

Calendar No. 121

111th Congress
1st Session

SENATE

REPORT
111-56

ENHANCED OVERSIGHT OF STATE AND
LOCAL ECONOMIC RECOVERY ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1064

TO AMEND THE AMERICAN RECOVERY AND REINVESTMENT ACT
OF 2009 TO PROVIDE FOR ENHANCED STATE AND LOCAL OVER-
SIGHT OF ACTIVITIES CONDUCTED UNDER SUCH ACT, AND FOR
OTHER PURPOSES



JULY 22, 2009.—Ordered to be printed

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ENHANCED OVERSIGHT OF STATE AND LOCAL ECONOMIC RECOVERY ACT

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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 S. 1064]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1064) to amend the American Recovery and Reinvestment Act of 2009 to provide for enhanced State and local oversight of activities conducted under such Act, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

I. PURPOSE AND SUMMARY

S. 1064 would amend the American Recovery and Reinvestment Act of 2009 (“ARRA” or “the Recovery Act”) to provide for enhanced state and local oversight of activities conducted under Recovery Act programs. ARRA imposed unprecedented transparency and oversight requirements upon state and local governments that spend Recovery Act funds at the very time when many of those governments were being forced to cut back on the personnel who perform such work. S. 1064 would facilitate state and local compliance with ARRA’s mandates by enabling state and local governments to set aside up to 0.5 percent of ARRA funds to conduct necessary management, transparency, and oversight work. These funds would be in addition to amounts the underlying law already allocates for administrative costs for specific ARRA programs. In addition, the bill would allow states and local governments to use GSA purchasing schedules when using Recovery Act funds. The legislation would also require OMB to issue guidance on the definition of “jobs created” and “jobs retained” under reporting requirements of ARRA.

II. BACKGROUND AND NEED FOR THE LEGISLATION

The Homeland Security and Governmental Affairs Committee has held four hearings to discuss the oversight of the American Recovery and Reinvestment Act. All of these hearings have highlighted the importance of state and local governments in implementing the Recovery Act's oversight and accountability requirements. The unprecedented oversight at the federal level is simply not enough to ensure that the taxpayers' money is being properly spent; rigorous state and local management and oversight is also necessary. (See, e.g., Senate Committee on Homeland Security and Governmental Affairs, Hearing on Follow the Money: Transparency and Accountability for Recovery and Reinvestment Spending, 111th Cong. (March 5, 2009); Senate Committee on Homeland Security and Governmental Affairs, Hearing on Recovery and Reinvestment Spending: Implementing A Bold Oversight Strategy, 111th Cong. (April 2, 2009); Senate Committee on Homeland Security and Governmental Affairs, Hearing on The American Recovery and Reinvestment Act: Making the Economic Stimulus Work for Connecticut, 111th Cong. (April 7, 2009 in Hartford, CT); Senate Committee on Homeland Security and Governmental Affairs, Hearing on Follow the Money: State and Local Oversight of Stimulus Funding, 111th Cong. (April 23, 2009)).

At the Committee's April 23, 2009 hearing, witnesses emphasized the need to ensure adequate funding for state and local management and oversight of Recovery Act programs. Gene Dodaro, Acting Comptroller General of the United States, discussed the strain that ARRAs oversight requirements will place on state auditors and other officials responsible for ensuring that the money is properly spent. In order for states to have the management and oversight capacity to properly oversee all aspects of the spending, down to sub-recipients in program areas, he stated, "additional funding is very appropriate, commensurate with the amount of additional federal resources that are going to go there." ARRA includes more than \$250 million to hire additional federal investigators and inspectors to monitor the federal program, but there is no comparable new funding for state and local governments to administer and oversee ARRA spending even though approximately \$300 billion of Recovery Act funds will be under direct supervision of these governments. Ray Scheppach, the Executive Director of the National Governors Association, testified that state budget shortfalls for fiscal years 2009 and 2010 would exceed \$230 billion as a result of falling revenues. Scheppach warned that such shortfalls are forcing states to cut back on personnel who can ensure accountability for Recovery Act funds, and that money could be needed for data collection and management to comply with the law's transparency requirements. While states are facing budget deficits and layoffs, it is crucial that there be adequate personnel and systems to monitor the spending of ARRA funds at the state and local levels. Federal stimulus money should be available to cover administrative and oversight costs so that states can maintain necessary personnel and put in place necessary tracking systems.

The bill in some respects parallels guidance issued by the Office of Management and Budget on May 11, 2009, regarding this cost recovery issue and would go further in assuring that ample funds

are available for these administrative and oversight duties. The House passed companion legislation, H.R. 2182, on May 19, 2009.

III. LEGISLATIVE HISTORY

On May 18, 2009, S. 1064 was introduced by Chairman Lieberman and referred to the Senate Committee on Homeland Security and Governmental Affairs. The bill's original co-sponsors were Ranking Minority Member Collins, Senator Burris, and Senator McCaskill. Additional cosponsors are Senator Feingold and Senator Bennet. On May 20, 2009, the Committee considered S. 1064 at its business meeting, where the bill was reported favorably by voice vote as amended by the Collins-Lieberman Amendment, Coburn Amendment 1, and Lieberman Second-Degree Amendment to Coburn Amendment 1. Members present for the vote on the bill were Senators Lieberman, Akaka, Carper, Pryor, McCaskill, Burris, Collins, Coburn, and Voinovich.

The Collins-Lieberman Amendment would require the General Services Administration (GSA) to provide necessary schedule ordering guidance for state and local users; allow access to e-Buy online electronic Request for Quote system to maximize competition; and make available, free of charge, necessary training. Coburn Amendment 1 would require that information on federal spending in ARRA be included and clearly identified on USAspending.gov, the website created under the Federal Funding Accountability and Transparency Act of 2006, in addition to the website created under ARRA. The Lieberman Second-Degree Amendment to Coburn Amendment 1 would clarify that the requirements to include and differentiate ARRA information on USAspending.gov would not expand existing reporting requirements under the Federal Funding Accountability and Transparency Act.

IV. SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title

The short title of the bill is the Enhanced Oversight of State and Local Economic Recovery Act.

Sec. 2. Requirements for funding for state and local oversight under American Recovery and Reinvestment Act of 2009

This section would amend the American Recovery and Reinvestment Act to require Federal agencies, subject to guidance from the Director of the Office of Management and Budget, to adjust applicable limits on administrative expenditures for Federal awards to help award recipients defray the costs of data collection requirements, auditing, contract and grant planning and management, and investigations of waste, fraud, and abuse.

The section further amends the Recovery Act to allow state and local governments receiving funds under the Recovery Act to set aside an amount up to 0.5 percent of such funds, in addition to any funds already allocated to administrative expenditures, to conduct planning and oversight to prevent and detect waste, fraud, and abuse.

Sec. 3. Authorization for acquisition by state and local governments through Federal supply schedules

This section amends section 502 of title 40, United States Code, by providing the Administrator of the General Services Administration with the authority to provide for the use by state or local governments of the Federal supply schedules for goods or services that are funded by the Recovery Act. Participation by a firm that sells to the Federal Government through the supply schedule shall be voluntary. The section also includes provisions to ensure proper usage of GSA schedules by state and local users by offering guidance, availability of the Request for Quote and Request for Proposal system, and training related to proper schedule usage, free of charge.

Sec. 4. Definition of jobs created and jobs retained

This section amends section 1512(g) of the Recovery Act by requiring the Director of the Office of Management and Budget to issue guidance to state and local government agencies and other funding recipients to ensure accurate and consistent reporting of "jobs created" and "jobs retained" through Recovery Act projects.

Sec. 5. Federal awards under the American Recovery and Reinvestment Act of 2009

This section amends Section 2 of the Federal Funding Accountability and Transparency Act of 2006 to require that the Office of Management and Budget ensure that the website created under that Act differentiates projects that are funded under the ARRA from other Federal awards, and allows users to search the website for Federal awards under the ARRA.

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. The Congressional Budget Office states that S. 1064 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

MAY 21, 2009.

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 S. 1064, the Enhanced Oversight of State and Local Economic Recovery Act.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1064—Enhanced Oversight of State and Local Economic Recovery Act

S. 1064 would allow state and local governments to purchase certain goods and services at the same discounted prices charged to the federal government. Eligible purchases under the bill would include those funded through grants provided in Public Law 111–5, the American Recovery and Reinvestment Act (Recovery Act). The legislation also would allow state and local governments to use a portion of their Recovery Act funds to monitor and account for those funds. CBO estimates that enacting S. 1064 would increase offsetting collections and associated spending of fees charged by the General Services Administration (GSA), but the net effect on the federal budget would be negligible. The bill would have no effect on revenues.

Under current law, state and local governments are able to use GSA’s federal supply schedule to purchase goods from willing commercial vendors if those purchases are related to law enforcement, fire fighting, disaster recovery, or information technology. GSA charges a 0.75 percent fee on all purchases to recover the administrative costs of maintaining the supply schedule.

S. 1064 would temporarily expand the program to include any purchase made by those governments using Recovery Act funds. Based on information from GSA on the anticipated additional demand by the state and local governments, CBO estimates that additional purchases would increase GSA’s offsetting collections by about \$15 million annually over the next few years. Because such fees are spent by GSA without further appropriation, the net budgetary impact would be negligible.

In addition, section 2 would allow funds previously appropriated by the Recovery Act to state and local governments to be used for planning and auditing activities as well as investigations of waste and fraud. CBO expects that provision would not change the amount or the timing of expenditures to state and local governments. We therefore estimate that implementing that provision would have no significant effect on direct spending.

S. 1064 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. The bill would benefit state and local governments by allowing them to use the federal supply schedule to purchase additional goods and services.

On May 12, 2009, CBO provided a cost estimate for H.R. 2182, the Enhanced Oversight of State and Local Economic Recovery Act, as ordered reported by the House Committee on Oversight and Government Reform on May 6, 2009. The two pieces of legislation have similar provisions, and the CBO cost estimates are identical.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

VII. CHANGES TO 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 S. 1064 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):

**AMERICAN RECOVERY AND REINVESTMENT ACT OF
2009**

Pub. L. 111–5, Title XV, 1512, February 17, 2009

SEC. 1512. REPORTS ON USE OF FUNDS

* * * * *

(g) **GUIDANCE.**—Federal agencies, in coordination with the Director of the Office of Management and Budget, shall provide for user-friendly means for recipients of covered funds to meet the requirements of this section. *The Director of the Office of Management and Budget shall issue guidance to ensure accurate and consistent reporting of “jobs created” and “jobs retained” as those terms are used in subsection (c)(3)(D).*

* * * * *

Pub. L. 111–5, Title XV, 1552, February 17, 2009

**SEC. 1552. SET-ASIDE FOR STATE AND LOCAL GOVERNMENT RECORD-
ING AND RECORDKEEPING FUNDING FOR STATE AND
LOCAL GOVERNMENT OVERSIGHT**

FEDERAL AGENCY REQUIREMENT.—Federal agencies receiving funds under this act may, after following the notice and comment rulemaking requirements under the Administrative Procedures Act (5 U.S.C. 500), reasonably *shall, subject to guidance from the Director of the Office of Management and Budget* adjust applicable limits on administrative expenditures for Federal awards to help award recipients defray the costs of data collection requirements, auditing, contract and grant planning and management and investigations of waste, fraud, and abuse initiated pursuant to this Act.

STATE AND LOCAL GOVERNMENT AUTHORITY.—*Notwithstanding any other provision of law, State and local governments receiving funds under this Act may set aside an amount up to 0.5 percent of such funds, in addition to any funds already allocated to administrative expenditures, to conduct planning and oversight to prevent and detect waste, fraud, and abuse.*

SECTION 502 OF TITLE 40, UNITED STATES CODE

§ 502. Services for other entities

* * * * *

(e) **USE OF SUPPLY SCHEDULES FOR ECONOMIC RECOVERY.**—

(1) **IN GENERAL.**—*The Administrator may provide for the use by state or local governments of Federal supply schedules of the General Services Administration for goods or services that are funded by the American Recovery and Reinvestment Act of 2009 (Public Law 111–5).*

(2) **VOLUNTARY USE.**—*In the case of the use by a state or local government of a Federal supply schedule pursuant to paragraph (1), participation by a firm that sells to the Federal Government through the supply schedule shall be voluntary with respect to a sale to the State or local government through such supply schedule.*

(3) PROVISIONS TO ENSURE PROPER USAGE BY NON-FEDERAL USERS.—The Administrator shall, for authorized non-Federal users of Federal Supply Schedules—

(A) review the existing ordering guidance and, as necessary, prescribe additional guidance to ensure proper usage and to maximize task and delivery order competition;

(B) make available the online electronic Request for Quote (RFQ/Request for Proposal (RFP) system; and

(C) make available, free of charge, training related to proper Schedule usage, including online training courses.

(4) DEFINITION.—The definitions in subsection (c)(3) shall apply for purposes of this subsection.

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006

Pub. L. 109-282, Sec. 2, Sept. 26, 2006

SEC. 2. FULL DISCLOSURE OF ENTITIES RECEIVING FEDERAL FUNDING

* * * * *

(b)(1) * * *

(2) ADDITIONAL WEBSITE CONTENT.—Not later than 30 days after the date of enactment of the Enhanced Oversight of State and Local Economic Recovery Act, the Office of Management and Budget shall ensure that the website under this subsection—

(A) clearly differentiates between projects funded under the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) and other Federal awards; and

(B) provides users with the ability to perform searches for information in the website relating only to Federal awards funded by the American Recovery and Reinvestment Act of 2009

2 (3) * * *

3 (4) * * *

4 (5) * * *

* * * * *

(h) WEBLINK.—The website Recovery.gov established under the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) shall contain a prominently displayed weblink on its front page to the website under this section.