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118TH CONGRESS }
1st Session

SENATE

{ REPORT
118-94

ALL-AMERICAN FLAG ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1973

TO REQUIRE THE PURCHASE OF DOMESTICALLY MADE FLAGS OF
THE UNITED STATES OF AMERICA FOR USE BY THE FEDERAL
GOVERNMENT



SEPTEMBER 5, 2023.—Ordered to be printed

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SEPTEMBER 5, 2023.—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. 1973]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1973), to require the purchase of domestically made flags of the United States of America for use by the Federal Government, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

S. 1973, the *All-American Flag Act*, prohibits agencies from using funds to procure a United States flag unless the flag has been manufactured in the United States from materials grown, produced, or manufactured domestically. The bill specifies exceptions to this prohibition, including an exception if flags of satisfactory quality and sufficient quantity cannot be procured as needed at market prices.

II. BACKGROUND AND NEED FOR THE LEGISLATION

According to data compiled and published by the U.S. Census Bureau, Economic Indicators Division, the dollar value of U.S. imports of American flags (United States flags) was \$6.5 million in 2022 and \$4.4 million in 2023 (through June 2023). Imports of United States flags almost exclusively come from China; the United States imported 93% (\$6 million) of United States flags from China in 2022 and 95% (\$4.2 million) of United States flags from China through June 2023.¹ While several state laws—including in Arizona, Florida, Tennessee, Maryland, Massachusetts, and Wisconsin—require states to purchase flags from U.S. manufacturers, no federal law requires the government to only purchase flags that are fully manufactured in the United States.² This bill would prevent the government from procuring United States flags produced in other countries, including China. As a result, this bill would ensure all United States flags used by the federal government—such as flags for veteran burials and those flying above federal buildings—are American-made.

Currently, the federal government is required to buy flags that contain at least 60% American-made materials.³ S. 1973 would expand this requirement to ensure that United States flags procured by the federal government are produced entirely with American-made or grown materials and manufactured completely in the United States.

III. LEGISLATIVE HISTORY

Senator Sherrod Brown (D-OH) introduced S. 1973 on June 14, 2023 with original cosponsors Senator Gary Peters (D-MI), Senator Susan Collins (R-ME), and Senator Joe Manchin (D-WV). Senator Roger Marshall (R-KS) joined as a cosponsor on July 18, 2023. The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 1973 at a business meeting on July 26, 2023. At the business meeting, Senator Paul offered an amendment to the bill. The amendment struck section (c) from the proposed new legislative text, which would have required each manufacturer of a United States flag to maintain records related to the source of the materials and supplies used to make their flags for a period of five years. The Committee adopted the Paul amendment by voice vote, with Senators Peters, Hassan, Sinema, Rosen, Ossoff, Paul, Lankford, and Scott present. The bill, as amended by the Paul amendment, was ordered reported favorably by roll call vote of 8 yeas to 0 nays, with Senators Peters, Hassan, Sinema, Rosen, Ossoff, Paul, Lankford, and Scott voting in the affirmative. Senators Carper, Padilla, Blumenthal, Romney, Hawley, and Marshall voted yea by proxy, for the record only, and Senator Johnson voted nay by proxy, for the record only.

¹ U.S. Census Bureau, USA Trade Online (6307909825—National Flags of the United States) (<https://usatrade.census.gov/>).

² *Raising the American Flag Made in China*, The Atlantic (July 3, 2018) (<https://www.theatlantic.com/technology/archive/2018/07/raising-the-american-flag-made-in-china/564293/>).

³ Exec. Order No. 14005, 86 Fed. Reg. 7475 (Jan. 25, 2021); *see also* Federal Acquisition Regulation: Amendments to the FAR Buy American Act Requirements, 87 Fed. Reg. 12780 (Mar. 7, 2022).

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

Section 1. Short title

This section establishes the short title of the bill as the “All-American Flag Act.”

Section 2. Requirement for agencies to buy domestically made United States flags

Subsection (a)(1) adds a new section to the end of Chapter 63 of title 41 of the United States Code. This new section (section 6310) requires that funds appropriated or otherwise available to an agency may not be used for the procurement of any United States flag unless the flag has been wholly manufactured in the United States from materials grown, produced, or manufactured in the United States.

Section 6310 provides for certain exceptions to this requirement, including for the procurement of United States flags by vessels in foreign waters, for resale purposes in military commissaries and exchanges, and for amounts less than the simplified acquisition threshold. There is also an exception for availability reasons, if the head of the agency concerned determines that satisfactory quality and sufficient quantity of a flag cannot be procured as needed at market prices.

Section 6310 also provides for a presidential waiver, if the President determines a waiver is necessary to comply with any trade agreement to which the United States is a party. Finally, section 6310 defines the terms “agency” and “simplified acquisition threshold” for the purposes of this bill.

Subsection (a)(2) amends the table of sections at the beginning of Chapter 63 to include section 6310.

Subsection (b) provides that the requirements of this bill will become applicable beginning 180 days after the bill’s enactment.

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. 1973, All-American Flag Act			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on July 26, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	0	*	*
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	*	*
Spending Subject to Appropriation (Outlays)	0	*	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply?	Yes
Mandate Effects			
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between -\$500,000 and \$500,000.			

S. 1973 would amend federal law to require, with certain exceptions, that all U.S. flags acquired by the federal government be manufactured in the United States from materials grown, produced, or manufactured domestically.

Using information from the General Services Administration and flag vendors, CBO expects that many vendors already meet the bill's requirements. CBO estimates that the costs of implementing S. 1973 would be insignificant; any spending would be subject to the availability of appropriated funds.

Enacting S. 1973 could affect direct spending by some agencies that are allowed to use fees, receipts from the sale of goods, and other collections to cover operating costs. CBO estimates that any net changes in direct spending by those agencies would be negligible because most of them can adjust amounts collected to reflect changes in operating costs.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was reviewed by Chad Chirico, Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

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 *italic*, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

TITLE 41—PUBLIC CONTRACTS

* * * * *

Subtitle II—Other Advertising and Contract Provisions

* * * * *

CHAPTER 63—GENERAL CONTRACT PROVISIONS

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Table of sections

Sec.

6301. Authorization requirement.

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6310. Requirement for agencies to buy domestically made United States flags.

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SEC. 6309. HONORABLE DISCHARGE CERTIFICATE IN LIEU OF BIRTH CERTIFICATE

(a) * * *

(b) * * *

SEC. 6310. REQUIREMENT FOR AGENCIES TO BUY DOMESTICALLY MADE UNITED STATES FLAGS

(a) *REQUIREMENT.*—Except as provided in subsections (b) through (d), funds appropriated or otherwise available to an agency may not be used for the procurement of any flag of the United States, unless such flag has been 100 percent manufactured in the United States from articles, materials, or supplies that have been grown or 100 percent produced or manufactured in the United States.

(b) *AVAILABILITY EXCEPTION.*—Subsection (a) does not apply to the extent that the head of the agency concerned determines that satisfactory quality and sufficient quantity of a flag described in such subsection cannot be procured as and when needed at United States market prices.

(c) *EXCEPTION FOR CERTAIN PROCUREMENTS.*—Subsection (a) does not apply to the following:

(1) Procurements by vessels in foreign waters.

(2) Procurements for resale purposes in any military commissary, military exchange, or non-appropriated fund instrumentality operated by an agency.

(3) Procurements for amounts less than the simplified acquisition threshold.

(d) *PRESIDENTIAL WAIVER.*—

(1) *IN GENERAL.*—The President may waive the requirement in subsection (a) if the President determines a waiver is necessary to comply with any trade agreement to which the United States is a party.

(2) *NOTICE OF WAIVER.*—Not later than 30 days after granting a waiver under paragraph (1), the President shall publish a notice of the waiver in the Federal Register.

(e) *DEFINITIONS.*—In this section:

(1) *AGENCY.*—The term ‘agency’ has the meaning given the term ‘executive agency’ in section 102 of title 40.

(2) *SIMPLIFIED ACQUISITION THRESHOLD.*—*The term ‘simplified acquisition threshold’ has the meaning given that term in section 134.*

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