmental Affairs directs the Secretary of the Department of Homeland Security (DHS), acting through the Assistant Secretary of the U.S. Immigration and Customs Enforcement, to promulgate regulations prohibiting the award of contracts for guard services by the Federal Protective Service to any business owned, controlled or operated by an individual convicted of serious felonies. The regulations shall identify which serious felonies may prohibit a contractor from being awarded a contract, on either a permanent or interim basis, and shall require contractors to provide the relevant information when submitting bids or proposals.

The bill also requires that the regulations provide guidelines for a contracting officer to assess the present responsibility of the contractor, any mitigating factors and the risk associated with the previous conviction, so that the contracting officer may award a contract to an affected business under certain circumstances. The bill also requires a report on establishing similar guidelines government-wide.

The Committee is concerned that the Federal Protective Service's existing processes for overseeing its contracts for security guard services, and for evaluating the present responsibility of a contractor, may have created a security risk for federal employees and buildings. However, the Committee was also concerned that the legislation as passed by the House of Representatives may have instituted an overly broad prohibition. As a result, the Committee amended the legislation to direct DHS to develop regulations identifying which serious felonies may prohibit a business from being awarded a contract for security guard services. The legislation gives the Secretary flexibility to consider permanent or interim prohibitions, or both, as necessary. The Committee recognizes that such a prohibition may disproportionately affect small businesses, which may have a more difficult time changing principals in the event one or more individuals has previously been convicted of a felony. The Committee has therefore required the regulations include guidance for contracting officers to assess mitigating factors and other evidence of present responsibility, thereby allowing the contracting officer to award a contract under certain circumstances.

III. LEGISLATIVE HISTORY

H.R. 3068 was introduced by Representative Eleanor Holmes Norton on July 17, 2007, and was referred to the House Committee on Transportation and Infrastructure. On July 18, 2007, the bill was referred to the Subcommittee on Economic Development, Public Buildings and Emergency Management. The subcommittee held a markup to consider H.R. 3068 on August 1, 2007, and favorably recommended the bill to the Committee by voice vote. On August 2, 2007, the Committee on Transportation and Infrastructure ordered the bill, as amended, reported favorably to the House by voice vote. The House passed H.R. 3068 by voice vote on October 2, 2007.

On October 3, 2007, H.R. 3068 was referred to the Senate Committee on Homeland Security and Governmental Affairs. On July 30, 2008, the Committee considered H.R. 3068. Senator Lieberman

offered an amendment in the nature of a substitute which was adopted by voice vote. The bill, as amended, was adopted by the Committee by voice vote, and favorably reported to the Senate. Members present for the vote on the substitute amendment and the vote on the bill, as amended, were Senators Lieberman, Akaka, Carper, Pryor, Landrieu, Tester, Collins, Stevens, and Voinovich.

IV. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The short title of the bill is the Federal Protective Service Guard Contracting Reform Act of 2008.

Section 2. Federal Protective Service contracts

Subsection (a) requires the Secretary of Homeland Security, acting through the Assistant Secretary of U.S. Immigration and Customs Enforcement, to promulgate regulations establishing guidelines for the prohibition of contract awards for guard services by the Federal Protective Service to any businesses owned, controlled or operated by an individual convicted of a felony. The Secretary may consider permanent or interim prohibitions. The regulations shall identify which serious felonies may prohibit a contractor from being awarded a contract, require contractors to provide the necessary information, and will provide guidelines for contracting officers considering mitigating factors and evidence of present responsibility.

Subsection (b) requires the regulations be issued not later than 6 months after the date of enactment of the legislation.

Section 3. Report on government-wide applicability

This section requires the Administrator for Federal Procurement Policy to submit a report to the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Oversight and Government Reform on establishing similar guidelines government-wide, no later than 180 days after the date of enactment.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirement of paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate the Committee has considered the regulatory impact of this bill. CBO states that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

VI. ESTIMATED COST OF LEGISLATION

AUGUST 12, 2008.

Hon. JOSEPH I. LIEBERMAN,
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 H.R. 3068, the Federal Protective Service Guard Contracting Reform Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 3068—Federal Protective Service Guard Contracting Reform Act of 2008

H.R. 3068 would direct the Department of Homeland Security (DHS) to issue regulations prohibiting firms owned, operated, or controlled by certain convicted felons from receiving contracts to provide guard services through the Federal Protective Service. The bill would allow DHS to determine which felonies would affect eligibility for such contracts and the terms and conditions under which exceptions could be granted. Finally, the legislation would require the Office of Federal Procurement Policy (OFPP) to report to the Congress on the merits of establishing similar guidelines governmentwide.

Based on information from DHS and OFPP, CBO estimates that implementing H.R. 3068 would cost less than $500,000 over the 2009–2010 period, subject to the availability of appropriated funds. Enacting the legislation would not affect direct spending or revenues.

H.R. 3068 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

On August 27, 2007, CBO provided a cost estimate for H.R. 3068 as ordered reported by the House Committee on Transportation and Infrastructure on August 2, 2007. The two bills are similar in that they both deal with the awarding of guard services but have different provisions regarding the regulations and reporting requirements. The cost estimates reflect those differences.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

VIII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Because this legislation would not repeal or amend any provision of current law, it would make no changes in existing law within the meaning of clauses (a) and (b) of paragraph 12 of rule XXVI of the Standing Rules of the Senate.

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