

Hc - 5, 8, 13, 14

*Jim Webb*

AMENDMENT NO. \_\_\_\_\_

Calendar No. \_\_\_\_\_

Purpose: To provide for the study and investigation of war-time contracts and contracting processes in Operation Iraqi Freedom and Operation Enduring Freedom.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

**H. R. 1585**

**AMENDMENT No. 2999**

To

By Webb

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rposes.

To: \_\_\_\_\_

HR 1585

18

Page(s)

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AMENDMENT intended to be proposed by Mr. WEBB, (for himself, Mrs. McCaskill, Ms. Klebuchar, Mr. Brown, Mr. Casey, Mr. Tester, Mr. Cardin, Mr. Whitehouse, Mr. Sanders, Mr. Levin, Mr. Carper

Viz:

1 At the end of subtitle C of title XV, add the following:

2 SEC. 1535. STUDY AND INVESTIGATION OF WARTIME CON-

3 TRACTS AND CONTRACTING PROCESSES IN

4 OPERATION IRAQI FREEDOM AND OPER-

5 ATION ENDURING FREEDOM.

6 (a) COMMISSION ON WARTIME CONTRACTING.—

7 (1) ESTABLISHMENT.—There is hereby estab-

8 lished a commission to be known as the "Commis-

Mrs. Feinstein,  
Mr. Kerry, Mr.  
Johnson, Mrs.  
Boxer, Mr. Obama  
Mr. Leahy, Mr.  
Harkin, MS.  
Stabenow, Mr.  
Dodd, MS.  
Landrieu, Mr.  
Feingold, Mr.  
Bayh, Mr. Pryor  
Mr. Byrd

1       sion on Wartime Contracting” (in this subsection re-  
2       ferred to as the “Commission”).

3           (2) MEMBERSHIP MATTERS.—

4           (A) MEMBERSHIP.—The Commission shall  
5       be composed of 8 members, as follows:

6           (i) 2 members shall be appointed by  
7       the Majority Leader of the Senate, in con-  
8       sultation with the Chairmen of the Com-  
9       mittee on Armed Services and the Com-  
10      mittee on Homeland Security and Govern-  
11      mental Affairs of the Senate.

12          (ii) 2 members shall be appointed by  
13      the Speaker of the House of Representa-  
14      tives, in consultation with the Chairmen of  
15      the Committee on Armed Services and the  
16      Committee on Oversight and Government  
17      Reform of the House of Representatives.

18          (iii) 1 member shall be appointed by  
19      the Minority Leader of the Senate, in con-  
20      sultation with the Ranking Minority Mem-  
21      bers of the Committee on Armed Services  
22      and the Committee on Homeland Security  
23      and Governmental Affairs of the Senate.

24          (iv) 1 member shall be appointed by  
25      the Minority Leader of the House of Rep-

1                   representatives, in consultation with the  
2                   Ranking Minority Member of the Com-  
3                   mittee on Armed Services and the Com-  
4                   mittee on Oversight and Government Re-  
5                   form of the House of Representatives.

6                   (v) 1 member shall be appointed by  
7                   the Secretary of Defense.

8                   (vi) 1 member shall be appointed by  
9                   the Secretary of State.

10                  (B) DEADLINE FOR APPOINTMENTS.—All  
11                  appointments to the Commission shall be made  
12                  not later than 90 days after the date of the en-  
13                  actment of this Act.

14                  (C) CHAIRMAN AND VICE CHAIRMAN.—

15                  (i) CHAIRMAN.—The chairman of the  
16                  Commission shall be a member of the  
17                  Commission selected by the members ap-  
18                  pointed under clauses (i) and (ii) of sub-  
19                  paragraph (A), but only if approved by the  
20                  vote of a majority of the members of the  
21                  Commission.

22                  (ii) VICE CHAIRMAN.—The vice chair-  
23                  man of the Commission shall be a member  
24                  of the Commission selected by the mem-  
25                  bers appointed under clauses (iii) and (iv)

1 of subparagraph (A), but only if approved  
2 by the vote of a majority of the members  
3 of the Commission.

4 (3) DUTIES.—

5 (A) GENERAL DUTIES.—The Commission  
6 shall study and investigate the following mat-  
7 ters:

8 (i) Federal agency contracting for the  
9 reconstruction of Iraq and Afghanistan.

10 (ii) Federal agency contracting for the  
11 logistical support of coalition forces in Op-  
12 eration Iraqi Freedom and Operation En-  
13 during Freedom.

14 (iii) Federal agency contracting for  
15 the performance of security and intel-  
16 ligence functions in Operation Iraqi Free-  
17 dom and Operation Enduring Freedom.

18 (B) SCOPE OF CONTRACTING COVERED.—  
19 The Federal agency contracting covered by this  
20 paragraph includes contracts entered into both  
21 in the United States and abroad for the per-  
22 formance of activities described in subpara-  
23 graph (A), whether performed in the United  
24 States or abroad.

1 (C) PARTICULAR DUTIES.—In carrying out  
2 the study under this paragraph, the Commis-  
3 sion shall assess—

4 (i) the extent and impact of the reli-  
5 ance of the Federal Government on con-  
6 tractors to perform functions (including se-  
7 curity, intelligence, and management func-  
8 tions) in Operation Iraqi Freedom and Op-  
9 eration Enduring Freedom;

10 (ii) the performance of the contracts  
11 under review, and the mechanisms used to  
12 manage the performance of the contracts  
13 under review;

14 (iii) the extent of waste, fraud, abuse,  
15 or mismanagement under such contracts;

16 (iv) the extent to which those respon-  
17 sible for such waste, fraud, abuse, or mis-  
18 management have been held financially or  
19 legally accountable; and

20 (v) the appropriateness of the organi-  
21 zational structure, policies, ~~and~~ practices, *and resources*  
22 of the Department of Defense and the De-  
23 partment of State for handling contingency  
24 contract management and support;

25 (4) REPORTS.—

*(vi) the extent of the  
misuse of force or  
violations of the  
laws of war or  
federal statutes by  
contractors.*

1           (A) INTERIM REPORT.—Not later than one  
2 year after the date of the appointment of all of  
3 the members of the Commission under para-  
4 graph (2), the Commission shall submit to Con-  
5 gress an interim report on the study carried out  
6 under paragraph (3), including the results and  
7 findings of the study as of that date.

8           (B) OTHER REPORTS.—The Commission  
9 may from time to time submit to Congress such  
10 other reports on the study carried out under  
11 paragraph (3) as the Commission considers ap-  
12 propriate.

13           (C) FINAL REPORT.—Not later than two  
14 years after the date of the appointment of all  
15 of the members of the Commission under para-  
16 graph (2), the Commission shall submit to Con-  
17 gress a report on the study carried out under  
18 paragraph (3). The report shall—

19           (i) include the findings of the Com-  
20 mission;

21           (ii) identify lessons learned on the  
22 contracting covered by the study; and

23           (iii) include specific recommendations  
24 for improvements to be made in—

1 (I) the process for developing  
2 contract requirements for wartime  
3 contracts and contracts for contin-  
4 gency operations;

5 (II) the process for awarding  
6 contracts and task orders for wartime  
7 contracts and contracts for contin-  
8 gency operations;

9 (III) the process for managing  
10 and providing oversight for the per-  
11 formance of wartime contracts and  
12 contracts for contingency operations;

13 (IV) the process for holding con-  
14 tractors and their employees account-  
15 able for waste, fraud, abuse, or mis-  
16 management under wartime contracts  
17 and contracts for contingency oper-  
18 ations;

19 (V) the process for determining  
20 which functions are inherently govern-  
21 mental and which functions are ap-  
22 propriate for performance by contrac-  
23 tors in an area of combat operations  
24 (including an area of a contingency  
25 operation), including a determination

1           whether the use of civilian contractors  
2           to provide security in an area of com-  
3           bat operations is a function that is in-  
4           herently governmental;

5                   (VI) the organizational structure, ~~resources~~  
6           policies and practices of the Depart-  
7           ment of Defense and the Department  
8           of State handling contract manage-  
9           ment and support for wartime con-  
10          tracts and contracts for contingency  
11          operations; and

12                   (VII) the process by which roles  
13          and responsibilities with respect to  
14          wartime contracts and contracts for  
15          contingency operations are distributed  
16          among the various departments and  
17          agencies of the Federal Government,  
18          and interagency coordination and  
19          communication mechanisms associated  
20          with wartime contracts and contracts  
21          for contingency operations.

22           (5) OTHER POWERS AND AUTHORITIES.—

23                   (A) HEARINGS AND EVIDENCE.—The  
24          Commission or, on the authority of the Com-  
25          mission, any subcommittee or member thereof,





1 (II) SIGNATURE.—Subject to  
2 subclause (I), subpoenas issued under  
3 this subparagraph may be issued  
4 under the signature of the chairman  
5 or any member designated by a ma-  
6 jority of the Commission, and may be  
7 served by any person designated by  
8 the chairman or by a member des-  
9 ignated by a majority of the Commis-  
10 sion.

11 (ii) ENFORCEMENT.—

12 (I) IN GENERAL.—In the case of  
13 contumacy or failure to obey a sub-  
14 poena issued under clause (i), the  
15 United States district court for the ju-  
16 dicial district in which the subpoenaed  
17 person resides, is served, or may be  
18 found, or where the subpoena is re-  
19 turnable, may issue an order requiring  
20 such person to appear at any des-  
21 ignated place to testify or to produce  
22 documentary or other evidence. Any  
23 failure to obey the order of the court  
24 may be punished by the court as a  
25 contempt of that court.

1 (II) ADDITIONAL ENFORCE-  
2 MENT.—In the case of any failure of  
3 any witness to comply with any sub-  
4 poena or to testify when summoned  
5 under authority of subclause (I) or  
6 this subclause, the Commission may,  
7 by majority vote, certify a statement  
8 of fact constituting such failure to the  
9 appropriate United States attorney,  
10 who may bring the matter before the  
11 grand jury for its action, under the  
12 same statutory authority and proce-  
13 dures as if the United States attorney  
14 had received a certification under sec-  
15 tions 102 through 104 of the Revised  
16 Statutes of the United States (2  
17 U.S.C. 192 through 194).

18 (C) ACCESS TO INFORMATION.—The Com-  
19 mission may secure directly from the Depart-  
20 ment of Defense and any other department or  
21 agency of the Federal Government any informa-  
22 tion or assistance that the Commission con-  
23 siders necessary to enable the Commission to  
24 carry out the requirements of this subsection.  
25 Upon request of the Commission, the head of

1           such department or agency shall furnish such  
2           information expeditiously to the Commission.  
3           Whenever information or assistance requested  
4           by the Commission is unreasonably refused or  
5           not provided, the Commission shall report the  
6           circumstances to Congress without delay.

7           (D) PERSONNEL.—The Commission shall  
8           have the authorities provided in section 3161 of  
9           title 5, United States Code, and shall be subject  
10          to the conditions set forth in such section, ex-  
11          cept to the extent that such conditions would be  
12          inconsistent with the requirements of this sub-  
13          section.

14          (E) DETAILEES.—Any employee of the  
15          Federal Government employee may be detailed  
16          to the Commission without reimbursement from  
17          the Commission, and such detailee shall retain  
18          the rights, status, and privileges of his or her  
19          regular employment without interruption.

20          (F) SECURITY CLEARANCES.—The appro-  
21          priate departments or agencies of the Federal  
22          Government shall cooperate with the Commis-  
23          sion in expeditiously providing to the Commis-  
24          sion members and staff appropriate security  
25          clearances to the extent possible pursuant to ex-

1           isting procedures and requirements, except that  
2           no person shall be provided with access to clas-  
3           sified information under this section without  
4           the appropriate security clearances.

5                   (G) VIOLATIONS OF LAW.—

6                   (i) REFERRAL TO ATTORNEY GEN-  
7                   ERAL.—The Commission may refer to the  
8                   Attorney General any violation or potential  
9                   violation of law identified by the Commis-  
10                  sion in carrying out its duties under this  
11                  subsection.

12                  (ii) REPORTS ON RESULTS OF REFER-  
13                  RAL.—The Attorney General shall submit  
14                  to Congress a report on each prosecution  
15                  and conviction, <sup>resolution, or other disposition</sup> that results from a referral  
16                  made under this subparagraph.

17                  (6) TERMINATION.—The Commission shall ter-  
18                  minate on the date that is 60 days after the date of  
19                  the submittal of its final report under paragraph  
20                  (4)(C).

21                  (7) CONTINGENCY OPERATION DEFINED.—In  
22                  this subsection, the term “contingency operation”  
23                  has the meaning given that term in section 101 of  
24                  title 10, United States Code.

1 (b) INVESTIGATION OF WASTE, FRAUD, ABUSE, AND  
2 MISMANAGEMENT.—

3 (1) IN GENERAL.—The Special Inspector Gen-  
4 eral for Iraq Reconstruction shall, in collaboration  
5 with the Inspector General of the Department of De-  
6 fense, the Inspector General of the Department of  
7 State, ~~and~~ the Inspector General of the United  
8 States Agency for International Development, and in  
9 consultation with the Commission on Wartime Con-  
10 tracting established by subsection (a), conduct a se-  
11 ries of audits to identify potential waste, fraud,  
12 abuse, or mismanagement in the performance of—

13 (A) Department of Defense contracts and  
14 subcontracts for the logistical support of coali-  
15 tion forces in Operation Iraqi Freedom and Op-  
16 eration Enduring Freedom; and

17 (B) Federal agency contracts and sub-  
18 contracts for the performance of security, intel-  
19 ligence, and reconstruction functions in Oper-  
20 ation Iraqi Freedom and Operation Enduring  
21 Freedom.

22 (2) SCOPE OF AUDITS OF CONTRACTS.—Each  
23 audit conducted pursuant to paragraph (1)(A) shall  
24 focus on a specific contract, task order, or site of  
25 performance under a contract or task order and

*the Inspector General of  
the Director of  
National Intelligence  
the Inspector  
General of the  
Central Intelligence  
Agency, and the  
Inspector General  
of the Defense  
Intelligence  
Agency*

1 shall examine, at a minimum, one or more of the fol-  
2 lowing issues:

3 (A) The manner in which requirements  
4 were developed.

5 (B) The procedures under which the con-  
6 tract or task order was awarded.

7 (C) The terms and conditions of the con-  
8 tract or task order.

9 (D) The contractor's staffing and method  
10 of performance, including cost controls.

11 (E) The efficacy of Department of Defense  
12 management and oversight, Department of  
13 State management and oversight, and United  
14 States Agency for International Development  
15 management and oversight, including the ade-  
16 quacy of staffing and training of officials re-  
17 sponsible for such management and oversight.

18 (F) The flow of information from the con-  
19 tractor to officials responsible for contract man-  
20 agement and oversight.

21 (3) SCOPE OF AUDITS OF OTHER CON-  
22 TRACTS.—Each audit conducted pursuant to para-  
23 graph (1)(B) shall focus on a specific contract, task  
24 order, or site of performance under a contract or

1 task order and shall examine, at a minimum, one or  
2 more of the following issues:

3 (A) The manner in which the requirements  
4 were developed and the contract or task order  
5 was awarded.

6 (B) The manner in which the Federal  
7 agency exercised control over the contractor's  
8 performance.

9 (C) The extent to which operational field  
10 commanders are able to coordinate or direct the  
11 contractor's performance in an area of combat  
12 operations.

13 (D) The extent to which the functions per-  
14 formed were appropriate for performance by a  
15 contractor.

16 (E) The degree to which contractor em-  
17 ployees were properly screened, selected,  
18 trained, and equipped for the functions to be  
19 performed.

20 (F) The nature and extent of any incidents  
21 of misconduct or unlawful activity by contractor  
22 employees.

23 (G) The extent to which any incidents of  
24 misconduct or unlawful activity were reported,



1           documented, investigated, and (where appro-  
2           priate) prosecuted.

3           (4) CONTINUATION OF SPECIAL INSPECTOR  
4           GENERAL.—

5                   (A) IN GENERAL.—Notwithstanding sec-  
6                   tion 3001(o) of the Emergency Supplemental  
7                   Appropriations Act for Defense and for the Re-  
8                   construction of Iraq and Afghanistan, 2004  
9                   (Public Law 108–106; 5 U.S.C. App. 8G note),  
10                  the Office of the Special Inspector General for  
11                  Iraq Reconstruction shall not terminate until  
12                  the date that is 60 days after the date of the  
13                  submittal under paragraph (4)(C) of subsection  
14                  (a) of the final report of the Commission on  
15                  Wartime Contracting established by subsection  
16                  (a).

17                   (B) REAFFIRMATION OF CERTAIN DUTIES  
18                   AND RESPONSIBILITIES.—Congress reaffirms  
19                   that the Special Inspector General for Iraq Re-  
20                   construction retains the duties and responsibil-  
21                   ities in sections 4 of the Inspector General Act  
22                   of 1978 (5 U.S.C. App. 4; relating to reports  
23                   of criminal violations to the Attorney General)  
24                   and section 5 of the Inspector General Act of  
25                   1978 (5 U.S.C. App. 5; relating to reports to

1 Congress) as expressly provided in subsections  
2 (f)(3) and (i)(3), respectively, of section 3001  
3 of the Emergency Supplemental Appropriations  
4 Act for Defense and for the Reconstruction of  
5 Iraq and Afghanistan, 2004.

6 (c) AUTHORIZATION OF APPROPRIATIONS.—There is  
7 authorized to be appropriated such sums as may be re-  
8 quired to carry out the provisions of this section.