

105TH CONGRESS  
2D SESSION

# S. 2618

To require certain multilateral development banks and other lending institutions to implement independent third-party procurement monitoring, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 10 (legislative day, OCTOBER 2), 1998

Mr. McCAIN introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

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## A BILL

To require certain multilateral development banks and other lending institutions to implement independent third-party procurement monitoring, and for other purposes.

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 “Fair Competition in  
5 Foreign Commerce Act”.

6 **SEC. 2. FINDINGS AND STATEMENT OF PURPOSE.**

7 (a) FINDINGS.—Congress finds that—

8 (1) The United States makes substantial con-  
9 tributions and provides significant funding for major

1 international development projects through the  
2 International Bank for Reconstruction and Develop-  
3 ment, the International Development Association,  
4 the International Finance Corporation, the Inter-  
5 American Development Bank, the International  
6 Monetary Fund, the Asian Development Bank, the  
7 Inter-American Investment Corporation, the North  
8 American Development Bank, the African Develop-  
9 ment Fund, and other multilateral lending institu-  
10 tions.

11 (2) These international development projects  
12 are often plagued with fraud, corruption, waste, in-  
13 efficiency, and misuse of funding.

14 (3) Fraud, corruption, waste, inefficiency, mis-  
15 use, and abuse are major impediments to competi-  
16 tion in foreign commerce throughout the world.

17 (4) Identifying these impediments after they  
18 occur is inadequate and meaningless.

19 (5) Detection of impediments before they occur  
20 helps to ensure that valuable United States re-  
21 sources contributed to important international devel-  
22 opment projects are used appropriately.

23 (6) Independent third-party procurement mon-  
24 itoring is an important tool for detecting and pre-  
25 venting such impediments.

1           (7) Third-party procurement monitoring in-  
2           cludes evaluations of each stage of the procurement  
3           process and assures the openness and transparency  
4           of the process.

5           (8) Improving transparency and openness in the  
6           procurement process helps to minimize fraud, cor-  
7           ruption, waste, inefficiency, and other misuse of  
8           funding, and promotes competition, thereby  
9           strengthening international trade and foreign com-  
10          merce.

11          (b) PURPOSE.—The purpose of this Act is to build  
12          on the excellent progress associated with the Organization  
13          on Economic Development and Cooperation Agreement on  
14          Bribery and Corruption, by requiring the use of independ-  
15          ent third-party procurement monitoring as part of the  
16          United States participation in multilateral development  
17          banks and other lending institutions and in the disburse-  
18          ment of nonhumanitarian foreign assistance funds.

19          **SEC. 3. DEFINITIONS.**

20          (a) DEFINITIONS.—In this Act:

21               (1) APPROPRIATE COMMITTEES.—The term  
22               “appropriate committees” means the Committee on  
23               Commerce, Science, and Technology of the Senate  
24               and the Committee on Commerce of the House of  
25               Representatives.

1           (2) INDEPENDENT THIRD-PARTY PROCURE-  
 2           MENT MONITORING.—The term “independent third-  
 3           party procurement monitoring” means a program  
 4           to—

5                       (A) eliminate bias,

6                       (B) promote transparency and open com-  
 7           petition, and

8                       (C) minimize fraud, corruption, waste, in-  
 9           efficiency, and other misuse of funds,

10          in international procurement through independent  
 11          evaluation of the technical, financial, economic, and  
 12          legal aspects of the procurement process.

13          (3) INDEPENDENT.—The term “independent”  
 14          means that the person monitoring the procurement  
 15          process does not render any paid services to private  
 16          industry and is neither owned nor controlled by any  
 17          government or government agency.

18          (4) EACH STAGE OF PROCUREMENT.—The term  
 19          “each stage of procurement” means the development  
 20          and issuance of technical specifications, bidding doc-  
 21          uments, evaluation reports, contract preparation,  
 22          and the delivery of goods and services.

23          (5) MULTILATERAL DEVELOPMENT BANKS AND  
 24          OTHER LENDING INSTITUTIONS.—The term “multi-  
 25          lateral development banks and other lending institu-

1 tions” means the International Bank for Recon-  
2 struction and Development, the International Devel-  
3 opment Association, the International Finance Cor-  
4 poration, the Inter-American Development Bank, the  
5 International Monetary Fund, the Asian Develop-  
6 ment Bank, the Inter-American Investment Corpora-  
7 tion, the North American Development Bank, and  
8 the African Development Fund.

9 **SEC. 4. REQUIREMENTS FOR FAIR COMPETITION IN FOR-**  
10 **EIGN COMMERCE.**

11 (a) IN GENERAL.—Not later than 180 days after the  
12 date of enactment of this Act, the Secretary of the Treas-  
13 ury shall transmit to the President and to appropriate  
14 committees of Congress a strategic plan for requiring the  
15 use of independent third-party procurement monitoring  
16 and other international procurement reforms relating to  
17 the United States participation in multilateral develop-  
18 ment banks and other lending institutions.

19 (b) STRATEGIC PLAN.—The strategic plan shall in-  
20 clude an instruction by the Secretary of the Treasury to  
21 the United States Executive Director of each multilateral  
22 development bank and lending institution to use the voice  
23 and vote of the United States to oppose the use of funds  
24 appropriated or made available by the United States for  
25 any non-humanitarian assistance, until—

1           (1) the recipient international financial institu-  
2           tion has adopted an anticorruption plan that re-  
3           quires the use of independent third-party procure-  
4           ment monitoring services and ensures openness and  
5           transparency in government procurement; and

6           (2) the recipient country institutes specific  
7           strategies for minimizing corruption and maximizing  
8           transparency in each stage of the procurement proc-  
9           ess.

10          (c) ANNUAL REPORTS.—Not later than June 29 of  
11 each year, the Secretary of the Treasury shall report to  
12 Congress on the progress in implementing procurement re-  
13 forms made by each multilateral development bank and  
14 lending institution and each country that received assist-  
15 ance from a multilateral development bank or lending in-  
16 stitution during the preceding year.

17          (d) RESTRICTIONS ON ASSISTANCE.—Notwithstand-  
18 ing any other provision of law, no funds appropriated or  
19 made available for nonhumanitarian foreign assistance  
20 programs, including the activities of the Agency for Inter-  
21 national Development, may be expended for those pro-  
22 grams unless the recipient country, multilateral develop-  
23 ment bank or lending institution has demonstrated that—

1           (1) procurement practices are open, trans-  
2           parent, and free of corruption, fraud, inefficiency,  
3           and other misuse, and

4           (2) independent third-party procurement mon-  
5           itoring has been adopted and is being used by the  
6           recipient.

7 **SEC. 5. EXCEPTIONS.**

8           (a) NATIONAL SECURITY INTEREST.—Section 4 shall  
9           not apply with respect to a country if the President deter-  
10          mines with such respect to such country that making  
11          funds available is important to the national security inter-  
12          est of the United States. Any such determination shall  
13          cease to be effective 6 months after being made unless  
14          the President determines that its continuation is impor-  
15          tant to the national security interest of the United States.

16          (b) OTHER EXCEPTIONS.—Section 4 shall not apply  
17          with respect to assistance to—

18               (1) meet urgent humanitarian needs (including  
19               providing food, medicine, disaster, and refugee re-  
20               lief);

21               (2) facilitate democratic political reform and  
22               rule of law activities;

23               (3) create private sector and nongovernmental  
24               organizations that are independent of government  
25               control; and

- 1 (4) facilitate development of a free market economic system.
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