

Calendar No. 575

117TH CONGRESS }
2d Session }

SENATE

{ REPORT
117-219 }

COMBATING OBSTRUCTIVE NATIONAL SECURITY UNDERREPORTING OF LEGITIMATE THREATS (CONSULT) ACT OF 2022

REPORT

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 4516

TO REQUIRE THE OFFICE OF FEDERAL PROCUREMENT POLICY TO DEVELOP GOVERNMENTWIDE PROCUREMENT POLICY AND GUIDANCE TO MITIGATE ORGANIZATIONAL CONFLICT OF INTERESTS RELATING TO NATIONAL SECURITY AND FOREIGN POLICY, AND FOR OTHER PURPOSES



DECEMBER 5, 2022.—Ordered to be printed

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

R E P O R T

[To accompany S. 4516]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 4516) to require the Office of Federal Procurement Policy to develop governmentwide procurement policy and guidance to mitigate organizational conflict of interests relating to national security and foreign policy, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

S. 4516, the *Combating Obstructive National Security Under-reporting of Legitimate Threats (CONSULT) Act of 2022*, would require implementation of governmentwide procurement policy and guidance in the Federal Acquisition Regulation to help agencies address issues created when federal contractors have other business

relationships with entities that may pose a national security risk, such as adversarial foreign entities or governments.

II. BACKGROUND AND NEED FOR THE LEGISLATION

The *Combating Obstructive National Security Underreporting of Legitimate Threats (CONSULT) Act of 2022* directs the Office of Federal Procurement Policy, in coordination with relevant department heads such as the Secretary of Defense, Secretary of State, and Secretary of Commerce, to develop governmentwide policy and guidance to help agencies address organizational conflicts of interest (OCI) involving consultant contractor business relationships with entities that may pose a risk to national security or foreign policy interests. This policy and guidance are to be implemented in the Federal Acquisition Regulation, which currently does not address this specific type of OCI.¹

Recent accounts have highlighted geopolitical issues involving federal procurement, and instances of contractors supporting the Department of Defense and other agencies on matters involving national security while also involved in other business relationships that could compromise, or appear to compromise, U.S. interests.² Federal agencies need updated policy and guidance to avoid or mitigate these potential conflicts.

III. LEGISLATIVE HISTORY

Senator Joni Ernst (R–IA) introduced S. 4516, the Combating Obstructive National Security Underreporting of Legitimate Threats (CONSULT) Act of 2022, on July 13, 2022, with Chairman Gary Peters (D–MI) and Senator Margaret Hassan (D–NH). Senator Rick Scott (R–FL) joined as a cosponsor on July 20, 2022, and Senator Marco Rubio (R FL) joined as a cosponsor on September 7, 2022.

The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 4516 at a business meeting on August 3, 2022. The bill was ordered reported favorably by voice vote with Senators Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Romney, Scott, and Hawley present.

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

Section 1. Short title

This section provides that the Act may be cited as the “Combating Obstructive National Security Underreporting of Legitimate Threats (CONSULT) Act of 2022.”

¹ See FAR Subpart 9.5 for existing policy and guidance on organizational and consultant conflicts of interest.

² Brookings Institution, *Russian and China nuclear arsenals: Posture, proliferation, and the future of arms control* (Jun. 21, 2018) (<https://www.brookings.edu/testimonies/russian-and-chinese-nuclear-arsenals-posture-proliferation-and-the-future-of-arms-control/>); *NNSA Cancels \$28B Site Management Deal To Split Work Up*, Law360 (May 17, 2022) (<https://www.law360.com/articles/1494245/nnsa-cancels-28b-site-management-deal-to-split-work-up>). See also *Advising both Chinese state companies and the Pentagon, McKinsey & Co. comes under scrutiny*, NBC News (Nov. 13, 2021) (www.nbcnews.com/politics/national-security/advising-both-chinese-state-companies-pentagon-mckinsey-co-comes-under-n1283777); *McKinsey & Co. worked with Russian weapons maker even as it advised Pentagon*, NBC News (May 21, 2022) (www.nbcnews.com/politics/national-security/consulting-firm-mckinsey-co-advised-state-owned-russian-defense-firm-rcna29618).

Sec. 2. Findings

This section identifies congressional findings related to the Act, including findings related to the federal government's reliance on contractors for mission support services creating the potential for conflicts of interest involving matters of national security, the importance of ensuring contractor support does not run counter to the national security and foreign policy interests of the United States, and the need to protect against this type of conflict as essential to the national security and economic security of the United States.

Sec. 3. Governmentwide procurement policy and guidance to mitigate organizational conflicts of interest relating to national security and foreign policy

This section requires the Office of Federal Procurement Policy, in consultation with relevant agencies, to develop governmentwide procurement policy and guidance to address organizational conflicts of interest relating to contracts involving national security matters or foreign policy interests of the United States. This policy and guidance must include a definition of consulting contract; provisions and clauses for agencies to use that require consulting contractors to disclose potential organizational conflicts of interest involving certain entities; provide that organizational conflicts of interest found to be contrary to the national security or foreign policy interests of the United States may be grounds for denial of a contract; and, make clear that failure to disclose such a potential conflict may be grounds for termination for cause, suspension, or debarment of a contractor. This policy and guidance must be implemented in the Federal Acquisition Regulation within 1 year of 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 (CBO) 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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 9, 2022.

Hon. GARY C. PETERS,
Chairman, Committee on Homeland Security and Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed table summarizing estimated budgetary effects and mandates information for some of the legislation that has been ordered reported by the Senate Committee on Homeland Security and Governmental Affairs during the 117th Congress.

If you wish further details, we will be pleased to provide them. The CBO staff contact for each estimate is listed on the enclosed table.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

SUMMARY ESTIMATES OF LEGISLATION ORDERED REPORTED

The Congressional Budget Act of 1974 requires the Congressional Budget Office, to the extent practicable, to prepare estimates of the budgetary effects of legislation ordered reported by Congressional authorizing committees. In order to provide the Congress with as much information as possible, the attached table summarizes information about the estimated direct spending and revenue effects of some of the legislation that has been ordered reported by the Senate Committee on Homeland Security and Governmental Affairs during the 117th Congress. The legislation listed in this table generally would have small effects, if any, on direct spending or revenues, CBO estimates. Where possible, the table also provides information about the legislation's estimated effects on spending subject to appropriation and on intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act.

ESTIMATED BUDGETARY EFFECTS AND MANDATES INFORMATION

Bill Number	Title	Status	Last Action	Budget Function	Direct Spending, 2023-2032	Revenues, 2023-2032	Spending Subject to Appropriation, 2023-2027	Pay-As-You-Go Procedures Apply?	Increases On-Budget Deficits Beginning in 2033?	Mandates	Contact
S. 4516	Combating Obstructive National Security Underreporting of Legitimate Threats (CON-SULT) Act of 2022	Ordered reported	08/03/22	800	Between zero and \$500,000	Between zero and \$500,000	Not estimated	Yes	No	No	Matthew Pickford

S. 4516 would require the Office of Federal Procurement Policy to develop policy and guidance to mitigate conflicts of interest in federal contracts involving national security or foreign policy interests. Contracts with the Chinese and Russian governments or affiliated entities as well as state sponsors of terrorism, among others, would be subject to the new policies. CBO estimates that enacting S. 4516 would have an insignificant effect on direct spending and revenues over the 2023-2032 period. CBO has not estimated the discretionary costs of implementing the bill. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

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

This legislation would make no changes 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.

