

Calendar No. 748

110th Congress }
2nd Session }

SENATE

{ REPORT
{ 110-338

FEDERAL FOOD DONATION ACT OF 2008

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2420

TO ENCOURAGE THE DONATION OF EXCESS FOOD
TO NONPROFIT ORGANIZATIONS THAT PROVIDE
ASSISTANCE TO FOOD-INSECURE PEOPLE IN THE
UNITED STATES IN CONTRACTS ENTERED INTO
BY EXECUTIVE AGENCIES FOR THE PROVISION,
SERVICE, OR SALE OF FOOD



MAY 22, 2008.—Ordered to be printed

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

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MAY 22, 2008.—Ordered to be printed

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

R E P O R T

[To accompany S. 2420]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 2420) to encourage the donation of excess food to nonprofit organizations that provide assistance to food-insecure people in the United States in contracts entered into by executive agencies for the provision, service, or sale of food, having considered the same, reports favorably thereon with an amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 2420 is to encourage federal agencies and their contractors to donate excess food to nonprofit organizations serving the needy. The bill requires federal contracts above \$25,000 for the provision of food, or for the lease or rental of federal property to a private entity for events at which food is provided, to include a clause that encourages—but does not require—the donation of excess food to nonprofit organizations.

As reported, the bill would also extend to the government and the contractor, when donating food, the same civil or criminal liability protection provided to donors of food under the Bill Emerson Good Samaritan Food Donation Act of 1996.¹

II. BACKGROUND AND NEED FOR THE LEGISLATION

Research from the United States Department of Agriculture (USDA) has found that more than one-quarter of all the food produced for human consumption in America is currently discarded.² At the same time this waste is occurring, 11 percent (12.6 million households) of U.S. households are food insecure.³ These households, at some time during the year, had difficulty providing enough food for all their members due to a lack of resources.⁴ About a third of these food-insecure households (4.4 million, or 3.9 percent of all U.S. households) were food insecure to the extent that one or more household members were hungry, at least some time during the year, because they could not afford enough food.⁵ The Committee believes that one way to address hunger is to encourage federal agencies and their contractors to donate excess foods to nonprofit organizations serving the needy.

Nonprofits in the business of food rescue serve millions of people. City Harvest, in New York City, for example, picks up excess food from places such as restaurants, groceries, manufacturers, wholesalers, and greenmarkets, and delivers the food to soup kitchens, food pantries, day care and senior citizen centers, homeless shelters and other places that serve those in need. In fiscal year 2008, City Harvest rescued approximately 20 million pounds of excess, nutritious food.⁶ Rock and Wrap it Up!, a national food rescue organization headquartered in New York and supporter of this legislation, collects leftover food from professional sporting events and concerts. Last year they collected approximately 350,000 pounds of food for a total of one million meals.⁷ These organizations, though, find it difficult to keep up with demand.

According to a new report released by the U.S. Conference of Mayors on December 17, 2007, request for emergency food assistance from food pantries, emergency kitchens and home-delivered meal programs increased an average of 10 percent over the last year.⁸ At the same time food costs are increasing. A recent Congressional Research report found U.S. food prices rose 4% in 2007 and are expected to increase by 3.5% to 4.5% in 2008.⁹ America's food banks are straining to meet their needs with the increase in both food requests and food costs. For example, a December 8, 2007 Washington Post article reported that the Capitol Area Food Bank, the emergency food system for Washington D.C., had only 230,000

¹ 42 U.S.C. 1791(b).

² United States Department of Agriculture, *Waste Not, Want Not*, October, 2001. Can be found at http://www.epa.gov/epaoswer/non-hw/reduce/wast_not.pdf.

³ United States Department of Agriculture, *Household Food Security in the United States*, 2005. Can be found at <http://www.ers.usda.gov/publications/err29/err29.pdf>.

⁴ Id.

⁵ Id.

⁶ City Harvest Inc., *About Us*. Can be found at <http://www.cityharvest.org/home.aspx?catid=0&pg=1>.

⁷ Rock and Wrap it Up!. Can be found at <http://www.rockandwrapitup.org/index/>.

⁸ The United States Conference of Mayors, *Hunger and Homelessness Survey*, at 4-6. Can be found at <http://usmayors.org/HHSurvey2007/hhsurvey07.pdf>.

⁹ CRS Report, *Food Price Inflation: Causes and Impacts*, April 10, 2008. Can be found at <http://www.congress.gov/erp/rs/pdf/RS22859.pdf>.

pounds of food on its shelves, down from 570,000 pounds at this time last year.¹⁰ Overall this year, the Capitol Area Food Bank is projecting totals to fall roughly 6 percent below last year's total of 19.5 million pounds. America's Second Harvest, the country's leading hunger-relief charity, issued an urgent call for support on Thanksgiving Day 2007, projecting an immediate food shortage of 15 million pounds—the equivalent of more than 400 truckloads or 11.7 million meals—by the end of the year.¹¹

Nationally the value of USDA commodities provided by the Emergency Food Assistance Program has dropped from \$242 million in Fiscal Year 2003 to only \$58 million in the last Fiscal Year. With the increase in demand—as high as 20 percent among food banks and food rescue organizations—and the national shortage of donated food, the Committee believes it is appropriate to encourage federal agencies and their contractors to donate excess food to non-profit organizations serving the needy.

III. LEGISLATIVE HISTORY

S. 2420 was introduced by Senator Charles E. Schumer and was referred to the Committee on Homeland Security and Governmental Affairs on December 6, 2007. S. 2420 was cosponsored by Senator Lugar, Senator Menendez, Senator Collins, Senator Voinovich, Senator Crapo, and Senator Durbin. Its companion bill H.R. 4220 was introduced on November 15, 2007, and referred to the Committee on Oversight and Government Reform. The Committee on Oversight and Government Reform held a markup to consider H.R. 4220 on December 12, 2007, and ordered the bill to be reported by voice vote as amended. On December 17, 2007, the House passed by voice vote H.R. 4220 under suspension of the rules. On December 18, 2007, H.R. 4220 was received in the Senate. It was read twice and referred to the Committee on Homeland Security and Governmental Affairs on January 22, 2008.

S. 2420 was reported favorably by the Committee by voice vote on April 10, 2008 as amended by the Lieberman-Collins substitute. The substitute amendment: clarifies that both the government and contractor, when donating food, will be covered by the liability protections extended to donors of food under the Bill Emerson Good Samaritan Food Donation Act of 1996; specifies that the contract clause required by the bill applies only to contracts to be performed within the United States; and strikes a section of the bill creating a food security coordinator at the United States Department of Agriculture. Members present for the vote on the bill as amended were Senators Lieberman, Levin, Akaka, Carper, Landrieu, McCaskill, Tester, Collins, Voinovich, and Sununu.

IV. SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

Section 1 designates the name of the act as the “Federal Food Donation Act of 2008.”

¹⁰The Washington Post, *Cupboards are Bare at Food Banks*, page A01. Can be found at <http://www.capitalareafoodbank.org/documents/documents/cupboardsarebare.pdf>.

¹¹American's Second Harvest, *Nation Responds, But Shortage Still Critical At Food Banks Around The Country*, December 17, 2007. Can be found at http://www.secondharvest.org/news_room/2007_press_releases/121707.html.

Section 2. Purpose

Section 2 describes the purpose of the act as encouraging executive agencies and contractors of executive agencies, to the maximum extent practicable and safe, to donate excess, apparently wholesome food to feed food-insecure people in the United States.

Section 3. Definitions

Section 3 defines the following terms for purposes of the act: “apparently wholesome food,” “excess,” “food-insecure,” and “nonprofit organization.”

“Apparently wholesome food” has the meaning given to the term in section 2(b) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)), which defines apparently wholesome food as food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

“Food-Insecure” is defined as inconsistent access to sufficient, safe, and nutritious food.

Section 4. Promoting Federal Food Donation

Subsection (a) requires that the Federal Acquisition Regulation, as issued in accordance with section 25 of the Federal Procurement Policy Act (41 U.S.C. 421), be revised to provide that all contracts above \$25,000 for the provision, services, or sale of food in the United States, or for the lease or rental of Federal property to a private entity for events at which food is provided in the United States, shall include a clause that encourages the donation of excess, apparently wholesome food to nonprofit organizations that provide assistance to food-insecure people.

Subsection (b) requires, for cases in which a contractor enters into a contract with an executive agency under which apparently wholesome food is donated to food-insecure people in the United States, that the head of the executive agency shall not assume responsibility for the costs and logistics of collecting, transporting, maintaining the safety of, or distributing excess, apparently wholesome food to food-insecure people in the United States.

Subsection (c) specifies that an executive agency (including an agency that enters into a contract with a contractor) and any contractor making donations pursuant to this Act shall be exempt from civil and criminal liability to the extent provided under the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791) (“Bill Emerson Act”). The Bill Emerson Act already exempts persons from civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the person donates in good faith to a nonprofit organization for ultimate distribution to needy individuals. The effect of subsection (c) is to make clear that both the government and the contractor would benefit from this liability protection. (The Bill Emerson Act also separately provides the same liability protection for nonprofit organizations receiving such donations in good faith for distribution to needy individuals.)

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 the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandate Reform Act and would not affect the budgets of state, local, and tribal governments. The enactment of this legislation will not have significant regulatory impact.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

APRIL 11, 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 S. 2420, the Federal Food Donation 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.

S. 2420—Federal Food Donation Act of 2008

CBO estimates that enacting S. 2420 would have no significant impact on the federal budget, and would not affect direct spending or revenues. S. 2420 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, and tribal governments.

S. 2420 would amend Federal Acquisition Regulations to require a clause in food services contracts of over \$25,000 to encourage donation of any excess food. Under the legislation, federal agencies would not be responsible for the costs of transporting or collecting any donated food. In addition, agencies and contractors would be protected from any civil or criminal liabilities arising from such donations.

On December 17, 2007, CBO provided a cost estimate for H.R. 4220, the Federal Food Donation Act of 2007, as ordered reported by the House Committee on Oversight and Government Reform on December 12, 2007. The two pieces of legislation are similar, and the CBO cost estimates are identical.

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

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

No changes to existing law are made by S. 2420, as reported.