

111TH CONGRESS
2^D SESSION

H. R. 6262

To stimulate job creation by directing Federal procurement to domestic sources, to ensure the enforcement of domestic sourcing requirements, to prohibit the procurement of sweatshop goods by the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2010

Mr. HARE (for himself, Mr. MICHAUD, Mr. HASTINGS of Florida, Ms. MOORE of Wisconsin, Ms. KAPTUR, Mr. GRIJALVA, and Mr. FILNER) introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To stimulate job creation by directing Federal procurement to domestic sources, to ensure the enforcement of domestic sourcing requirements, to prohibit the procurement of sweatshop goods by the United States, 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 “Jobs Through Procure-
5 ment Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) United States Government procurement
4 from domestic manufacturers is vital to economic re-
5 covery, and subcontractors should be bound by the
6 same domestic sourcing requirements as prime con-
7 tractors.

8 (2) The Berry Amendment and the Buy Amer-
9 ican Act are not implemented as intended by Con-
10 gress when contractors procure significant amounts
11 of goods from subcontractors that obtain such goods
12 from nondomestic sources.

13 (3) The United States Government should not
14 procure goods manufactured or produced in facilities
15 that do not comply with core labor standards, as de-
16 fined under the laws of the United States and the
17 Declaration on Fundamental Principles and Rights
18 at Work of the International Labour Organization.

19 (4) Workplaces that violate core labor stand-
20 ards are commonly referred to as sweatshops, and
21 workers have a right to be free of sweatshop working
22 conditions.

23 (5) Subjecting workers to sweatshop conditions
24 is morally offensive to United States citizens as tax-
25 payers and investors, and is degrading to workers.

1 (6) Prohibiting the procurement of sweatshop
2 goods, regardless of the source of the goods, is con-
3 sistent with the international obligations of the
4 United States because the prohibition applies equally
5 to domestic and foreign products and avoids any dis-
6 crimination among foreign sources of competing
7 products.

8 **SEC. 3. STRENGTHENING ENFORCEMENT OF DOMESTIC**
9 **SOURCING REQUIREMENTS.**

10 (a) BUY AMERICAN ACT AMENDMENT.—Section 2 of
11 the Buy American Act (41 U.S.C. 10a) is amended by
12 adding at the end the following new subsection:

13 “(c) APPLICABILITY TO CONTRACTS AND SUB-
14 CONTRACTS FOR PROCUREMENT OF COMMERCIAL
15 ITEMS.—This section is applicable to contracts and sub-
16 contracts for the procurement of commercial items not-
17 withstanding section 34 of the Office of Federal Procure-
18 ment Policy Act (41 U.S.C. 430).”.

19 (b) CONTRACT CLAUSE REQUIRED FOR PRIME CON-
20 TRACTS.—

21 (1) BERRY AMENDMENT COMPLIANCE CLAUSE
22 IN DEFENSE CONTRACTS.—The Secretary of De-
23 fense shall prescribe regulations to require that each
24 contract of the Department of Defense for the pro-
25 curement of services shall contain a clause ensuring

1 compliance in the procurement of goods by the con-
2 tractor with section 2533a of title 10, United States
3 Code (popularly known as the “Berry Amendment”),
4 regardless of whether any goods to be furnished
5 under the contract are specified at the time of the
6 contract.

7 (2) BUY AMERICAN ACT COMPLIANCE CLAUSE
8 IN ALL FEDERAL CONTRACTS.—The Federal Acqui-
9 sition Regulation shall be revised to require that
10 each contract of the Federal Government for the
11 procurement of services shall contain a clause ensur-
12 ing compliance in the procurement of goods by the
13 contractor with the Buy American Act (41 U.S.C.
14 10a et seq.), regardless of whether any goods to be
15 furnished are specified at the time of the contract.

16 (c) CONTRACT CLAUSE REQUIRED FOR SUB-
17 CONTRACTORS.—

18 (1) BERRY AMENDMENT COMPLIANCE.—The
19 Secretary of Defense shall prescribe regulations to
20 require that each contract of the Department of De-
21 fense shall contain a clause that requires the con-
22 tractor to include a clause in any subcontract (at
23 any tier) that has a value in excess of \$100,000
24 under the contract ensuring compliance in the pro-
25 curement of goods by the subcontractor with section

1 2533a of title 10, United States Code (popularly
2 known as the “Berry Amendment”).

3 (2) BUY AMERICAN ACT COMPLIANCE.—The
4 Federal Acquisition Regulation shall be revised to
5 require that each contract of the Federal Govern-
6 ment shall contain a clause that requires the con-
7 tractor to include a clause in any subcontract (at
8 any tier) that has a value in excess of \$100,000
9 under the contract ensuring compliance in the pro-
10 curement of goods with the Buy American Act (41
11 U.S.C. 10a et seq.).

12 (d) BERRY AMENDMENT AND BUY AMERICAN ACT
13 TRAINING.—

14 (1) ACQUISITION WORKFORCE.—The Secretary
15 of Defense shall ensure that each member of the ac-
16 quisition workforce who participates in contracts for
17 services under which a subcontract for the procure-
18 ment of manufactured or produced goods may be
19 awarded receives training on compliance with section
20 2533a of title 10, United States Code (popularly
21 known as the “Berry Amendment”), and the Buy
22 American Act (41 U.S.C. 10a et seq.).

23 (2) CONTRACTOR PROVIDING SERVICES.—The
24 Secretary of Defense shall ensure that any con-
25 tractor that has been awarded a contract by the De-

1 partment of Defense to provide services and under
2 which a subcontract for the procurement of manu-
3 factured or produced goods may be awarded receives
4 training on compliance with section 2533a of title
5 10, United States Code (popularly known as the
6 “Berry Amendment”), and the Buy American Act
7 (41 U.S.C. 10a et seq.).

8 (e) CERTIFICATION REQUIRED FOR DOMESTIC
9 SOURCE.—Any offeror or contractor that is required to
10 comply with section 2533a of title 10, United States Code
11 (popularly known as the “Berry Amendment”), or the Buy
12 American Act (41 U.S.C. 10a et seq.) shall certify compli-
13 ance with such section or such Act and submit to the con-
14 tracting officer the name of the manufacturer or producer
15 and the address of the manufacturing or production loca-
16 tion of all materials, or domestic end products in the case
17 of commercially available off-the-shelf items, including the
18 name of the manufacturer or producer and the address
19 of the manufacturer or production location.

20 **SEC. 4. GOVERNMENT PROCUREMENT OF SWEATSHOP**
21 **GOODS PROHIBITED.**

22 (a) AMENDMENT TO FEDERAL PROPERTY AND AD-
23 MINISTRATIVE SERVICES ACT OF 1949.—Title III of the
24 Federal Property and Administrative Services Act of 1949

1 (41 U.S.C. 251 et seq.) is amended by adding at the end
2 the following new section:

3 **“SEC. 318. PROHIBITION ON PROCUREMENT OF SWEAT-**
4 **SHOP GOODS AND RELATED REQUIREMENTS.**

5 “(a) DEFINITIONS.—In this section:

6 “(1) CORE LABOR STANDARDS.—

7 “(A) IN GENERAL.—The term ‘core labor
8 standards’ means, with respect to employees—

9 “(i) the right of association;

10 “(ii) the right to organize and bargain
11 collectively;

12 “(iii) a prohibition on the use of any
13 form of forced or compulsory labor;

14 “(iv) a prohibition on discrimination
15 which has the effect of nullifying or im-
16 pairing equality of opportunity or treat-
17 ment in employment or occupation;

18 “(v) a prohibition of the worst forms
19 of child labor, including all forms of slav-
20 ery or practices similar to slavery, such as
21 the sale and trafficking of children, debt
22 bondage, serfdom, and forced or compul-
23 sory labor, and work which, by its nature
24 and circumstances in which it is carried

1 out, is likely to harm the health, safety, or
2 morals of children;

3 “(vi) a minimum age for the employ-
4 ment of children that is not less than the
5 age of completion of compulsory schooling
6 and not less than 15 years; and

7 “(vii) acceptable conditions of work
8 with respect to wages, hours of work, and
9 occupational safety and health.

10 “(B) ADDITIONAL DEFINITIONS.—For
11 purposes of subparagraph (A):

12 “(i) ACCEPTABLE CONDITIONS.—The
13 term ‘acceptable conditions’ shall be deter-
14 mined by the laws, regulations, or com-
15 petent authority of the country in which
16 the labor is performed, except that wages
17 paid shall be no less than the amount suf-
18 ficient to maintain a standard of living
19 necessary for health, and the general well-
20 being of workers and their families, as de-
21 termined under clauses (ii) and (iii).

22 “(ii) UNITED STATES WAGES.—For
23 labor performed in the United States, the
24 wages paid shall not be less than the min-
25 imum wage required under section 6 of the

1 Fair Labor Standards Act of 1938 (29
2 U.S.C. 206), or other applicable statute.

3 “(iii) WAGES FOR OTHER NATIONS.—

4 For labor performed in a country other
5 than the United States, the wages paid
6 shall be determined by the Bureau of
7 International Labor Affairs of the United
8 States Department of Labor.

9 “(2) COVERED CONTRACT.—The term ‘covered
10 contract’ means a contract for a total amount in ex-
11 cess of the micro-purchase threshold, as that term is
12 defined in section 32(f) of the Office of Federal Pro-
13 curement Policy Act (41 U.S.C. 428(f)).

14 “(3) SWEATFREE PURCHASING CONSORTIUM.—

15 The term ‘Sweatfree Purchasing Consortium’ means
16 an organization consisting of and for Federal, State,
17 and local government agencies with a mission of
18 ending public purchasing from sweatshops and help-
19 ing its members make purchases of goods that are
20 not sweatshop goods more effectively and less expen-
21 sively than any single agency could accomplish on its
22 own.

23 “(4) SWEATSHOP GOOD.—The term ‘sweatshop

24 good’ means all goods, wares, articles, and merchan-
25 dise manufactured or produced wholly or in part in

1 violation of core labor standards, as defined in sub-
2 section (a).

3 “(b) BID SPECIFICATIONS AND PREAWARD PROCE-
4 DURES.—The agency head shall ensure that each bid or
5 proposal submitted for a covered contract includes the fol-
6 lowing:

7 “(1) A list of each subcontractor and produc-
8 tion facility to be used in the performance of the
9 covered contract, including company names, owners
10 or officers, complete physical addresses, and the pri-
11 mary business purpose.

12 “(2) A certification that each facility listed pur-
13 suant to paragraph (1) complies with the core labor
14 standards, or that the contractor has complied with
15 the requirements of subsection (c)(4).

16 “(3) If the product is to be manufactured or
17 produced by a third party, a certification that the
18 bidder will purchase the product under terms, in-
19 cluding prices and delivery dates, that support and
20 enable the manufacturing or production of the prod-
21 uct in a manner that is consistent with core labor
22 standards.

23 “(c) CONTRACTUAL REQUIREMENT.—The agency
24 head shall ensure that each covered contract entered into

1 by the agency for the procurement of goods includes a
2 clause that requires the contractor—

3 “(1) to comply with the requirements of this
4 section;

5 “(2) to update the list of subcontractors and
6 production facilities to be used in the performance of
7 the covered contract as needed and to furnish a copy
8 of this section to each subcontractor and require
9 each production facility to affirm that it will comply
10 with core labor standards;

11 “(3) to ensure that workers who will manufac-
12 ture or produce the goods to be provided under the
13 covered contract are informed of the requirements of
14 this section;

15 “(4) not later than 30 days after having actual
16 or constructive knowledge of any instance of non-
17 compliance with core labor standards in a facility
18 manufacturing or producing goods to be provided
19 under the covered contract, to—

20 “(A) disclose the noncompliance to the rel-
21 evant agency; and

22 “(B) submit to the relevant agency a writ-
23 ten corrective action plan, that will become part
24 of the covered contract;

1 “(5) not later than 120 days after the submis-
2 sion of the corrective action plan under paragraph
3 (4)(B), or before receipt of half the total remaining
4 value of the covered contract, whichever occurs first,
5 to implement the corrective action plan; and

6 “(6) to cooperate fully in providing reasonable
7 access to the contractor’s records, persons, or prem-
8 ises if requested by the contracting agency, the De-
9 partment of Labor, or the Department of Justice for
10 the purpose of determining whether any good pro-
11 vided under the covered contract is a sweatshop
12 good.

13 “(d) REQUEST FOR PAYMENT.—Each request for
14 payment by a contractor under a covered contract shall
15 be considered to be a recertification by the contractor as
16 described in subsections (b)(2) and (b)(3).

17 “(e) INVESTIGATIONS.—

18 “(1) IN GENERAL.—Not later than 14 days
19 after the receipt of an allegation of a violation of
20 this section, the agency head shall refer the matter
21 for investigation to the Inspector General of the
22 agency and, as the agency head or the Inspector
23 General determines appropriate, to the Attorney
24 General and the Secretary of Labor if any of the fol-
25 lowing apply:

1 “(A) A contracting officer has independent
2 knowledge that a contractor or a subcontractor
3 has labor policies or practices that are not con-
4 sistent with core labor standards.

5 “(B) An individual files a written com-
6 plaint directly with the contracting agency that
7 the contractor or subcontractor, to the best of
8 the individual’s knowledge, has labor policies or
9 practices that are not consistent with core labor
10 standards.

11 “(C) A contracting officer or the agency
12 head receives any other information providing a
13 reasonable basis for believing that a contractor
14 or subcontractor has labor policies or practices
15 that are not consistent with core labor stand-
16 ards.

17 “(2) NOTIFICATION.—The agency head shall
18 notify the relevant contractor of the allegations and
19 the investigation, including any preliminary findings
20 or recommendations, not later than 90 days after
21 the referral of the matter for investigation under
22 paragraph (1).

23 “(3) AGENCY COOPERATION.—The agency may
24 cooperate with Federal, State, and local government
25 agencies participating in a Sweatfree Purchasing

1 Consortium (in this section, referred to as ‘Consortium’) by notifying the Consortium not later than 14
2 days after receiving any referral of a matter for in-
3 vestigation under paragraph (1), and may share the
4 findings of any investigation and remedies imposed
5 with the Consortium.
6

7 “(4) INVESTIGATION BY THE CONSORTIUM.—If
8 the contractor is a provider of goods to any agency
9 participating in the Consortium, the agency head of
10 the referring agency or its Inspector General, may,
11 notwithstanding any other provision of law, enter
12 into an agreement with the Consortium to conduct
13 the investigation.

14 “(f) REMEDIES.—

15 “(1) IN GENERAL.—The agency head may im-
16 pose remedies as provided in this subsection if the
17 agency head finds that the contractor has done any
18 of the following:

19 “(A) Submitted a false certification under
20 this section.

21 “(B) Failed to cooperate with an investiga-
22 tion under this section.

23 “(C) Failed to implement a corrective ac-
24 tion plan submitted under subsection (c)(4)(B).

1 “(2) TERMINATION OF CONTRACT.—The agency
2 head may terminate a covered contract on the basis
3 of a finding of a violation under paragraph (1).

4 “(3) SUSPENSION OF PERFORMANCE.—The
5 agency head, on the basis of a finding that the con-
6 tractor has committed a violation under paragraph
7 (1), may refuse to take delivery of, or pay for,
8 sweatshop goods.

9 “(4) DEBARMENT AND SUSPENSION.—The
10 agency head may suspend a contractor, for a period
11 of not more than 3 years, from eligibility for Federal
12 contracts on the basis of a finding that the con-
13 tractor has committed a violation under paragraph
14 (1).

15 “(5) INCLUSION ON LIST OF PARTIES EX-
16 CLUDED FROM FEDERAL PROCUREMENT AND NON-
17 PROCUREMENT PROGRAMS.—The Administrator of
18 General Services shall include on the List of Parties
19 Excluded from Federal Procurement and Non-
20 procurement Programs maintained by the Adminis-
21 trator under part 9 of the Federal Acquisition Regu-
22 lation each contractor that is debarred, suspended,
23 proposed for debarment or suspension, or declared
24 ineligible by the agency head on the basis that the

1 contractor has committed a violation under para-
2 graph (1).

3 “(6) REMEDIES NOT EXCLUSIVE.—This section
4 shall not be construed to limit other remedies which
5 may be available under United States law.

6 “(g) ADVISORY BOARD.—

7 “(1) ESTABLISHMENT.—There is established a
8 board to be known as the Procurement Advisory
9 Board (in this section, referred to as the ‘Board’) to
10 oversee and consider issues relating to the imple-
11 mentation and enforcement of this section and to
12 make recommendations relating to such implementa-
13 tion and enforcement.

14 “(2) COLLABORATION WITH THE CONSOR-
15 TIUM.—The Board may collaborate with the Consor-
16 tium in carrying out the Board’s activities under
17 paragraph (1).

18 “(3) MEMBERSHIP.—The Board shall be com-
19 posed of 7 members appointed by the President as
20 follows:

21 “(A) Three members from the Department
22 of Defense.

23 “(B) One member from the Department of
24 Labor.

1 “(C) Three members who are members of
2 a labor organization as defined in section 2(5)
3 of the National Labor Relations Act (29 U.S.C.
4 152(5)) or a Joint Labor Management Cooper-
5 ative Committee established pursuant to section
6 205A of the Labor Management Relations Act,
7 1947 (29 U.S.C. 175a).

8 “(h) PHASE-IN.—

9 “(1) YEAR ONE.—During the first full fiscal
10 year after the effective date of this section, this sec-
11 tion shall be enforced only with respect to purchases
12 and contracts for apparel, garments, and cor-
13 responding accessories, materials, supplies, or equip-
14 ment.

15 “(2) YEAR TWO.—During the second full fiscal
16 year after the effective date of this section, each
17 agency head, in consultation with the Board estab-
18 lished under subsection (g), shall select procurement
19 categories (other than apparel, garments, and cor-
20 responding accessories, materials, supplies, or equip-
21 ment) based on the feasibility of implementation and
22 may set phase-in goals and timetables of up to one
23 year for such categories in order to achieve compli-
24 ance with the requirements of this section.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall take effect 180 days after the date of
3 the enactment of this Act.

4 **SEC. 5. RULE OF CONSTRUCTION.**

5 Nothing in this Act, or the amendments made by this
6 Act, shall be construed to preempt any law of a State or
7 political subdivision of a State that establishes higher
8 wages or labor standards for the mining, production, or
9 manufacture of any good, ware, article, or merchandise
10 purchased by the State or political subdivision of a State
11 than those provided for in this Act.

○