

Calendar No. 797

108TH CONGRESS
2^D SESSION

S. 2275

[Report No. 108-408]

To amend the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) to provide for homeland security assistance for high-risk nonprofit organizations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 1, 2004

Ms. MIKULSKI (for herself, Mr. SPECTER, Mrs. MURRAY, Mrs. CLINTON, Ms. LANDRIEU, Mr. SCHUMER, Mr. LIEBERMAN, Mr. DASCHLE, Mr. DAYTON, Mr. REID, Ms. COLLINS, Mr. SMITH, Mrs. BOXER, Mr. DODD, Mr. BAUCUS, and Mr. COLEMAN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

NOVEMBER 10, 2004

Reported under authority of the order of the Senate of October 11, 2004, by
Ms. COLLINS, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) to provide for homeland security assistance for high-risk nonprofit organizations, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “High Risk Nonprofit
3 Security Enhancement Act of 2004”.

4 **SEC. 2. FINDING.**

5 Congress finds that there is a public interest in pro-
6 tecting high-risk nonprofit organizations from inter-
7 national terrorist attacks that would disrupt the vital serv-
8 ices such organizations provide to the people of the United
9 States and threaten the lives and well-being of United
10 States citizens who operate, utilize, and live or work in
11 proximity to such organizations.

12 **SEC. 3. PURPOSES.**

13 The purposes of this Act are to—

14 (1) establish within the Department of Home-
15 land Security a program to protect United States
16 citizens at or near high-risk nonprofit organizations
17 from international terrorist attacks through loan
18 guarantees and Federal contracts for security en-
19 hancements and technical assistance;

20 (2) establish a program within the Department
21 of Homeland Security to provide grants to local gov-
22 ernments to assist with incremental costs associated
23 with law enforcement in areas in which there are a
24 high concentration of high-risk nonprofit organiza-
25 tions vulnerable to international terrorist attacks;
26 and

1 (3) establish an Office of Community Relations
 2 and Civic Affairs within the Department of Home-
 3 land Security to focus on security needs of high-risk
 4 nonprofit organizations with respect to international
 5 terrorist threats.

6 **SEC. 4. AUTHORITY TO ENTER INTO CONTRACTS AND**
 7 **ISSUE FEDERAL LOAN GUARANTEES.**

8 The Homeland Security Act of 2002 (6 U.S.C. 101
 9 et seq.) is amended by adding at the end the following:
 10 **“TITLE XVIII—PROTECTION OF**
 11 **CITIZENS AT HIGH-RISK NON-**
 12 **PROFIT ORGANIZATIONS**

13 **“SEC. 1801. DEFINITIONS.**

14 “In this title:

15 “(1) **CONTRACT.**—The term ‘contract’ means a
 16 contract between the Federal Government and a
 17 contractor selected from the list of certified contrac-
 18 tors to perform security enhancements or provide
 19 technical assistance approved by the Secretary under
 20 this title.

21 ~~“(2) **FAVORABLE REPAYMENT TERMS.**~~—The
 22 term ‘favorable repayment terms’ means the repay-
 23 ment terms of loans offered to nonprofit organiza-
 24 tions under this title that—

1 ~~“(A) are determined by the Secretary, in~~
 2 ~~consultation with the Secretary of the Treasury,~~
 3 ~~to be favorable under current market condi-~~
 4 ~~tions;~~

5 ~~“(B) have interest rates at least 1 full per-~~
 6 ~~centage point below the market rate; and~~

7 ~~“(C) provide for repayment over a term~~
 8 ~~not less than 25 years.~~

9 ~~“(3) (2) NONPROFIT ORGANIZATION.—The~~
 10 ~~term ‘nonprofit organization’ means an organization~~
 11 ~~that—~~

12 ~~“(A) is described under section 501(c)(3)~~
 13 ~~of the Internal Revenue Code of 1986 and ex-~~
 14 ~~empt from taxation under section 501(a) of~~
 15 ~~such Code; and~~

16 ~~“(B) is designated by the Secretary under~~
 17 ~~section 1803(a).~~

18 ~~“(4) (3) SECURITY ENHANCEMENTS.—The term~~
 19 ~~‘security enhancements’—~~

20 ~~“(A) means the purchase and installation~~
 21 ~~of security equipment in real property (includ-~~
 22 ~~ing buildings and improvements), owned or~~
 23 ~~leased by a nonprofit organization, specifically~~
 24 ~~in response to the risk of attack at a nonprofit~~

1 organization by an international terrorist orga-
2 nization;

3 “(B) includes software security measures;
4 and

5 “(C) does not include enhancements that
6 would otherwise have been reasonably necessary
7 due to nonterrorist threats.

8 “~~(5)~~ (4) TECHNICAL ASSISTANCE.—The term
9 ‘technical assistance’—

10 “(A) means guidance, assessment, rec-
11 ommendations, and any other provision of infor-
12 mation or expertise which assists nonprofit or-
13 ganizations in—

14 “(i) identifying security needs;

15 “(ii) purchasing and installing secu-
16 rity enhancements;

17 “(iii) training employees to use and
18 maintain security enhancements; or

19 “(iv) training employees to recognize
20 and respond to international terrorist
21 threats; and

22 “(B) does not include technical assistance
23 that would otherwise have been reasonably nec-
24 essary due to nonterrorist threats.

1 **“SEC. 1802. AUTHORITY TO ENTER INTO CONTRACTS AND**
2 **ISSUE FEDERAL LOAN GUARANTEES.**

3 “(a) IN GENERAL.—The Secretary may—

4 “(1) enter into contracts with certified contrac-
5 tors for security enhancements and technical assist-
6 ance for nonprofit organizations; and

7 “(2) issue Federal loan guarantees to financial
8 institutions in connection with loans made by such
9 institutions to nonprofit organizations for security
10 enhancements and technical assistance.

11 “(b) LOANS.—The Secretary may guarantee loans
12 under this title—

13 “(1) only to the extent provided for in advance
14 by appropriations Acts; ~~and~~

15 ~~“(2) only to the extent such loans have favor-~~
16 ~~able repayment terms.~~

17 “(2) *under such terms and conditions as the Sec-*
18 *retary considers to be appropriate, consistent with*
19 *section 503 of the Federal Credit Reform Act of 1990*
20 *(2 U.S.C. 661b); and*

21 “(3) *only to the extent that the terms and condi-*
22 *tions include a requirement that the decision to pro-*
23 *vide a loan guarantee to a financial institution and*
24 *the amount of the guarantee does not in any way de-*
25 *pend on the purpose, function, or identity of the orga-*

1 *nization to which the financial institution has made,*
 2 *or intends to make, a loan.*

3 **“SEC. 1803. ELIGIBILITY CRITERIA.**

4 “(a) IN GENERAL.—The Secretary shall designate
 5 nonprofit organizations as high-risk nonprofit organiza-
 6 tions eligible for contracts or loans under this title based
 7 on the vulnerability of the specific site of the nonprofit
 8 organization to international terrorist attacks.

9 “(b) VULNERABILITY DETERMINATION.—In deter-
 10 mining vulnerability to international terrorist attacks and
 11 eligibility for security enhancements or technical assist-
 12 ance under this title, the Secretary shall consider—

13 “(1) threats of international terrorist organiza-
 14 tions (as designated by the State Department)
 15 against any group of United States citizens who op-
 16 erate or are the principal beneficiaries or users of
 17 the nonprofit organization;

18 “(2) prior attacks, within or outside the United
 19 States, by international terrorist organizations
 20 against the nonprofit organization or entities associ-
 21 ated with or similarly situated as the nonprofit orga-
 22 nization;

23 “(3) the symbolic value of the site as a highly
 24 recognized United States cultural or historical insti-

1 tution that renders the site a possible target of
2 international terrorism;

3 “(4) the role of the nonprofit organization in
4 responding to international terrorist attacks; ~~and~~

5 “(5) any recommendations of the applicable
6 ~~State Homeland Security Authority~~ established *des-*
7 *ignated State agency* under section 1806 or Federal,
8 State, and local law enforcement authorities; *and*

9 “(6) *the likelihood of physical harm to persons at*
10 *the site or in the area surrounding the site.*

11 ~~“(e) DOCUMENTATION.—In order to be eligible for~~
12 ~~security enhancements, technical assistance or loan guar-~~
13 ~~antees under this title, the nonprofit organization shall~~
14 ~~provide the Secretary with documentation that—~~

15 ~~“(1) the nonprofit organization hosted a gath-~~
16 ~~ering of at least 100 or more persons at least once~~
17 ~~each month at the nonprofit organization site during~~
18 ~~the preceding 12 months; or~~

19 ~~“(2) the nonprofit organization provides serv-~~
20 ~~ices to at least 500 persons each year at the non-~~
21 ~~profit organization site.~~

22 ~~“(d) (c) TECHNICAL ASSISTANCE ORGANIZATIONS.—~~
23 ~~If 2 or more nonprofit organizations establish another~~
24 ~~nonprofit organization to provide technical assistance, that~~
25 ~~established organization shall be eligible to receive security~~

1 enhancements and technical assistance under this title
2 based upon the collective risk of the nonprofit organiza-
3 tions it serves.

4 **“SEC. 1804. USE OF LOAN GUARANTEES.**

5 “Funds borrowed from lending institutions, which
6 are guaranteed by the Federal Government under this
7 title, may be used for technical assistance and security en-
8 hancements.

9 **“SEC. 1805. NONPROFIT ORGANIZATION APPLICATIONS.**

10 “(a) IN GENERAL.—A nonprofit organization desir-
11 ing assistance under this title shall submit a separate ap-
12 plication for each specific site needing security enhance-
13 ments or technical assistance.

14 “(b) CONTENT.—Each application shall include—

15 “(1) a detailed request for security enhance-
16 ments and technical assistance, from a list of ap-
17 proved enhancements and assistance issued by the
18 Secretary under this title;

19 “(2) a description of the intended uses of funds
20 to be borrowed under Federal loan guarantees; and

21 “(3) such other information as the Secretary
22 shall require.

23 “(c) JOINT APPLICATION.—Two or more nonprofit
24 organizations located on contiguous sites may submit a
25 joint application.

1 **“SEC. 1806. REVIEW BY STATE HOMELAND SECURITY AU-**
2 **THORITIES DESIGNATED STATE AGENCIES.**

3 “(a) ~~ESTABLISHMENT OF STATE HOMELAND SECUR-~~
4 ~~ITY AUTHORITIES~~ *DESIGNATED STATE AGENCIES.*—In
5 accordance with regulations prescribed by the Secretary,
6 each State may establish a State Homeland Security Au-
7 ~~thority~~ *shall designate a State agency* to carry out this
8 title.

9 “(b) APPLICATIONS.—

10 “(1) SUBMISSION.—Applications shall be sub-
11 mitted to the applicable ~~State Homeland Security~~
12 ~~Authority~~ *designated State agency.*

13 “(2) EVALUATION.—After consultation with
14 Federal, State, and local law enforcement authori-
15 ties, the ~~State Homeland Security Authority~~ *des-*
16 *ignated State agency* shall evaluate all applications
17 using the criteria under section 1803 and transmit
18 all qualifying applications to the Secretary ranked by
19 severity of risk of international terrorist attack.

20 “(3) APPEAL.—An applicant may appeal the
21 finding that an application is not a qualifying appli-
22 cation to the Secretary under procedures that the
23 Secretary shall issue by regulation not later than 90
24 days after the date of enactment of this title.

1 **“SEC. 1807. SECURITY ENHANCEMENT AND TECHNICAL AS-**
2 **SISTANCE CONTRACTS AND LOAN GUARAN-**
3 **TEES.**

4 “(a) IN GENERAL.—Upon receipt of the applications,
5 the Secretary shall select applications for execution of se-
6 curity enhancement and technical assistance contracts, or
7 issuance of loan guarantees, giving preference to the non-
8 profit organizations determined to be at greatest risk of
9 international terrorist attack based on criteria under sec-
10 tion 1803.

11 “(b) SECURITY ENHANCEMENTS AND TECHNICAL
12 ASSISTANCE; FOLLOWED BY LOAN GUARANTEES.—The
13 Secretary shall execute security enhancement and tech-
14 nical assistance contracts for the highest priority appli-
15 cants until available funds are expended, after which loan
16 guarantees shall be made available for additional appli-
17 cants determined to be at high risk, up to the authorized
18 amount of loan guarantees. The Secretary may provide
19 with respect to a single application a combination of such
20 contracts and loan guarantees.

21 “(c) JOINT APPLICATIONS.—Special preference shall
22 be given to joint applications submitted on behalf of mul-
23 tiple nonprofit organizations located in contiguous set-
24 tings.

25 “(d) MAXIMIZING AVAILABLE FUNDS.—Subject to
26 subsection (b), the Secretary shall execute security en-

1 hancement and technical assistance contracts in such
2 amounts as to maximize the number of high-risk appli-
3 cants nationwide receiving assistance under this title.

4 “(e) APPLICANT NOTIFICATION.—Upon selecting a
5 nonprofit organization for assistance under this title, the
6 Secretary shall notify the nonprofit organization that the
7 Federal Government is prepared to enter into a contract
8 with certified contractors to install specified security en-
9 hancements or provide specified technical assistance at the
10 site of the nonprofit organization.

11 “(f) CERTIFIED CONTRACTORS.—

12 “(1) IN GENERAL.—Upon receiving a notifica-
13 tion under subsection (e), the nonprofit organization
14 shall select a certified contractor to perform the
15 specified security enhancements, from a list of cer-
16 tified contractors issued and maintained by the Sec-
17 retary under subsection (j).

18 “(2) LIST.—The list referred to in paragraph
19 (1) shall be comprised of contractors selected on the
20 basis of—

21 “(A) technical expertise;

22 “(B) performance record including quality
23 and timeliness of work performed;

24 “(C) adequacy of employee criminal back-
25 ground checks; and

1 “(D) price competitiveness.

2 “(3) OTHER CERTIFIED CONTRACTORS.—The
3 Secretary shall include on the list of certified con-
4 tractors additional contractors selected by senior of-
5 ficials at ~~State Homeland Security Authorities~~ *des-*
6 *ignated State agencies* and the chief executives of
7 county and other local jurisdictions. Such additional
8 certified contractors shall be selected on the basis of
9 the criteria under paragraph (2).

10 “(g) ENSURING THE AVAILABILITY OF CONTRAC-
11 TORS.—If the list of certified contractors under this sec-
12 tion does not include any contractors who can begin work
13 on the security enhancements or technical assistance with-
14 in 60 days after applicant notification, the nonprofit orga-
15 nization may submit a contractor not currently on the list
16 to the Secretary for the Secretary’s review. If the Sec-
17 retary does not include the submitted contractor on the
18 list of certified contractors within 60 days after the sub-
19 mission and does not place an alternative contractor on
20 the list within the same time period (who would be avail-
21 able to begin the specified work within that 60-day pe-
22 riod), the Secretary shall immediately place the submitted
23 contractor on the list of certified contractors and such con-
24 tractor shall remain on such list until—

25 “(1) the specified work is completed; or

1 “(2) the Secretary can show cause why such
2 contractor may not retain certification, with such de-
3 terminations subject to review by the Comptroller
4 General of the United States.

5 “(h) CONTRACTS.—Upon selecting a certified con-
6 tractor to provide security enhancements and technical as-
7 sistance approved by the Secretary under this title, the
8 nonprofit organization shall notify the Secretary of such
9 selection. The Secretary shall deliver a contract to such
10 contractor within 10 business days after such notification.

11 “(i) CONTRACTS FOR ADDITIONAL WORK OR UP-
12 GRADES.—A nonprofit organization, using its own funds,
13 may enter into an additional contract with the certified
14 contractor, for additional or upgraded security enhance-
15 ments or technical assistance. Such additional contracts
16 shall be separate contracts between the nonprofit organi-
17 zation and the contractor.

18 “(j) EXPEDITING ASSISTANCE.—In order to expedite
19 assistance to nonprofit organizations, the Secretary
20 shall—

21 “(1) compile a list of approved technical assist-
22 ance and security enhancement activities within 45
23 days after the date of enactment of this title;

24 “(2) publish in the Federal Register within 60
25 days after such date of enactment a request for con-

1 tractors to submit applications to be placed on the
2 list of certified contractors under this section;

3 “(3) after consultation with the Secretary of
4 the Treasury, publish in the Federal Register within
5 60 days after such date of enactment, prescribe reg-
6 ulations setting forth the conditions under which
7 loan guarantees shall be issued under this title, in-
8 cluding application procedures, expeditious review of
9 applications, underwriting criteria, assignment of
10 loan guarantees, modifications, commercial validity,
11 defaults, and fees; and

12 “(4) publish in the Federal Register within 120
13 days after such date of enactment (and every 30
14 days thereafter) a list of certified contractors, in-
15 cluding those selected by ~~State Homeland Security~~
16 ~~Authorities~~ *designated State agencies*, county, and
17 local officials, with coverage of all 50 States, the
18 District of Columbia, and the territories.

19 **“SEC. 1808. LOCAL LAW ENFORCEMENT ASSISTANCE**
20 **GRANTS.**

21 “(a) IN GENERAL.—The Secretary may provide
22 grants to units of local government to offset incremental
23 costs associated with law enforcement in areas where there
24 is a high concentration of nonprofit organizations.

1 **“SEC. 1810. AUTHORIZATION OF APPROPRIATIONS AND**
2 **LOAN GUARANTEES.**

3 “(a) **NONPROFIT ORGANIZATIONS PROGRAM.**—There
4 are authorized to be appropriated to the Department to
5 carry out the nonprofit organization program under this
6 title, \$100,000,000 for fiscal year 2005 and such sums
7 as may be necessary for fiscal years 2006 and 2007.

8 “(b) **LOCAL LAW ENFORCEMENT ASSISTANCE**
9 **GRANTS.**—There are authorized to be appropriated to the
10 Department for local law enforcement assistance grants
11 under section 1808, \$50,000,000 for fiscal year 2005 and
12 such sums as may be necessary for fiscal years 2006 and
13 2007.

14 “(c) **OFFICE OF COMMUNITY RELATIONS AND CIVIC**
15 **AFFAIRS.**—There are authorized to be appropriated to the
16 Department for the Office of Community Relations and
17 Civic Affairs under section 1809, \$5,000,000 for fiscal
18 year 2005 and such sums as may be necessary for fiscal
19 years 2006 and 2007.

20 “(d) **LOAN GUARANTEES.**—

21 “(1) **AUTHORIZATION OF APPROPRIATIONS.**—
22 There are authorized to be appropriated in each of
23 fiscal years 2005, 2006, and 2007, such amounts as
24 may be required under the Federal Credit Act with
25 respect to Federal loan guarantees authorized by

1 this title, which shall remain available until ex-
2 pended.

3 “(2) LIMITATION.—The aggregate value of all
4 loans for which loan guarantees are issued under
5 this title by the Secretary may not exceed
6 \$250,000,000 in each of fiscal years 2005, 2006,
7 and 2007.”.

8 **SEC. 5. TECHNICAL AND CONFORMING AMENDMENT.**

9 The table of contents under section 1(b) of the Home-
10 land Security Act of 2002 (6 U.S.C. 101(b)) is amended
11 by adding at the end the following:

“TITLE XVIII—PROTECTION OF CITIZENS AT HIGH-RISK
NONPROFIT ORGANIZATIONS

“Sec. 1801. Definitions.

“Sec. 1802. Authority to enter into contracts and issue Federal loan guaran-
tees.

“Sec. 1803. Eligibility criteria.

“Sec. 1804. Use of loan guarantees.

“Sec. 1805. Nonprofit organization applications.

~~“Sec. 1806. Review by State Homeland Security Authorities.~~

“Sec. 1806. Review by designated State agencies.

“Sec. 1807. Security enhancement and technical assistance contracts and loan
guarantees.

“Sec. 1808. Local law enforcement assistance grants.

“Sec. 1809. Office of Community Relations and Civic Affairs.

“Sec. 1810. Authorization of appropriations and loan guarantees.”.

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