

Calendar No. 617

117TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 117-239

INVENT HERE, MAKE HERE FOR HOMELAND
SECURITY ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 4902

TO ADDRESS THE PREFERENCE FOR UNITED STATES
INDUSTRY WITH RESPECT TO PATENT RIGHTS IN
INVENTIONS MADE WITH DEPARTMENT OF HOMELAND
SECURITY RESEARCH ASSISTANCE, AND FOR OTHER PURPOSES



DECEMBER 12, 2022.—Ordered to be printed

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DECEMBER 12, 2022.—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. 4902]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 4902) to address the preference for United States industry with respect to patent rights in inventions made with Department of Homeland Security research assistance, 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. 4902, the *Invent Here, Make Here for Homeland Security Act*, would ensure that products invented as a result of funding provided by the Department of Homeland Security Science and Technology Directorate (DHS S&T) are manufactured in the United States. The bill requires any waivers to be issued in accordance with the new Buy America reporting requirements passed in the *Infrastructure Investments and Job Act*. The bill also prohibits

these inventions from being manufactured in certain countries, including China, North Korea, Iran, and Russia.

II. BACKGROUND AND NEED FOR THE LEGISLATION

Current law—in a chapter popularly referred to as the *Bayh-Doyle Act*—requires products stemming from federally-funded research to be made in the United States.¹ S. 4902 reiterates this preference specifically for DHS S&T. However, the *Bayh-Doyle Act* requirement includes a relatively broad waiver option for federal agencies, and this option is routinely used in order for products to be manufactured overseas.² This legislation would constrict the *Bayh-Doyle* waiver option for DHS S&T by requiring any waivers issued by the Secretary of Homeland Security to be in accordance with the new Buy America reporting requirements passed in the *Infrastructure Investment and Jobs Act*.³

III. LEGISLATIVE HISTORY

Senator Rob Portman (R-OH) introduced S. 4902, the *Invent Here, Make Here for Homeland Security Act*, on September 21, 2022, with Senator Tammy Baldwin (D-WI). The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 4902 at a business meeting on September 28, 2022. The bill was ordered reported favorably by voice vote *en bloc*. Senators present for the vote were Peters, Carper, Hassan, Sinema, Rosen, Padilla, Ossoff, Portman, Johnson, Paul, Lankford, Romney, Scott, and Hawley.

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

Section 1. Short title

This section designates the name of the bill as the “Invent Here, Make Here for Homeland Security Act.”

Section 2. Preference for United States Industry.

This section adds a new subsection—subsection (d)—to the end of Section 308 of the Homeland Security Act of 2002.

Subsection (d)(1) defines “country of concern,” “funding agreement,” “nonprofit organization,” “subject invention,” and “relevant congressional committees.”

Subsection (d)(2) prohibits firms or nonprofits that receive title to any subject invention developed under a funding agreement with the Department of Homeland Security from granting to any person the exclusive right to use or sell the invention unless the person agrees that any products produced through the use of the invention will be manufactured in the United States.

Subsection (d)(3) permits the Secretary of Homeland Security to waive the requirements of subsection (d)(2) if the firm, nonprofit, or assignee has made reasonable but unsuccessful efforts to grant licenses to persons who would be likely to manufacture substantially in the United States, or that domestic manufacture is not

¹The Bayh-Doyle Act of 1980, 35 U.S.C. § 200.

²*Invent Here, Manufacture Here*, The Hill (Feb. 13, 2022) (<https://thehill.com/opinion/finance/594042-invent-here-manufacture-here/>).

³Infrastructure Investment and Jobs Act, Pub. L. No. 117–58, Title IX (2021).

commercially feasible. The subsection further requires the Secretary to consult with the relevant congressional committees before granting a waiver, and to comply with the procedures laid out in the Build America, Buy America Act. Finally, the subsection prohibits the Secretary from granting waivers that will result in products being manufactured substantially in a country of concern.

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

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 Provisions Apply?	Increase On-Budget Deficits Beginning in 2033?	Mandates	Contact
S. 4902	Invent Here, Make Here for Homeland Security Act	Ordered reported	09/28/22	750	0	0	Not estimated	No	No	No	Jeremy Crimm

S. 4902 would, with some exceptions, require any product invented as a result of funding from the Department of Homeland Security to be manufactured in the United States. CBO estimates that enacting S. 4902 would not affect direct spending or revenues. 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 change 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.

HOMELAND SECURITY ACT OF 2002

* * * * *

SECTION 308—CONDUCT OF RESEARCH, DEVELOPMENT, DEMONSTRATION, TESTING AND EVALUATION

(a) * * *

(b) * * *

(c) * * *

(d) PREFERENCE FOR UNITED STATES INDUSTRY.—

(1) DEFINITIONS.—*In this subsection:*

(A) COUNTRY OF CONCERN.—*The term ‘country of concern’ means a country that—*

(i) is a covered nation, as that term is defined in section 4872(d) of title 10, United States Code; or

(ii) the Secretary determines is engaged in conduct that is detrimental to the national security of the United States

(B) FUNDING AGREEMENT; NONPROFIT ORGANIZATION; SUBJECT INVENTION.—*The terms ‘funding agreement’, ‘nonprofit organization’, and ‘subject invention’ have the meanings given those terms in section 201 of title 35, United States Code.*

(C) RELEVANT CONGRESSIONAL COMMITTEES.—*The term ‘relevant congressional committees’ means—*

(i) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(ii) the Committee on Homeland Security of the House of Representatives.

(2) PREFERENCE.—*Subject to the other provisions of this subsection, no firm or nonprofit organization which receives title to any subject invention developed under a funding agreement entered into with the Department and no assignee of any such firm or nonprofit organization shall grant to any person the exclusive right to use or sell any subject invention unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States.*

(3) WAIVERS.—

(A) IN GENERAL.—*Subject to subparagraph (B), in individual cases, the requirement for an agreement described in paragraph (2) may be waived by the Secretary upon a showing by the firm, nonprofit organization, or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.*

(B) CONDITIONS ON WAIVERS GRANTED BY DEPARTMENT.—

(i) *BEFORE GRANT OF WAIVER.*—Before granting a waiver under subparagraph (A), the Secretary shall—

(I) *consult with the relevant congressional committees regarding the decision of the Secretary to grant the waiver; and*

(II) *comply with the procedures developed and implemented pursuant to section 70923(b)(2) of the Build America, Buy America Act (subtitle A of title IX of division G of Public Law 117–58).*

(ii) *PROHIBITION ON GRANTING CERTAIN WAIVERS.*—The Secretary may not grant a waiver under subparagraph (A) if, as a result of the waiver, products embodying the applicable subject invention, or produced through the use of the applicable subject invention, will be manufactured substantially in a country of concern.