

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—118th Cong., 2d Sess.

S. 3139

To ensure that Federal contractors comply with child labor laws, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. PETERS

Viz:

1 Strike all after the enacting clause and insert the following:
2

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Preventing Child
5 Labor Exploitation in Federal Contracting Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) APPROPRIATE COMMITTEES OF CON-
9 GRESS.—The term “appropriate committees of Con-
10 gress” means—

11 (A) the Committee on Homeland Security
12 and Governmental Affairs of the Senate; and

1 (B) the Committee on Oversight and Ac-
2 countability of the House of Representatives.

3 (2) EXECUTIVE AGENCY.—The term “executive
4 agency” has the meaning given such term in section
5 133 of title 41, United States Code.

6 **SEC. 3. PROMOTION OF WORKPLACE ACCOUNTABILITY.**

7 (a) REQUIRED REPRESENTATIONS AND CERTIFI-
8 CATIONS.—Not later than 18 months after the date of en-
9 actment of this Act, the Federal Acquisition Regulatory
10 Council shall amend the Federal Acquisition Regulation
11 to—

12 (1) require any entity that enters into a con-
13 tract with an executive agency to represent, on an
14 annual basis and to the best of the knowledge of the
15 entity, whether, within the preceding 3-year period,
16 any final administrative merits determination, arbi-
17 tral award or decision, or civil judgment, as defined
18 in coordination with the Secretary of Labor, has
19 been issued against the entity for any violation of
20 section 12 of the Fair Labor Standards Act of 1938
21 (29 U.S.C. 212), relating to child labor;

22 (2) provide (through a revision of the Certifi-
23 cation Regarding Knowledge of Child Labor for
24 Listed End Products as described in section 52.222–
25 18 of the Federal Acquisition Regulation or through,

1 if necessary, another certification) a requirement
2 that an offeror—

3 (A) certify, to the best of the knowledge of
4 the entity, whether, within the preceding 3-year
5 period, any final administrative merits deter-
6 mination, arbitral award or decision, or civil
7 judgment, as defined in coordination with the
8 Secretary of Labor, for a violation described in
9 paragraph (1) has been issued against the enti-
10 ty; and

11 (B) require such a certification from each
12 of the subcontractors or service providers to be
13 used in performing, or that were considered for
14 the performance of, the contract for which the
15 offeror is submitting an offer and provide such
16 certifications with the certification by the offer-
17 or under subparagraph (A);

18 (3) prohibit executive agencies from awarding a
19 contract to—

20 (A) an entity that provides an affirmative
21 response to a representation under paragraph
22 (1) and has failed to implement any corrective
23 measure negotiated under subsection (b); or

24 (B) an offeror that—

1 (i) provides an affirmative response to
2 a certification under paragraph (2) and
3 has failed to implement any corrective
4 measure negotiated under subsection (b);
5 or

6 (ii) intends to use a subcontractor or
7 service provider in the performance of the
8 contract that was identified as having vio-
9 lations in such an affirmative response and
10 has failed to implement any corrective
11 measure negotiated under such subsection;

12 (4) require the name and address of each entity
13 that provides an affirmative response to a represen-
14 tation under paragraph (1), and the name and ad-
15 dress of each offeror, subcontractor, or service pro-
16 vider identified as having violations in an affirmative
17 response to a certification under paragraph (2), to
18 be referred to the Secretary of Labor for purposes
19 of negotiating with that entity, offeror, subcon-
20 tractor, or service provider on corrective measures
21 under subsection (b) and preparing the list and con-
22 ducting suspension and debarment proceedings
23 under subsection (c);

24 (5) provide procedures for consultation with the
25 Secretary of Labor by an offeror described in para-

1 graph (2) to assist the offeror in evaluating the in-
2 formation on compliance with section 12 of the Fair
3 Labor Standards Act of 1938, relating to child
4 labor, submitted to the offeror by a subcontractor or
5 service provider pursuant to such paragraph; and

6 (6) make any other changes necessary to imple-
7 ment the requirements of this Act.

8 (b) CORRECTIVE MEASURES.—An entity that makes
9 an affirmative response to a representation under sub-
10 section (a)(1) or offeror, subcontractor, or service provider
11 that makes an affirmative response in a certification under
12 subsection (a)(2)—

13 (1) shall update the representation or certifi-
14 cation, respectively, based on any steps taken by the
15 entity, offeror, subcontractor, or service provider to
16 correct violations of or improve compliance with sec-
17 tion 12 of the Fair Labor Standards Act of 1938,
18 relating to child labor, including any agreements en-
19 tered into with the Secretary of Labor; and

20 (2) may negotiate with the Secretary of Labor
21 regarding corrective measures that the entity, offer-
22 or, subcontractor, or service provider may take in
23 order to avoid being placed on the list under sub-
24 section (c) and referred for suspension and debar-
25 ment proceedings under such subsection, in the case

1 the entity, offeror, subcontractor, or service provider
2 meets the criteria for such list and proceedings
3 under such subsection.

4 (c) LIST OF INELIGIBLE ENTITIES.—

5 (1) IN GENERAL.—For each calendar year be-
6 ginning with the first calendar year that begins after
7 the date that is 2 years after the date of enactment
8 of this Act, the Secretary of Labor, in coordination
9 with other executive agencies as necessary, shall pre-
10 pare a list and conduct suspension and debarment
11 proceedings for—

12 (A) each entity that provided an affirma-
13 tive response to a representation under sub-
14 section (a)(1) and has failed to implement any
15 corrective measure negotiated under subsection
16 (b) for the year of the list; and

17 (B) each offeror, subcontractor, or service
18 provider that was identified as having violations
19 in an affirmative response to a certification
20 under subsection (a)(2) and has failed to imple-
21 ment any corrective measure negotiated under
22 subsection (b) for the year of the list.

23 (2) INELIGIBILITY.—

24 (A) IN GENERAL.—The head of an execu-
25 tive agency shall not, during the period of time

1 described in subparagraph (B), solicit offers
2 from, award contracts to, or consent to sub-
3 contracts with any entity, offeror, subcon-
4 tractor, or service provider that is listed—

5 (i) under paragraph (1); and

6 (ii) as an active exclusion in the Sys-
7 tem for Award Management.

8 (B) PERIOD OF TIME.—The period of time
9 described in this subparagraph is a period of
10 time determined by the suspension and debar-
11 ment official that is not less than 4 years from
12 the date on which the entity, offeror, subcon-
13 tractor, or service provider is listed as an exclu-
14 sion in the System for Award Management.

15 (3) ADDITIONAL CONSIDERATIONS.—In deter-
16 mining the entities to consider for suspension and
17 debarment proceedings under paragraph (1), the
18 Secretary of Labor shall ensure procedures for such
19 determination are consistent with the procedures set
20 forth in subpart 9.4 of the Federal Acquisition Reg-
21 ulation for the suspension and debarment of Federal
22 contractors.

23 (d) PENALTIES FOR FAILURE TO REPORT.—

24 (1) OFFENSE.—It shall be unlawful for a per-
25 son to knowingly fail to make a representation or

1 certification required under paragraph (1) or (2), re-
2 spectively, of subsection (a).

3 (2) PENALTY.—

4 (A) IN GENERAL.—A violation of para-
5 graph (1) shall be referred by any executive
6 agency with knowledge of such violation for sus-
7 pension and debarment proceedings, to be con-
8 ducted by the suspension and debarment official
9 of the Department of Labor.

10 (B) LOSS TO GOVERNMENT.—A violation
11 of paragraph (1) shall be subject to the pen-
12 alties under sections 3729 through 3733 of title
13 31, United States Code (commonly known as
14 the “False Claims Act”).

15 (e) ANNUAL REPORTS TO CONGRESS.—For each cal-
16 endar year beginning with the first calendar year that be-
17 gins after the date that is 2 years after the date of enact-
18 ment of this Act, the Secretary of Labor shall submit to
19 the appropriate committees of Congress, and make pub-
20 licly available on a public website, a report that includes—

21 (1) the number of entities, offerors, subcontractors,
22 or service providers on the list under subsection
23 (c) for the year of the report;

1 (2) the number of entities, offerors, subcontractors,
2 tors, or service providers that agreed to take correc-
3 tive measures under subsection (b) for such year;

4 (3) the amount of the applicable contracts for
5 the entities, offerors, subcontractors, or service pro-
6 viders described in paragraph (1) or (2); and

7 (4) an assessment of the effectiveness of the
8 implementation of this Act for such year.

9 **SEC. 4. GAO STUDY.**

10 Not later than 2 years after the date of enactment
11 of this Act, the Comptroller General of the United States
12 shall conduct a study on the prevalence of violations of
13 section 12 of the Fair Labor Standards Act of 1938 (29
14 U.S.C. 212), relating to child labor, among Federal con-
15 tractors and submit to the appropriate committees of Con-
16 gress a report with the findings of the study.

17 **SEC. 5. USE OF CIVIL PENALTIES COLLECTED FOR CHILD**
18 **LABOR LAW VIOLATIONS.**

19 Section 16(e)(5) of the Fair Labor Standards Act of
20 1938 (29 U.S.C. 216(e)(5)) is amended—

21 (1) by striking “Except” and all that follows
22 through “sums” and inserting “Sums”; and

23 (2) by striking the second sentence.

1 SEC. 6. NO ADDITIONAL FUNDS.

2 No additional funds are authorized to be appro-
3 priated for the purpose of carrying out this Act.