

Calendar No. 489

117TH CONGRESS }
2d Session }

SENATE

{ REPORT
117-149 }

EXTENSION OF DEPARTMENT OF
HOMELAND SECURITY OTHER
TRANSACTION AUTHORITY ACT OF 2022

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 4553

TO EXTEND OTHER TRANSACTION AUTHORITY FOR THE
DEPARTMENT OF HOMELAND SECURITY



SEPTEMBER 15, 2022.—Ordered to be printed

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**EXTENSION OF DEPARTMENT OF HOMELAND SECURITY
OTHER TRANSACTION AUTHORITY ACT OF 2022**

SEPTEMBER 15, 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. 4553]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 4553), to extend other transaction authority for the Department of Homeland Security, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

S. 4553, the *Extension of Department of Homeland Security Other Transaction Authority Act of 2022*, would extend the Department of Homeland Security (DHS) other transaction authority for the purpose of carrying out research and development or prototype projects through fiscal year 2024.¹

¹The Homeland Security Act of 2002, Section 831, authorized the Secretary of Homeland Security to exercise the same other transaction authorities granted to the Secretary of Defense

Continued

II. BACKGROUND AND NEED FOR THE LEGISLATION

Other transaction agreements (OTAs) are legally binding agreements that are exempt from the Federal Acquisition Regulation (FAR). Unlike procurement contracts, grants, and cooperative agreements, OTAs provide greater access to non-traditional contractors, or those who have not previously done business with the federal government.² DHS uses OTAs when the Department and awardees need flexibility in the negotiation of terms and conditions that go beyond what is available in the FAR.

This streamlined and rapid means of procurement is seen as a way for defense agencies to keep pace with global competitors such as China and Russia.³ DHS uses OTAs predominately with non-traditional government contractors working on cutting-edge, emerging technologies that otherwise would not be available to the Department in a timely manner or include specific government needs.⁴

III. LEGISLATIVE HISTORY

Chairman Gary Peters (D–MI) introduced S. 4553, the *Extension of Department of Homeland Security Other Transaction Authority Act of 2022*, on July 19, 2022, with Ranking Member Rob Portman (R–OH). The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 4553 at a business meeting on August 3, 2022. The bill was ordered reported favorably by voice vote *en bloc* with Senators Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Lankford, Romney, Scott, and Hawley present.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section provides that the Act may be cited as the “Extension of Department of Homeland Security Other Transaction Authority Act of 2022.”

Sec. 2. Department of Homeland Security other transaction authority

This section amends Section 831 of the Homeland Security Act of 2002 (6 U.S.C. § 391) to extend the DHS other transaction authority through fiscal year 2024 and correct the section number of the reference to the DoD other transaction authority at 10 U.S.C. § 4022, formerly section 2371(b).

under 10 U.S.C. § 2371, as revised. The Secretary of Homeland Security was granted this authority on November 25, 2002, for a period of 5 years, but the authority has been repeatedly extended.

²AcqNotes Program Management Tool for Aerospace, Contracts and Legal, *Other Transaction Authority (OTA)* (<https://acqnotes.com/acqnote/careerfields/other-transaction-authority-ota>) (Accessed Aug. 22, 2022).

³Center for Strategic & International Studies, *Department of Defense Other Transaction Authority Trends: A New R&D Funding Paradigm* (Dec. 8, 2020) (www.csis.org/analysis/department-defense-other-transaction-authority-trends-new-rd-funding-paradigm).

⁴Department of Homeland Security, MD Number 0771.1, *Other Transaction Authority* (Jul. 8, 2005) (www.dhs.gov/xlibrary/assets/foia/mgmt_directive_0771_1_other_transaction_authority.pdf).

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 (CBO) 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, September 7, 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. 4553, the Extension of Department of Homeland Security Other Transaction Authority Act of 2022.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

S. 4553, Extension of Department of Homeland Security Other Transaction Authority Act of 2022			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on August 3, 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)	0	0	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

S. 4553 would extend through 2024 the authority for the Department of Homeland Security (DHS) to waive requirements of the Federal Acquisition Regulation, the procedures that guide federal procurement actions, for certain research and development and prototype projects. The authority, known as "Other Transaction Authority," helps DHS work with organizations that have not pre-

viously contracted with the federal government. The agency uses the authority to participate in research that broadens its knowledge base and to develop prototypes of emerging technologies. Under current law, the authority expires at the end of fiscal year 2022.

The authority is a contracting tool which affects DHS's procurement process for certain research and development projects, but it does not impact DHS spending on those activities. Based on that information, CBO estimates that implementing S. 4553 would have no effect on spending over the 2022–2027 period.

S. 4553 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Jeremy Crimm. The estimate was reviewed by LeoLex, Deputy Director of Budget Analysis.

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

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in *italic*, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

TITLE 6—DOMESTIC SECURITY

* * * * *

CHAPTER 1—HOMELAND SECURITY ORGANIZATION

* * * * *

Subchapter VIII—Coordination With Non-Federal Entities; Inspector General; United States Secret Service; Coast Guard; General Provisions

* * * * *

PART D—ACQUISITIONS

* * * * *

SEC. 391. RESEARCH AND DEVELOPMENT PROJECTS

(a) AUTHORITY

Until **[September 30, 2017]** *September 30, 2024* and subject to subsection (d), the Secretary may carry out a pilot program under which the Secretary may exercise the following authorities:

(1) * * *

(2) **[PROTOTYPE PROJECTS]**

The Secretary may, under the authority of paragraph (1), carry out prototype projects in accordance with the requirements and conditions provided for carrying out prototype projects under sec-

tion 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160). In applying the authorities of that section 845, subsection (c) of that section shall apply with respect to prototype projects under this paragraph, and the Secretary shall perform the functions of the Secretary of Defense under subsection (d) thereof.】

PROTOTYPE PROJECTS.—The Secretary—

(A) may, under the authority of paragraph (1), carry out prototype projects under section 4022 of title 10, United States Code; and

(B) in applying the authorities of such section 4022, the Secretary shall perform the functions of the Secretary of Defense as prescribed in such section.

(b) * * *

(c) ADDITIONAL REQUIREMENTS

(1) IN GENERAL

The authority of the Secretary under this section shall terminate 【September 30, 2017】 *September 30, 2024*, unless before that date the Secretary—

(A) issues policy guidance detailing the appropriate use of that authority; and

(B) provides training to each employee that is authorized to exercise that authority.

(2) * * *

(d) DEFINITION OF NONTRADITIONAL GOVERNMENT CONTRACTOR

In this section, the term “nontraditional Government contractor” has the same meaning as the term “nontraditional defense contractor” as defined in 【section 845(e) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note)】 *section 4022(e) of title 10, United States Code.*