

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—116th Cong., 1st Sess.**

**S. 1309**

To identify and combat corruption in countries, to establish a tiered system of countries with respect to levels of corruption by their governments and their efforts to combat such corruption, and to assess United States assistance to designated countries in order to advance anti-corruption efforts in those countries and better serve United States taxpayers.

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. CARDIN

Viz:

1 Strike all after the enacting clause and insert the fol-  
2 lowing:

3 **SECTION 1. DEFINITIONS.**

4 In this Act:

5 (1) **CORRUPT ACTOR.**—The term “corrupt  
6 actor” means—

7 (A) any foreign person or entity that is a  
8 government official or government entity re-

1           sponsible for, or complicit in, an act of public  
2           corruption; and

3                   (B) any company, in which a person or en-  
4           tity described in subparagraph (A) has a sig-  
5           nificant stake, which is responsible for, or  
6           complicit in, an act of public corruption.

7           (2) FOREIGN ASSISTANCE.—The term “foreign  
8           assistance” means assistance made available  
9           under—

10                   (A) the Foreign Assistance Act of 1961  
11           (22 U.S.C. 2151 et seq.); or

12                   (B) the Arms Export Control Act (22  
13           U.S.C. 2751 et seq.).

14           (3) GRAND CORRUPTION.—The term “grand  
15           corruption” means public corruption committed at a  
16           high level of government that—

17                   (A) distorts policies or the central func-  
18           tioning of the country; and

19                   (B) enables leaders to benefit at the ex-  
20           pense of the public good.

21           (4) PETTY CORRUPTION.—The term “petty cor-  
22           ruption” means the unlawful exercise of entrusted  
23           public power for private gain by low- or mid-level  
24           public officials in their interactions with ordinary

1 citizens, including by bribery, nepotism, fraud, or  
2 embezzlement.

3 (5) PUBLIC CORRUPTION.—The term “public  
4 corruption” means the unlawful exercise of entrusted  
5 public power for private gain, including by bribery,  
6 nepotism, fraud, or embezzlement.

7 **SEC. 2. SENSE OF CONGRESS.**

8 It is the sense of Congress that—

9 (1) it is in the foreign policy interest of the  
10 United States to help other countries promote good  
11 governance and combat public corruption, particu-  
12 larly grand corruption;

13 (2) multiple departments and agencies across  
14 the United States Government operate programs  
15 that promote good governance in foreign countries  
16 and enhance foreign countries’ ability to combat  
17 public corruption;

18 (3) the Department should promote coordina-  
19 tion among programs described in paragraph (2) to  
20 improve their effectiveness and efficiency; and

21 (4) the Department should identify areas in  
22 which United States efforts to help other countries  
23 promote good governance and combat public corrup-  
24 tion could be enhanced.

1 **SEC. 3. ANNUAL REPORT.**

2 The Secretary shall annually submit to the appro-  
3 priate congressional committees and publish, on a publicly  
4 accessible website, a report that—

5 (1) groups foreign countries, by quintile, based  
6 on—

7 (A) the World Bank Worldwide Govern-  
8 ance Indicator on Control of Corruption; and

9 (B) the World Bank Worldwide Govern-  
10 ance Indicator on Voice and Accountability;

11 (2) adds context and commentary, as appro-  
12 priate, to the World Bank Worldwide Governance  
13 Indicator on Control of Corruption and the World  
14 Bank Worldwide Governance Indicator on Voice and  
15 Accountability groupings under paragraph (1), as  
16 appropriate, based on the factors outlined in section  
17 4;

18 (3) describes, based on the World Bank World-  
19 wide Governance Indicators and the factors outlined  
20 in section 4, the status of foreign governments' ef-  
21 forts to combat public corruption; and

22 (4) describes the status of each foreign coun-  
23 try's active membership in voluntary multi-sectoral  
24 global governance initiatives as evidence of the coun-  
25 try's government-led efforts to combat public corrup-  
26 tion.

1 **SEC. 4. ADDITIONAL FACTORS FOR ASSESSING GOVERN-**  
2 **MENT EFFORTS TO COMBAT PUBLIC COR-**  
3 **RUPTION.**

4 (a) **FACTORS FOR ASSESSING GOVERNMENT EF-**  
5 **FORTS TO COMBAT PUBLIC CORRUPTION.**—In assessing  
6 a government’s efforts to combat public corruption, the  
7 Secretary should consider, to the extent reliable informa-  
8 tion is available—

9 (1) whether the country—

10 (A) has enacted laws and established gov-  
11 ernment structures, policies, and practices that  
12 prohibit public corruption, including grand cor-  
13 ruption and petty corruption; and

14 (B) enforces such laws through a fair judi-  
15 cial process;

16 (2) whether the country prescribes appropriate  
17 punishment for grand corruption that is commensu-  
18 rate with the punishment prescribed for serious  
19 crimes;

20 (3) whether the country prescribes appropriate  
21 punishment for petty corruption that provides a suf-  
22 ficiently stringent deterrent and adequately reflects  
23 the nature of the offense;

24 (4) the extent to which the government of the  
25 country—

1 (A) vigorously investigates and prosecutes  
2 acts of public corruption; and

3 (B) convicts and sentences persons respon-  
4 sible for such acts that take place wholly or  
5 partly within such country, including, as appro-  
6 priate, requiring the incarceration of individuals  
7 convicted of such acts;

8 (5) the extent to which the government of the  
9 country vigorously investigates, prosecutes, convicts,  
10 and sentences public officials who participate in or  
11 facilitate public corruption, including nationals of  
12 the country who are deployed in foreign military as-  
13 signments, trade delegations abroad, or other similar  
14 missions who engage in or facilitate severe forms of  
15 public corruption;

16 (6) the extent to which the government of the  
17 country has adopted measures to prevent public cor-  
18 ruption, such as measures to inform and educate the  
19 public, including potential victims, about the causes  
20 and consequences of public corruption;

21 (7) steps taken by the government of the coun-  
22 try to prohibit government officials from partici-  
23 pating in, facilitating, or condoning public corrup-  
24 tion, including the investigation, prosecution, and  
25 conviction of such officials;

1           (8) the extent to which the country government  
2 provides access, or, as appropriate, makes adequate  
3 resources available, to civil society organizations and  
4 other institutions to combat public corruption, in-  
5 cluding reporting, investigating, and monitoring;

6           (9) the extent to which an independent judici-  
7 ary or judicial body in the country is responsible for,  
8 and effectively capable of, deciding public corruption  
9 cases impartially, on the basis of facts and in ac-  
10 cordance with the law, without any improper restric-  
11 tions, influences, inducements, pressures, threats, or  
12 interferences (direct or indirect) from any source or  
13 for any reason;

14           (10) the extent to which the government of the  
15 country is assisting in international investigations of  
16 transnational public corruption networks and in  
17 other cooperative efforts to combat grand corrup-  
18 tion, including cooperating with the governments of  
19 other countries to extradite corrupt actors;

20           (11) the extent to which the government of the  
21 country recognizes the rights of victims of public  
22 corruption, ensures their access to justice, and takes  
23 steps to prevent victims from being further victim-  
24 ized or persecuted by corrupt actors, government of-  
25 ficials, or others;

1           (12) the extent to which the government of the  
2           country refrains from prosecuting legitimate victims  
3           of public corruption or whistleblowers due to such  
4           persons having assisted in exposing public corrup-  
5           tion, and refrains from other discriminatory treat-  
6           ment of such persons; and

7           (13) such other information relating to public  
8           corruption as the Secretary considers appropriate.

9 **SEC. 5. DESIGNATION OF EMBASSY ANTI-CORRUPTION**  
10 **POINTS OF CONTACT.**

11           (a) DESIGNATED COUNTRIES.—The Secretary shall  
12 annually designate an anti-corruption point of contact at  
13 the United States Mission to each country that he or she  
14 determines is in need of such a point of contact.

15           (b) POINTS OF CONTACT DUTIES.—Each designated  
16 anti-corruption point of contact shall be responsible for co-  
17 ordinating a whole-of-government approach to combating  
18 public corruption in his or her posted country among rel-  
19 evant United States Government departments or agencies  
20 with a presence in that country, including, as applicable,  
21 the Department of State, the Department of Justice, the  
22 Department of the Treasury, the Department of Home-  
23 land Security, and USAID.

1 (c) TRAINING.—The Secretary shall develop and im-  
2 plement appropriate training for designated anti-corrup-  
3 tion points of contact.

4 (d) INTERNAL REPORTING.—Each anti-corruption  
5 point of contact shall submit an annual report to the Sec-  
6 retary regarding anti-corruption activities within his or  
7 her posted country that—

8 (1) evaluates the effectiveness of current pro-  
9 grams that promote good governance and have an  
10 effect of combating public corruption; and

11 (2) identifies areas in which the United States  
12 Government’s approach could be enhanced, including  
13 specific programs that could be used to enhance the  
14 whole-of-government approach.

15 **SEC. 6. INTERAGENCY WORKING GROUP.**

16 (a) IN GENERAL.—The Secretary shall have primary  
17 responsibility for managing a whole-of-government effort  
18 to improve coordination among United States Government  
19 departments and agencies that have a role in promoting  
20 good governance in foreign countries and enhancing for-  
21 eign countries’ ability to combat public corruption.

22 (b) TASK FORCE.—

23 (1) INITIAL MEETING.—Not later than 180  
24 days after the date of the enactment of this Act, the  
25 Secretary shall establish and convene an initial

1 meeting of an interagency task force, which shall be  
2 composed of—

3 (A) representatives appointed by the Presi-  
4 dent from the departments and agency listed in  
5 section 5(b); and

6 (B) representatives from any other United  
7 States Government departments or agencies, as  
8 determined by the Secretary.

9 (2) ADDITIONAL MEETINGS.—The task force  
10 described in paragraph (1) shall meet not less fre-  
11 quently than twice per year.

12 (c) TASK FORCE DUTIES.—The task force estab-  
13 lished pursuant to subsection (b) shall—

14 (1) assist the Secretary in managing the whole-  
15 of-government effort described in subsection (a);

16 (2) evaluate, on a general basis, the effective-  
17 ness of current programs that have an effect of com-  
18 bating public corruption;

19 (3) identify general areas in which the United  
20 States Government's approach could be enhanced;  
21 and

22 (4) identify specific programs for specific coun-  
23 tries that could be used to enhance the whole-of-gov-  
24 ernment approach.

1 **SEC. 7. TRANSPARENCY AND ACCOUNTABILITY.**

2 (a) IN GENERAL.—Not later than 60 days after pub-  
3 lishing the report required under section 3, and prior to  
4 obligation by any United States agency of foreign assist-  
5 ance to the government of a country ranked in the lowest  
6 2 quintiles in the World Bank Worldwide Governance In-  
7 dicator on Control of Corruption grouping described in  
8 section 3(1), the Secretary, in coordination with the Ad-  
9 ministrator of USAID, as appropriate, shall—

10 (1) conduct a corruption risk assessment and  
11 create a corruption mitigation strategy for all United  
12 States foreign assistance programs to that country;

13 (2) require the inclusion of anti-corruption  
14 clauses for all foreign assistance contracts, grants,  
15 and cooperative agreements, which allow for the ter-  
16 mination of the contract, grant, or cooperative  
17 agreement without penalty if credible indicators of  
18 public corruption are discovered;

19 (3) require the inclusion of appropriate  
20 clawback clauses for all foreign assistance that has  
21 been misappropriated through corruption;

22 (4) require the appropriate disclosure to the  
23 United States Government, in confidential form, if  
24 necessary, of the beneficial ownership of contractors,  
25 subcontractors, grantees, cooperative agreement par-  
26 ticipants, and other organizations receiving funding

1 from the United States Government for foreign as-  
2 sistance programs; and

3 (5) establish a mechanism for investigating alle-  
4 gations of misappropriated foreign assistance funds  
5 or equipment.

6 (b) EXCEPTIONS AND WAIVER.—

7 (1) EXCEPTIONS.—Subsection (a) shall not  
8 apply to humanitarian assistance, disaster assist-  
9 ance, or assistance to combat corruption.

10 (2) WAIVER.—The Secretary may waive the re-  
11 quirement to delay foreign assistance under sub-  
12 section (a) if the Secretary certifies to the appro-  
13 priate congressional committees that such waiver is  
14 important to the national security interests of the  
15 United States.

16 **SEC. 8. RESOURCES AND REPORTING REQUIREMENTS.**

17 (a) ANNUAL REPORT.—

18 (1) IN GENERAL.—Not later than one year  
19 after the date of the enactment of this Act, and an-  
20 nually thereafter, the Secretary shall submit a report  
21 to the appropriate congressional committees that  
22 outlines the resources needed to meet the objectives  
23 of this Act, including—

24 (A) personnel needs; and

1 (B) a description of the bureaucratic struc-  
2 ture of the offices within the Department and  
3 USAID that are engaged in anti-corruption ac-  
4 tivities.

5 (b) ANNUAL BRIEFING.—

6 (1) IN GENERAL.—Not later than one year  
7 after the date of the enactment of this Act, and an-  
8 nually thereafter, the Secretary shall brief the ap-  
9 propriate congressional committees on the implemen-  
10 tation of this Act, including—

11 (A) the designation of anti-corruption  
12 points of contact for countries under section  
13 5(a);

14 (B) the training implemented under sec-  
15 tion 5(c);

16 (C) the reports received from anti-corrup-  
17 tion points of contact under section 5(d);

18 (D) the management of the whole-of-gov-  
19 ernment effort to improve coordination under  
20 section 6(a);

21 (E) the establishment of the task force  
22 under section 6(b); and

23 (F) the activities of the task force under  
24 section 6(c).

1           (2) FORM OF BRIEFING.—The briefings under  
2           subsection (b) shall be conducted on an in-person  
3           basis to members or staff of the appropriate con-  
4           gressional committees. Portions of the briefings may  
5           be conducted in a classified setting, as needed.

6           (c) ONLINE PLATFORM.—The Secretary and the  
7           USAID Administrator shall consolidate existing reports  
8           with anti-corruption components into one online, public  
9           platform, which shall—

10           (1) include—

11                   (A) the Human Rights Report;

12                   (B) the Fiscal Transparency Report;

13                   (C) the Investment Climate Statement re-  
14           ports;

15                   (D) the International Narcotics Control  
16           Strategy Report; and

17                   (E) any other relevant public reports;

18           (2) link to third-party indicators and compli-  
19           ance mechanisms used by the United States Govern-  
20           ment to inform policy and programming, such as—

21                   (A) the International Finance Corpora-  
22           tion’s Doing Business surveys;

23                   (B) the International Budget Partnership’s  
24           Open Budget Index; and

1 (C) multilateral peer review anti-corruption  
2 compliance mechanisms, such as the  
3 Organisation for Economic Co-operation and  
4 Development's Working Group on Bribery in  
5 International Business Transactions and the  
6 United Nations Convention Against Corruption,  
7 done at New York October 31, 2003, to further  
8 highlight expert international views on country  
9 challenges and country efforts.

10 (d) TRAINING.—The Secretary and the USAID Ad-  
11 ministrator shall incorporate anti-corruption components  
12 into existing Foreign Service and Civil Service training  
13 courses—

14 (1) to increase the ability of Department and  
15 USAID personnel to support anti-corruption as a  
16 foreign policy and development priority; and

17 (2) to strengthen their ability to design, imple-  
18 ment, and evaluate more effective anti-corruption  
19 programming around the world, including enhancing  
20 skills to better evaluate and mitigate public corrup-  
21 tion risks in assistance programs.