

Calendar No. 543

117TH CONGRESS }
2d Session }

SENATE

{ REPORT
117-192 }

HOMELAND PROCUREMENT REFORM ACT

—
R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1009

TO AMEND THE HOMELAND SECURITY ACT OF 2002
REGARDING THE PROCUREMENT OF CERTAIN ITEMS
RELATED TO NATIONAL SECURITY INTERESTS FOR
DEPARTMENT OF HOMELAND SECURITY FRONTLINE
OPERATIONAL COMPONENTS, AND FOR OTHER PURPOSES



NOVEMBER 14, 2022.—Ordered to be printed

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HOMELAND PROCUREMENT REFORM ACT

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

R E P O R T

[To accompany S. 1009]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1009) to amend the Homeland Security Act of 2002 regarding the procurement of certain items related to national security interests for Department of Homeland Security frontline operational components, and for other purposes, having considered the same, reports favorably thereon with an amendment, in the nature of a substitute, and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 1009, the Homeland Procurement Reform (HOPR) Act is to ensure that certain materials procured by the Department of Homeland Security (DHS) are made in America and meet established quality standards. Additionally, to the maximum extent possible, one third of the funds obligated for DHS procurement of items covered in the bill must be reserved for manufacturers that qualify as small businesses. Covered items include uni-

forms, holsters, patches and insignia, footwear, body armor, and biological, radiological, and nuclear protective gear.

The Secretary of DHS may waive bill requirements in the event of a national emergency or major disaster if the Secretary determines there is an insufficient supply of covered items that meet the requirement; notice must be provided to Congress in such an event. The bill also requires the Secretary to provide a report to House and Senate Committees on instances in which vendors have failed to meet deadlines for delivery of covered items and corrective actions taken by the Department in response to such instances. The Secretary is directed to conduct a study on the adequacy of uniform allowances provided to employees of frontline operational components.

II. BACKGROUND AND NEED FOR THE LEGISLATION

Currently, many uniforms and uniform components for frontline officers of U.S. Customs and Border Protection, the personnel who facilitate trade and travel and safeguard United States' borders, are made in foreign countries, including El Salvador, Mexico, Honduras and Cambodia.¹ This presents a homeland security risk by exposing uniforms and uniform components to potential theft and use for nefarious purposes and a supply chain risk in the event that circumstances in these various countries disrupt the production of materials.

In 2009, Congress enacted the Kissell Amendment as part of the American Recovery and Reinvestment Act to institute a preference at DHS for buying American-sourced textiles, clothing, and footwear.² However, in practice, the Kissell Amendment only applies to the Transportation Security Administration (TSA), while other agencies such as Customs and Border Protection, Immigration and Customs Enforcement, and the Secret Service are not covered.³

The Government Accountability Office (GAO) has found that the Kissell Amendment has only a limited effect on DHS textile purchases from foreign sources due to U.S. obligations under international agreements.⁴ GAO has also noted that DHS officials and representatives stated that it would be possible to source most of the items in the current uniforms contract from the United States.⁵

The HOPR Act addresses these concerns by requiring DHS to procure covered items from domestic sources to the greatest extent possible.

III. LEGISLATIVE HISTORY

Senator Jeanne Shaheen (D–NH) introduced S. 1009 on March 25, 2021, with Senator Jerry Moran (R–KS), Senator Margaret Wood Hassan (D–NH), and Senator Mike Rounds (R–SD). Senator Gary Peters (D–MI) joined as a cosponsor on July 13, 2021. The bill

¹ Government Accountability Office, *Government Procurement: Effect of Restriction on DHS's Purchasing of Foreign Textiles is Limited* (Nov. 21, 2017).

² American Recovery and Reinvestment Act of 2009, Pub. L. No. 111–5, § 602.

³ Congressional Research Service, *Buying American: The Berry and Kissell Amendments* (Jan. 13, 2021).

⁴ Government Accountability Office, *Government Procurement: Effect of Restriction on DHS's Purchasing of Foreign Textiles is Limited* (Nov. 21, 2017).

⁵ *Id.*

was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 1009 at a business meeting on July 14, 2021. During the meeting, a substitute amendment clarifying procured items covered by the bill and adding a reporting requirement was offered by Chairman Peters and adopted by unanimous consent.

An amendment to rescind President Biden’s proclamation that terminated President Trump’s emergency with respect to the southern border was offered by Senator Lankford (R–OK), and was not adopted by roll call vote of 6 yeas to 8 nays. Senators Portman, Johnson, Lankford, Romney, Scott, and Hawley voted in the affirmative. Senators Peters, Carper, Hassan, Rosen, Padilla, Ossoff, Sinema (by proxy), and Paul (by proxy) voted in the negative.

The Committee ordered the bill to be reported favorably by voice vote as amended by the Peters Substitute Amendment. Senators present for the vote on the bill were: Peters, Carper, Hassan, Rosen, Padilla, Ossoff, Portman, Johnson, Lankford, Romney, Scott, and Hawley.

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

Section 1. Short title

This section provides that the bill may be cited as the “Homeland Procurement Reform Act” or the “HOPR Act.”

Sec. 2. Requirements to Buy Certain Items Related to National Security Interests according to certain criteria

Subsection (a) adds a new section 836 titled “Requirements to Buy Certain Items Related to National Security Interests” to the end of Subtitle D of title VIII of the Homeland Security Act of 2002.

Section 836, subsection (a) defines the terms “covered item” and “frontline operational component.”

Section 836, subsection (b) requires the defined components of the Department of Homeland Security to use at least one-third of all funds allocated to purchasing the items specified as covered in the amendment to purchase these items from small businesses that manufacture the items in the United States. The subsection further defines the criteria these small businesses must meet to qualify as an approved contractor. The subsection also provides direction for the safeguarding of any covered item with insignia, including requirements for storage and reporting theft of these items, and for their destruction if they are defective or unusable. The subsection waives these requirements, as well as the requirements in Subsection (C), for national emergencies in which there is a supply shortage of such items; the Secretary must provide notice to Congress if requirements are waived.

Section 836, subsection (c) stipulates that the Secretary abide by the Federal Acquisition Regulation to ensure that the prices of these items are fair and reasonable.

Section 836, subsection (d) requires the Secretary to report on any failures of vendors to meet deadlines for delivery of covered items to specified Congressional committees within one year of the Act’s enactment.

Section 836, subsection (e) stipulates that the contract requirements created by this section will apply to all contracts entered into by the Department or any frontline component beginning 180 days after the Act's enactment.

Subsection (b) instructs the Secretary to submit a study of the adequacy of employee uniform allowances of the frontline operational components defined in this amendment. The subsection specifies that the study must be informed by an employee survey, must assess the adequacy of the most recent uniform allowance increase for first year employees, and must consider increasing the allowance for all employees by 50 percent. This study must be submitted within 18 months of the Act's enactment.

Subsection (c) instructs the Secretary to report to Congress with recommendations on how the Department could procure additional items from domestic sources and bolster the domestic supply chain for items related to national security. The report must include a review of the Department's compliance with certain procurement requirements in the American Recovery and Reinvestment Act of 2009, as well as an assessment of the Department's capacity to procure personal protective equipment (for pandemic response), helmets and other head protection, and environmental and flame-resistant clothing. This report must be submitted within 180 days of the Act's enactment.

Subsection (d) adds Sec. 836 to the table of contents of the Homeland Security Act of 2002 through a clerical amendment.

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 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, October 24, 2022.

Hon. GARY C. 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. 1009, the Homeland Procurement Reform Act.

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. 1009, Homeland Procurement Reform Act			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on July 14, 2021			
By Fiscal Year, Millions of Dollars	2023	2023-2027	2023-2032
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	54	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. 1009 would require, to the extent possible, that no less than one-third of the funds the Department of Homeland Security (DHS) obligates annually for procuring uniforms and certain protective gear be spent for contracts with domestic small business manufacturers. That provision would apply to contracts signed six months after the bill's enactment for select DHS component units. S. 1009 also contains several reporting requirements, including an annual briefing to the Congress and studies on the adequacy of uniform allowances and ways to bolster domestic procurement.

Currently, DHS sources its uniforms under a contract that will expire in January 2027. Based on information from DHS, the agency obligates funds when items are ordered and outlays them when they are delivered, usually within 90 days.

The affected agencies, including Customs and Border Protection, the U.S. Coast Guard, the Transportation Security Administration, and the Federal Emergency Management Agency, currently spend \$100 million on 1,500 items annually under the contract, which covers the majority of items subject to the bill's requirements. Using information from DHS, CBO expects that it would need to procure 150 of those items from new sources to meet the bill's requirements.

Using information from DHS regarding its current uniform contract, CBO estimates that each item that is re-sourced from domestic small business manufacturers would cost about 100 percent more. That includes a change fee, which is required under the current contract, and additional costs from the item being sourced from a domestic small business manufacturer. In conversations with CBO, DHS indicated that it could take several years to re-source items due to prototype development and testing. Based on this information, CBO anticipates that DHS would gradually procure items from domestic small business manufacturers beginning in fiscal year 2025.

In total, CBO estimates that re-sourcing uniforms to meet S. 1009's requirements would increase spending by \$54 million over the 2023–2027 period. Such spending would be subject to the availability of appropriated funds.

The specified agencies currently spend \$12 million annually on protective equipment, all of which is manufactured domestically. Based on this information, CBO assumes that DHS already complies with the protective equipment requirements in S. 1009 and that implementing the bill would not increase the cost of procuring these items.

Based on the cost of reports similar to those required by the bill, CBO estimates that it would cost DHS less than \$500,000 over the 2023–2027 period to annually brief the Congress and produce the required studies; such spending would be subject to the availability of appropriated funds.

The costs of the legislation, detailed in Table 1, fall within budget functions 750 (administration of justice), 450 (community regional development), and 400 (transportation).

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER S. 1009

	By fiscal year, millions of dollars—					
	2023	2024	2025	2026	2027	2023–2027
Estimated Authorization	0	0	13	23	20	56
Estimated Outlays	0	0	12	22	20	54

S. 1009 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.

On November 12, 2021, CBO transmitted a cost estimate for H.R. 2915, the Homeland Procurement Reform Act, as ordered reported by the House Committee on Homeland Security on October 5, 2021. The Senate bill would require that one-third of the funds DHS obligates annually for uniforms and protective gear for certain agencies to come from manufacturers that are small business. The House bill would require one-third of those obligations to come from both manufacturers and suppliers. DHS indicated that it is currently in compliance with the House bill’s procurement provision because a large percentage of its uniforms and protective gear already come from suppliers that are domestic small businesses. However, the exclusion of suppliers in the Senate bill would require DHS to resource 150 items from domestic small business manufacturers at a higher cost. In addition, CBO’s estimate for H.R. 2195 assumed a different enactment date than S. 1009.

The CBO staff contact for this estimate is Jeremy Crimm. The estimate was reviewed by Leo Lex, 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 *italics*, and existing law in which no change is proposed is shown in *roman*):

HOMELAND SECURITY ACT OF 2002

* * * * *

SEC. 836. REQUIREMENTS TO BUY CERTAIN ITEMS RELATED TO NATIONAL SECURITY INTERESTS.

(a) **DEFINITIONS.**—*In this section:*

(1) **COVERED ITEM.**—*The term ‘covered item’ means any of the following:*

- (A) *Footwear provided as part of a uniform.*
- (B) *Uniforms.*
- (C) *Holsters and tactical pouches.*
- (D) *Patches, insignia, and embellishments.*
- (E) *Chemical, biological, radiological, and nuclear protective gear.*
- (F) *Body armor components intended to provide ballistic protection for an individual, consisting of 1 or more of the following:*
 - (i) *Soft ballistic panels.*
 - (ii) *Hard ballistic plates.*
 - (iii) *Concealed armor carriers worn under a uniform.*
 - (iv) *External armor carriers worn over a uniform.*
- (G) *Any other item as determined appropriate by the Secretary.*

(2) **FRONTLINE OPERATIONAL COMPONENT.**—*The term ‘front-line operational component’ means any of the following organizations of the Department:*

- (A) *U.S. Customs and Border Protection.*
- (B) *U.S. Immigration and Customs Enforcement.*
- (C) *The United States Secret Service.*
- (D) *The Transportation Security Administration.*
- (E) *The Coast Guard.*
- (F) *The Federal Protective Service.*
- (G) *The Federal Emergency Management Agency.*
- (H) *The Federal Law Enforcement Training Centers.*
- (I) *The Cybersecurity and Infrastructure Security Agency.*

(b) **REQUIREMENTS.**—

(1) **IN GENERAL.**—*The Secretary shall ensure that any procurement of a covered item for a front-line operational component meets the following criteria:*

(A) *To the maximum extent possible, not less than one-third of funds obligated in a specific fiscal year for the procurement of such covered items shall be covered items that are manufactured in the United States by entities that qualify as small business concerns, as defined in section 3 of the Small Business Act (15 U.S.C. 632).*

(B) *Each contractor with respect to the procurement of such a covered item, including the end-item manufacturer of such a covered item—*

(i) is an entity registered with the System for Award Management (or successor system) administered by the General Services Administration; and

(ii) is in compliance with ISO 9001:2015 of the International Organization for Standardization (or successor standard) or a standard determined appropriate by the Secretary to ensure the quality of products and adherence to applicable statutory and regulatory requirements.

(C) *Each supplier of such a covered item with an insignia (such as any patch, badge, or emblem) and each supplier of such an insignia, if such covered item with such insignia or such insignia, as the case may be, is not produced, applied, or assembled in the United States, shall—*

(i) store such covered item with such insignia or such insignia in a locked area;

(ii) report any pilferage or theft of such covered item with such insignia or such insignia occurring at any stage before delivery of such covered item with such insignia or such insignia; and

(iii) destroy any such defective or unusable covered item with insignia or insignia in a manner established by the Secretary, and maintain records, for three years after the creation of such records, of such destruction that include the date of such destruction, a description of the covered item with insignia or insignia destroyed, the quantity of the covered item with insignia or insignia destroyed, and the method of destruction.

(2) **WAIVER.—**

(A) IN GENERAL.—In the case of a national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) or a major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170), the Secretary may waive a requirement in subparagraph (A), (B) or (C) of paragraph (1) if the Secretary determines there is an insufficient supply of a covered item that meets the requirement.

(B) NOTICE.—Not later than 60 days after the date on which the Secretary determines a waiver under subparagraph (A) is necessary, the Secretary shall provide to the Committee on Homeland Security and Governmental Affairs and the Committee on Appropriations of the Senate and the Committee on Homeland Security, the Committee on Oversight and Reform, and the Committee on Appropriations of the House of Representatives notice of such determination, which shall include—

(i) identification of the national emergency or major disaster declared by the President;

(ii) identification of the covered item for which the Secretary intends to issue the waiver; and

(iii) a description of the demand for the covered item and corresponding lack of supply from contractors able to meet the criteria described in subparagraph (B) or (C) of paragraph (1).

(c) PRICING.—The Secretary shall ensure that covered items are purchased at a fair and reasonable price, consistent with the procedures and guidelines specified in the Federal Acquisition Regulation.

(d) REPORT.—Not later than 1 year after the date of enactment of this section and annually thereafter, the Secretary shall provide to the Committee on Homeland Security, the Committee on Oversight and Reform, and the Committee on Appropriations of the House of Representatives, and the Committee on Homeland Security and

Governmental Affairs and the Committee on Appropriations of the Senate a briefing on instances in which vendors have failed to meet deadlines for delivery of covered items and corrective actions taken by the Department in response to such instances.

(e) EFFECTIVE DATE.—This section applies with respect to a contract entered into by the Department or any frontline operational component on or after the date that is 180 days after the date of enactment of this section.