

117TH CONGRESS
1ST SESSION

H. R. 5104

To permit the Secretary of Defense to reimburse contractors for paid leave costs incurred by such contractors during periods of work interruption in order to keep the employees and subcontractors of such contractors working or ready to resume work, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 24, 2021

Mr. WITTMAN (for himself and Mr. BROWN) introduced the following bill;
which was referred to the Committee on Armed Services

A BILL

To permit the Secretary of Defense to reimburse contractors for paid leave costs incurred by such contractors during periods of work interruption in order to keep the employees and subcontractors of such contractors working or ready to resume work, 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 “Just In Case Act”.

1 **SEC. 2. SPECIAL EMERGENCY REIMBURSEMENT AUTHOR-**
2 **ITY.**

3 (a) IN GENERAL.—Subchapter II of chapter 134 of
4 title 10, United States Code, is amended by adding at the
5 end the following new section:

6 **“§ 2265. Special emergency reimbursement authority**

7 “(a) SPECIAL EMERGENCY REIMBURSEMENT AU-
8 THORITY.—

9 “(1) IN GENERAL.—Notwithstanding any other
10 provision of law, the Secretary of Defense may, in
11 accordance with this paragraphs (2) and subsection
12 (c), modify the terms and conditions of a covered
13 contract, without consideration, to reimburse a con-
14 tractor for the cost of any paid leave, including sick
15 leave, that such contractor provides to the employees
16 or subcontractors (at any tier) of such contractor in
17 response to a covered emergency to keep such em-
18 ployees or subcontractors in a ready state with re-
19 spect to such covered contract.

20 “(2) REIMBURSEMENT REQUIREMENTS.—

21 “(A) ELIGIBLE EMPLOYEE AND SUB-
22 CONTRACT COSTS.—Reimbursements under this
23 subsection may be made only with respect to
24 employees of a contractor or employees of sub-
25 contractors (at any tier) of a contractor which,
26 for the relevant covered contract—

1 “(i) are unable to perform work on a
2 covered site due to facility closures or
3 other restrictions; and

4 “(ii) cannot telework because the du-
5 ties of such employee or contractor cannot
6 be performed remotely.

7 “(B) AVERAGE HOURS.—The number of
8 hours of paid leave for which the cost may be
9 reimbursement under this subsection may not
10 exceed an average of 40 hours per week per em-
11 ployee described in subparagraph (A).

12 “(C) BILL RATE.—The minimum applica-
13 ble contract billing rate under the relevant cov-
14 ered contract shall be used to calculate reim-
15 bursements under this subsection.

16 “(b) ENHANCED REIMBURSEMENT FOR SMALL BUSI-
17 NESS CONTRACTORS.—

18 “(1) IN GENERAL.—In addition to any reim-
19 bursement under subsection (a), the Secretary of
20 Defense may, in accordance with paragraph (2) and
21 subsection (c), modify the terms and conditions of a
22 covered contract, without consideration, to reimburse
23 a small business contractor for costs, other than
24 costs reimbursable under subsection (a), that are di-
25 rect costs of a covered emergency with respect to

1 which reimbursement is permitted under subsection
2 (a).

3 “(2) LIMITATIONS.—The Secretary of Defense
4 may reimburse a small business contractor under
5 this subsection to the extent that the relevant con-
6 tracting officer determines in writing that—

7 “(A) such reimbursement is necessary to
8 ensure the continuation of contractor perform-
9 ance during, or the resumption of contractor
10 performance after, the covered emergency;

11 “(B) the small business contractor miti-
12 gated the costs that may be reimbursed under
13 this subsection to the extent practicable; and

14 “(C) it is in the best interest of the United
15 States to reimburse such costs.

16 “(c) REIMBURSEMENT CONDITIONS.—

17 “(1) COST IDENTIFICATION.—A cost is eligible
18 for reimbursement under subsection (a) or (b) only
19 if the relevant contracting officer determines that
20 the records of the contractor to identify such cost as
21 a cost described in either such subsection such that
22 such contracting officer may audit such cost.

23 “(2) OTHER FEDERAL BENEFIT OFFSET.—

24 “(A) IN GENERAL.—Any reimbursement
25 under subsection (a) or (b) shall be reduced by

1 an amount equal to the total amount of any
2 other Federal payment, allowance, or tax or
3 other credit received for a cost that is reimburs-
4 able under such subsection.

5 “(B) NOTIFICATION.—A contractor that
6 receives a payment, allowance, or credit de-
7 scribed in subparagraph (A) for a cost which
8 such contractor seeks reimbursement under
9 subsection (a) or (b) shall submit to the rel-
10 evant contracting officer a notice of the receipt
11 of such payment, allowance, or credit—

12 “(i) prior to the execution of a con-
13 tract modification providing such reim-
14 bursement; and

15 “(ii) not later than 30 days after such
16 receipt.

17 “(C) POST REIMBURSEMENT.—A con-
18 tractor that receives a payment, allowance, or
19 credit described in subparagraph (A) for a cost
20 after the execution of a contract modification
21 under subsection (a) or (b) reimbursing such
22 cost, or that is unable to provide the notice re-
23 quired under subparagraph (B) in accordance
24 with clause (i) of such subparagraph, shall—

1 “(i) not later than 30 days after the
2 receipt of the payment, allowance, or cred-
3 it, notify the relevant contracting officer in
4 writing of such receipt; and

5 “(ii) agree to execute a contract modi-
6 fication to reduce the amount reimbursed
7 under subsections (a) and (b) by the
8 amount of such payment, allowance, or
9 credit.

10 “(3) APPROPRIATIONS AVAILABILITY.—Reim-
11 bursements under subsections (a) and (b) shall be
12 subject to the availability of appropriations.

13 “(d) COST ACCOUNTING STANDARDS.—For the pur-
14 poses of this section, a cognizant Federal agency official
15 shall provide a contractor subject to the cost accounting
16 standards issued pursuant to section 1502 of title 41,
17 United States Code, and required to submit one or more
18 disclosure statements, a reasonable opportunity to amend
19 any such disclosure statements to reflect any costs that
20 are reimbursable under subsection (a).

21 “(e) DEFINITIONS.—In this section:

22 “(1) COGNIZANT FEDERAL AGENCY OFFI-
23 CIAL.—The term ‘cognizant Federal agency official’
24 has the meaning given such term in section 30.001
25 of title 48, Code of Federal Regulations.

1 “(2) COVERED CONTRACT.—The term ‘covered
2 contract’ means any contract, including a fixed-price
3 or cost-reimbursement contract, or any other agree-
4 ment for the procurement of goods or services by or
5 for the Department of Defense.

6 “(3) COVERED EMERGENCY.—The term ‘cov-
7 ered emergency’ means an emergency or disaster, in-
8 cluding an emergency or major disaster as defined
9 in section 102 of the Robert T. Stafford Disaster
10 Relief and Emergency Assistance Act (42 U.S.C.
11 5122), which prevents the employees of a contractor
12 of the Department of Defense or the employees of
13 a subcontractor (at any tier) of such a contractor
14 from performing work under a covered contract, as
15 determined by the Secretary.

16 “(4) COVERED SITE.—The term ‘covered site’
17 means any government-owned, government-leased,
18 contractor-owned, or contractor-leased facility ap-
19 proved by the Federal government for contract per-
20 formance.

21 “(5) DISCLOSURE STATEMENT.—The term ‘dis-
22 closure statement’ means a Disclosure Statement de-
23 scribed in section 9903.202–1(a) of title 48, Code of
24 Federal Regulations.

1 “(6) MINIMUM APPLICABLE CONTRACT BILLING
 2 RATE.—The term ‘minimum applicable contract bill-
 3 ing rate’ means a rate capturing the financial im-
 4 pact incurred as a consequence of keeping the em-
 5 ployees or subcontractors (at any tier) of the con-
 6 tractor in a ready state, including the base hourly
 7 pay rate such employees and employees of such sub-
 8 contractors, indirect costs, general and administra-
 9 tive expenses, and other relevant costs.

10 “(7) READY STATE.—The term ‘ready state’
 11 means able to mobilize in a timely manner to per-
 12 form under a covered contract.

13 “(8) SMALL BUSINESS CONTRACT.—The term
 14 ‘small business contractor’ means a contractor that
 15 is a small business concern (as such term is defined
 16 under section 3 of the Small Business Act (15
 17 U.S.C. 632).”.

18 (b) CLERICAL AMENDMENT.—The table of sections
 19 for subchapter II of chapter 134 of title 10, United States
 20 Code, is amended by adding at the end the following new
 21 item:

“2265. Special emergency reimbursement authority.”.

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