

109TH CONGRESS
1ST SESSION

H. R. 3406

To protect United States workers from competition of foreign workforces
for performance of Federal and State contracts.

IN THE HOUSE OF REPRESENTATIVES

JULY 22, 2005

Ms. DELAURO (for herself, Mr. DINGELL, Ms. SOLIS, Mr. KILDEE, Mr. BRADY of Pennsylvania, Mr. SANDERS, and Mr. CONYERS) introduced the following bill; which was referred to the Committee on Government Reform

A BILL

To protect United States workers from competition of foreign workforces for performance of Federal and State contracts.

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 “United States Workers
5 Protection Act of 2005”.

6 **SEC. 2. LIMITATIONS ON OFF-SHORE PERFORMANCE OF** 7 **CONTRACTS.**

8 (a) LIMITATIONS.—

1 (1) IN GENERAL.—The Office of Federal Pro-
2 curement Policy Act (41 U.S.C. 403 et seq.) is
3 amended by adding at the end the following new sec-
4 tion:

5 **“SEC. 42. LIMITATIONS ON OFF-SHORE PERFORMANCE OF**
6 **CONTRACTS.**

7 “(a) CONVERSIONS TO CONTRACTOR PERFORMANCE
8 OF FEDERAL ACTIVITIES.—An activity or function of an
9 executive agency that is converted to contractor perform-
10 ance under Office of Management and Budget Circular
11 A–76 may not be performed by the contractor or any sub-
12 contractor at a location outside the United States except
13 to the extent that such activity or function was previously
14 performed by Federal Government employees outside the
15 United States.

16 “(b) OTHER FEDERAL CONTRACTS.—(1) A contract
17 that is entered into by the head of an executive agency
18 may not be performed outside the United States except
19 to meet a requirement of the executive agency for the con-
20 tract to be performed specifically at a location outside the
21 United States.

22 “(2) The prohibition in paragraph (1) does not apply
23 in the case of a contract of an executive agency if—

24 “(A) the President determines in writing that it
25 is necessary in the national security interests of the

1 United States for the contract to be performed out-
2 side the United States; or

3 “(B) the head of such executive agency makes
4 a determination and reports such determination on
5 a timely basis to the Director of the Office of Man-
6 agement and Budget that—

7 “(i) the property or services needed by the
8 executive agency are available only by means of
9 performance of the contract outside the United
10 States; and

11 “(ii) no property or services available by
12 means of performance of the contract inside the
13 United States would satisfy the executive agen-
14 cy’s need.

15 “(3) Paragraph (1) does not apply to the perform-
16 ance of a contract outside the United States under the
17 exception provided in subsection (a).

18 “(c) STATE CONTRACTS.—(1) Except as provided in
19 paragraph (2), funds appropriated for financial assistance
20 for a State may not be disbursed to or for such State dur-
21 ing a fiscal year unless the chief executive of that State
22 has transmitted to the Administrator for Federal Procure-
23 ment Policy, not later than April 1 of the preceding fiscal
24 year, a written certification that none of such funds will

1 be expended for the performance outside the United States
2 of contracts entered into by such State.

3 “(2) The prohibition on disbursement of funds to or
4 for a State under paragraph (1) does not apply with re-
5 spect to the performance of a State contract outside the
6 United States if—

7 “(A) the chief executive of such State—

8 “(i) determines that the property or serv-
9 ices needed by the State are available only by
10 means of performance of the contract outside
11 the United States and no property or services
12 available by means of performance of the con-
13 tract inside the United States would satisfy the
14 State’s need; and

15 “(ii) transmits a notification of such deter-
16 mination to the head of the executive agency of
17 the United States that administers the author-
18 ity under which such funds are disbursed to or
19 for the State; and

20 “(B) the head of the executive agency receiving
21 the notification of such determination—

22 “(i) confirms that the facts warrant the
23 determination;

24 “(ii) approves the determination; and

1 “(iii) transmits a notification of the ap-
2 proval of the determination to the Director of
3 the Office of Management and Budget.

4 “(3) In this subsection, the term ‘State’ means each
5 of the several States of the United States, the District
6 of Columbia, the Commonwealth of Puerto Rico, the Com-
7 monwealth of the Northern Mariana Islands, the Virgin
8 Islands, Guam, American Samoa, and the Trust Territory
9 of the Pacific Islands.

10 “(d) INAPPLICABILITY OF LIMITATIONS.—The limi-
11 tations in subsections (b) and (c) shall not apply to pro-
12 curement covered by the Agreement on Government Pro-
13 curement of the World Trade Organization (as described
14 in section 101(d)(17) of the Uruguay Round Agreement
15 Act (19 U.S.C. 3511(d)(17))).

16 “(e) RESPONSIBILITIES OF OMB.—The Director of
17 the Office of Management and Budget shall—

18 “(1) maintain—

19 “(A) the waivers granted under subsection
20 (b)(2), together with the determinations and
21 certifications on which such waivers were based;
22 and

23 “(B) the notifications received under sub-
24 section (c)(2)(B)(iii); and

1 “(2) submit to Congress promptly after the end
 2 of each quarter of each fiscal year a report that sets
 3 forth—

4 “(A) the waivers that were granted under
 5 subsection (b)(2) during such quarter; and

6 “(B) the notifications that were received
 7 under subsection (c)(2)(B)(iii) during such
 8 quarter.

9 “(f) ANNUAL GAO REVIEW.—The Comptroller Gen-
 10 eral shall—

11 “(1) review, each fiscal year, the waivers grant-
 12 ed during such fiscal year under subsection (b)(2)
 13 and the disbursements of funds authorized pursuant
 14 to the exception in subsection (c)(2); and

15 “(2) promptly after the end of such fiscal year,
 16 transmit to Congress a report containing a list of
 17 the contracts covered by such waivers and exception
 18 together with a brief description of the performance
 19 of each such contract outside the United States.”.

20 (2) CLERICAL AMENDMENT.—The table of sec-
 21 tions in section 1(b) of such Act is amended by add-
 22 ing at the end the following new item:

“Sec. 42. Limitations on off-shore performance of contracts.”.

23 (b) INAPPLICABILITY TO STATES DURING FIRST
 24 TWO FISCAL YEARS.—Section 42(c) of the Office of Fed-
 25 eral Procurement Policy Act (as added by subsection (a))

1 shall not apply to disbursements of funds to a State dur-
2 ing the fiscal year in which this Act is enacted and the
3 next fiscal year.

4 **SEC. 3. REPEAL OF SUPERSEDED LAW.**

5 Section 647 of the Transportation, Treasury, and
6 Independent Agencies Appropriations Act, 2004 (division
7 F of Public Law 108–199) is amended by striking sub-
8 section (e).

9 **SEC. 4. EFFECTIVE DATE AND APPLICABILITY.**

10 This Act and the amendments made by this Act shall
11 take effect 30 days after the date of the enactment of this
12 Act and, subject to subsection (b) of section 2, shall apply
13 with respect to new contracts entered into on or after such
14 date.

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