Calendar No. 734

118TH CONGRESS *2d Session*	SENATE	REPORT 118–314

TIME TO CHOOSE ACT OF 2024

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 3810

TO PROHIBIT CONFLICT OF INTERESTS AMONG CONSULTING FIRMS THAT SIMULTANEOUSLY CONTRACT WITH THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE UNITED STATES GOVERNMENT, AND FOR OTHER PURPOSES

DECEMBER 19 (legislative day, DECEMBER 16), 2024.—Ordered to be printed

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DECEMBER 19 (legislative day, DECEMBER 16), 2024.—Ordered to be printed

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

R E P O R T

[To accompany S. 3810]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 3810) to prohibit conflict of interests among consulting firms that simultaneously contract with the Government of the People's Republic of China and the United States Government, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

S. 3810, the *Time to Choose Act of 2024*, prohibits federal agencies from contracting with consulting firms that simultaneously contract with adversarial foreign governments, such as China, Russia, Iran, and North Korea.

The bill seeks to prevent conflicts of interest that could compromise the economic or national security interests of the United States or bias the support provided by consultants to federal agencies responsible for protecting and defending the United States

from foreign threats. The legislation authorizes agency heads to act, including termination and suspension and debarment, against consulting firms that knowingly conceal or provide inaccurate information about contracts with foreign adversaries. It also requires the Federal Acquisition Regulation be amended to prohibit federal contracts for consulting services being awarded to an entity if the entity or any of its subsidiaries or affiliates are determined to be a contractor of, or are otherwise providing consulting services to, a covered foreign entity.

II. BACKGROUND AND NEED FOR THE LEGISLATION

Reports have found that the Department of Defense and other federal agencies work with consulting firms that simultaneously provide services to adversarial governments. This has the potential to undermine the economic and national security of the United States by increasing opportunities for sensitive information to make its way to bad actors. For example, the Department of Defense has awarded contracts to consulting firms that have simultaneously provided services to entities directly tied to the Chinese government and projects counter to U.S. national security interests, such as on projects for building artificial islands to position missiles, fighters, and bombers in the South China Sea and conducting exercises for an amphibious assault on Taiwan.[1]

A 2024 report by the Government Accountability Office assessed the national security risks posed when contractors consult for both the U.S. and Chinese governments. The report found that current acquisition regulations do not specifically direct agencies to consider if contractors consulting for the U.S. government also have consulting contracts with China. It also found that acquisition personnel do not typically collect information on, assess, or mitigate potential national security risks posed by these consultants when awarding contracts.[2]

The *Time to Choose Act of 2024* addresses these findings and seeks to ensure that companies that carry out taxpayer-funded projects for the U.S. government are working in the best interests of the American people.

III. LEGISLATIVE HISTORY

Senator Josh Hawley (R–MO) introduced S. 3810, the *Time to Choose Act of 2024*, on February 27, 2024. The bill was referred to the Committee on Homeland Security and Governmental Affairs. Senator Rick Scott (R–FL) joined as a cosponsor on May 9, 2024. Senator Marco Rubio (R–FL) joined as an additional cosponsor on May 15, 2024.

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[1] *Advising Both Chinese State Companies and the Pentagon, McKinsey & Co. Comes Under Scrutiny*, NBC News (Nov. 13, 2021) (https://www.nbcnews.com/politics/national-security/advising-both-chinese-state-companies-pentagon-mckinsey-co-comes-under-n1283777); *How McKinsey Has Helped Raise the Stature of Authoritarian Governments*, New York Times (Dec. 15, 2018) (https://www.nytimes.com/2018/12/15/world/asia/mckinsey-china-russia.html); *McKinsey Faces Republican Calls for Probe into China 'Conflicts'*, Financial Times (Oct. 18, 2024) (ft.com/content/34470ab5-aa2b-4802-bfc4-df29efa2aefc); *US Lawmakers Demand Federal Probe into Ties Between China and McKinsey Consulting Firm*, JURISTnews (Oct. 20, 2024) (https://www.jurist.org/news/2024/10/us-lawmakers-demand-federal-probe-into-ties-between-china-and-consulting-firm-mckinsey/).

[2] Government Accountability Office, *Federal Contracting: Timely Actions Needed to Address Risks Posed by Consultants Working for China* (GAO–24–106932) (September 2024).

The Committee considered S. 3810 at a business meeting on May 15, 2024. At the business meeting, Senator Peters, for himself and Senator Hawley, offered a substitute amendment to the bill, as well as a modification to the substitute amendment. The Peters-Hawley substitute amendment, as modified, revised required coordination among agencies for waiver authority, revised penalties to align with existing False Claims Act requirements, and added a section stipulating that no additional funding is authorized to be appropriated to carry out the Act. Senator Peters also offered an amendment to change the long title of the bill, as well as a modification to the amendment to correct an error. The amended long title of the bill is "A bill to prohibit conflicts of interest among consulting firms that simultaneously contract with covered foreign entities and the United States Government, and for other purposes."

The Committee adopted the modification to the Peters-Hawley substitute amendment, and the substitute amendment as modified, by unanimous consent, with Senators Peters, Carper, Hassan, Rosen, Blumenthal, Paul, Lankford, Romney, Scott, Hawley, and Marshall present. The Committee adopted the modification to the Peters title amendment, and the title amendment as modified, by unanimous consent, with Senators Peters, Carper, Hassan, Rosen, Blumenthal, Paul, Lankford, Romney, Scott, Hawley, and Marshall present. The bill, as amended by the Peters-Hawley substitute amendment as modified, and the Peters title amendment as modified, was ordered reported favorably by a roll call of 10 yeas to 1 nay, with Senators Peters, Carper, Hassan, Rosen, Blumenthal, Lankford, Romney, Scott, Hawley, and Marshall voting in the affirmative, and Senator Paul voting in the negative. Senators Sinema, Ossoff, Butler, and Johnson voted yea by proxy, for the record only.

IV. Section-by-Section Analysis of the Bill, as Reported

Section 1. Short title

Section 1 establishes the short title of the bill as the "Time to Choose Act of 2024."

Section 2. Findings

Paragraph (1) finds that the Department of Defense and other U.S. government agencies regularly award contracts to firms that are simultaneously providing consulting services to foreign governments and proxies or affiliates thereof.

Paragraph (2) finds that the provision of such consulting services to covered foreign entities may support efforts by certain foreign governments to generate economic and military power that they can then use to undermine the economic and national security of the American people.

Paragraph (3) finds that it is a conflict of interest for consulting firms to simultaneously aid in the efforts of certain foreign governments to undermine the economic and national security of the United States while they are simultaneously contracting with federal agencies responsible for protecting and defending the United States from foreign threats.

Paragraph (4) finds that firms should be prevented from engaging in such a conflict of interest and should instead be required to

choose between aiding the efforts of certain foreign governments or helping the U.S. government.

Section 3. Prohibition on federal contracting with entities that are simultaneously aiding in their efforts of covered foreign entities

Subsection (a) requires the Federal Acquisition Regulatory Council, not later than one year after the date of the enactment, to amend the Federal Acquisition Regulation to require any entity that makes an offer or quotation to provide consulting services to an executive agency, prior to entering into a federal contract, to certify that neither it nor any of its subsidiaries or affiliates hold a consulting contract with one or more covered foreign entities. It also requires the Federal Acquisition Regulation be amended to prohibit federal contracts for consulting services being awarded to an entity if the entity or any of its subsidiaries or affiliates are determined to be a contractor of, or are otherwise providing consulting services to, a covered foreign entity.

Subsection (b) authorizes the head of an executive agency to waive the conflict of interest restrictions on a case-by-case basis if the agency head: (1) determines the waiver to be in the national security interests of the United States, in consultation with the Secretary of Defense and Secretary of National Intelligence; (2) determines that no other entity without a conflict of interest can perform the work for the federal contract; (3) submits to the Director of the Office of Management and Budget a notification of such waiver at least five days prior to issuing the waiver; (4) submits to the appropriate congressional committees a notification of such waiver within 30 days in unclassified form and offers a briefing to those committees; and (5) publishes on the agency's website a list of names of the covered foreign entities to which the entity receiving a waiver provides consulting services, unless the disclosure is deemed to directly harm U.S. national security interests. Limitations to the waivers include: no duration longer than 365 days; not more than one waiver across all executive agencies granted to a single entity at a given time; and notification requirements regarding information on the contractor, the covered foreign entities involved, the nature of the work performed for the covered foreign entities, justification of the executive agency's need for providing the waiver, and an acceptable management oversight plan.

The subsection also provides that an executive agency granting a waiver shall require the contractor to report information to the executive agency, including any known human rights violations, any known religious liberty violations, or any risks to the U.S. economic or national security identified by the contractor in the course of the contract.

Section 4. Penalties for false information

Subsection (a) requires that, if an executive agency determines that a consulting firm knowingly submitted a false certification or information, on or after the date of amendments to the Federal Acquisition Regulation under section 3(a), the head of that executive agency must terminate the contract and consider suspending or debarring the firm from eligibility for future federal contracts.

Subsection (b) provides that if a consulting firm knowingly hides or misrepresents one or more contracts with covered foreign enti-

ties or otherwise violates the False Claims Act, that firm shall be subject to the penalties and corrective actions under the False Claims Act, including liability for three times the amount of damages which the U.S. government sustains.

Section 5. Definitions

Section 5 defines the following terms used in the bill: "appropriate congressional committees," "consulting services," "covered foreign entity," "executive agency," "false claims act," and "North American industry classification system's industry group code."

Section 6. No additional funding

Section 6 stipulates that no additional funds are authorized to be appropriated for the purpose of carrying out this Act.

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

S. 3810, Time to Choose Act of 2024

As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on May 15, 2024

By Fiscal Year, Millions of Dollars	2024	2024-2029	2024-2034
Direct Spending (Outlays)	0	*	*
Revenues	0	*	*
Increase or Decrease (-) in the Deficit	0	*	*
Spending Subject to Appropriation (Outlays)	0	*	not estimated

Increases *net direct spending* in any of the four consecutive 10-year periods beginning in 2035?	No	Statutory pay-as-you-go procedures apply?	Yes
		Mandate Effects	
Increases *on-budget deficits* in any of the four consecutive 10-year periods beginning in 2035?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

* = between -$500,000 and $500,000.

S. 3810 would generally prohibit federal agencies from contracting with consulting firms that work with the Chinese or Russian governments or any country that the Department of State determines supports international terrorism. Waivers could be available on a case-by-case basis for no more than one year. Under the bill, penalties for false certifications would include terminating contracts, debarring entities from future contracts, and using the False Claims Act (FCA) to collect damages.

CBO is not aware of any data on the number of contracts the government has with consulting firms that also work with those countries. CBO expects that federal agencies would be able to replace any consulting services provided by such firms with similar services provided by other companies at a comparable cost. On that basis, CBO estimates that implementing the ban could change which companies receive funds from federal agencies but would not significantly affect total spending by the federal government on consulting services.

Additionally, CBO expects that agencies would incur some costs to implement the prohibition. Based on similar government-wide administrative and reporting efforts, CBO estimates that implementing the prohibition would cost less than $500,000 over the 2024–2029 period. Any related spending would be subject to the availability of appropriated funds.

CBO estimates that the provisions relating to the FCA would, on net, increase recoveries and civil fines collected by the federal government because they could lead to additional claims under the FCA.

Recoveries from FCA cases are recorded as offsetting receipts, that is, as reductions in direct spending. Civil fines are recorded as revenues and deposited in the Treasury. Because CBO expects relatively few cases would result in FCA claims, CBO estimates that the net decrease in the deficit would not be significant over the 2024–2034 period.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

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

This legislation would make no change in existing law, within the meaning of clauses (a) and (b) of subparagraph 12 of rule XXVI of the Standing Rules of the Senate, because this legislation would not repeal or amend any provision of current law.

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