

H. B. 3076

(By Delegates Boggs, Paxton, Caputo, D. Poling, Hamilton, Diserio, Swartzmiller, White, Ellem, Fleischauer and Mr. Speaker (Mr. Thompson)

[Introduced March 25, 2013; referred to the Committee on the Judiciary then Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-16-1, §21-16-2 and §21-16-3, all relating to requiring the use of American manufactured goods in the construction, alteration or repair of public buildings and public works; definitions.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §21-16-1, §21-16-2 and §21-16-3, all to read as follows:

**ARTICLE 16. WEST VIRGINIA BUY AMERICAN ACT.**

**§21-16-1. Short title.**

This article shall be known as the West Virginia Buy American Act of 2013.

**§21-16-2. Use of American materials.**

(a) Notwithstanding any other provision of law, each contract for the construction, reconstruction, alteration, repair,

1 improvement or maintenance of a public building or public works  
2 made by a public agency shall contain a provision that the  
3 manufactured goods used or supplied in the performance of the  
4 contract or any subcontract thereto shall be manufactured in the  
5 United States.

6 (b) Each public agency shall call for the use of United States  
7 origin manufactured goods in the design and engineering  
8 specifications for the projects for public buildings and public  
9 works.

10 (c) The provisions of subsections (a) and (b) of this section  
11 do not apply in any case or category of cases in which the  
12 Department of Labor finds:

13 (1) That their application to the procurement of a  
14 manufactured good would be inconsistent with the public interest;

15 (2) That a manufactured good sought for procurement is not  
16 produced in the United States in sufficient and reasonably  
17 available quantities and of a satisfactory quality;

18 (3) That the cost of a manufactured good manufactured in the  
19 United States is unreasonable;

20 (4) That a manufactured good is included on the applicable  
21 annual lists of manufactured goods that have been identified by the  
22 Department of Labor as not produced in the United States in  
23 sufficient quantities in the previous calendar year;

24 (5) That a manufactured good is required for completion of the

1 project and its procurement was unplanned or is de minimis;

2 (6) That the equipment, materials or supplies are necessary  
3 for the completion of the project but are not permanently  
4 incorporated or attached to the final project; or

5 (7) That the cost of the total project for the construction,  
6 reconstruction, alteration, repair, improvement or maintenance of  
7 a public building or public works is less than \$1 million.

8 (d) The Department of Labor shall implement procedures to  
9 allow a reasonable amount of time for public review and comment on  
10 a requested waiver under subsection (c) of this section before  
11 making a finding based on the request and shall publish a detailed  
12 justification for any waiver granted.

13 (e) Annual lists of items availability and nonavailability:

14 (1) The Department of Labor shall develop and reissue annually  
15 thereafter and publish:

16 (A) A list of manufactured goods deemed to qualify as  
17 manufactured in the Untied States for purposes of this article and  
18 required under subsection (b) to be specified in the design and  
19 engineering specifications in any project for the construction,  
20 reconstruction, alteration, repair, improvement or maintenance of  
21 a project for public buildings and public works;

22 (B) A list of manufactured goods found not to be available, or  
23 not known to be available based on existing information available,  
24 pursuant to subdivision (2), subsection (c) of this section in the

1 previous calendar year.

2 (2) Safe harbor:

3 (A) Any person who uses or supplies foreign origin  
4 manufactured goods under a contract subject to the requirements of  
5 this section is not in violation of this section if that person  
6 reasonably relied upon the finding of unavailability included in  
7 the Department of Labor's most recent published annual list.

8 (B) Any person who uses or supplies foreign origin  
9 manufactured goods under a contract subject to the requirements of  
10 this section is not in violation of this section until the list  
11 provided for under paragraph (A), subdivision (1), subsection (e)  
12 has been developed.

13 (3) In developing the lists or contracting for the development  
14 of the lists, the Department of Labor shall implement procedures to  
15 promote public input. In doing so, the Department of Labor shall:

16 (A) Publish the lists on the publicly accessible Internet  
17 website of the state and in the West Virginia Purchasing Bulletin;

18 (B) Make the lists available annually for public review and  
19 comment not less than thirty days prior to publication;

20 (C) Take into account all comments received and resolve  
21 disputes raised during the public comment period; and

22 (D) Invite public comments as to items' availability for which  
23 no determination on availability has been made.

24 (4) (A) The Department of Labor shall develop the lists over

1 a period not to exceed three years, provided that the manufactured  
2 goods most commonly used in such projects for the construction,  
3 reconstruction, alteration, repair, improvement or maintenance of  
4 a public building or public works and the manufactured goods  
5 determined to be available are included in the first publication of  
6 the list; and

7 (B) That a public agency, in consultation with the Department  
8 of Labor, shall have the discretion to, on an ad hoc basis, deviate  
9 from the lists when a prototype manufactured good not manufactured  
10 in the United States is incorporated for testing purposes.

11 (C) The Department of Labor shall develop a process to  
12 annually review and amend the lists required under subdivision (1)  
13 of this subsection in accordance with the requirements for public  
14 input under subdivision (3) of this subsection.

15 (f) Intentional Violations. -- A person, as defined in  
16 subsection (a), section three, article eleven, chapter five of this  
17 code, shall be subject to debarment or suspension provided for  
18 under article three of chapter five-a of this code if it has been  
19 determined by a court or federal or state agency that the person  
20 intentionally:

21 (1) Affixed a label bearing a "Made in America" inscription,  
22 or any inscription with the same meaning, to any manufactured good  
23 used in projects to which this section applies that was not made in  
24 the United States;

1 (2) Represented that any manufactured good used in projects to  
2 which this section applies that was not produced in the United  
3 States, was produced in the United States;

4 (3) Represented that a manufactured good was or was not  
5 manufactured in the United States for purposes of the Department of  
6 Labor's determinations as to a manufactured good's availability and  
7 the development of the lists provided in subsection (e) of this  
8 section; or

9 (4) Violated any portion of this law.

10 (g) This section shall be applied in a manner consistent with  
11 the state's obligations under any applicable international  
12 agreements in force or any agreement to which the state heretofore  
13 obligates itself pertaining to government procurement.

14 **§21-16-3. Definitions.**

15 For the purposes of this article, the following words have the  
16 meaning ascribed to them in this section:

17 (1) "Public agency" means the State of West Virginia, its  
18 departments, agencies, boards, commissions, and institutions, and  
19 all units and political subdivisions thereof, including local  
20 school districts;

21 (2) "Manufactured in the United States" means:

22 (A) In the case of a manufactured good, a good will be  
23 considered manufactured in the United States if:

24 (i) All the manufacturing processes for the manufactured good

1 take place in the United States; and

2 (ii) The origin of a manufactured goods's components or  
3 subcomponents meets a minimum level of domestic content, as  
4 determined by the Department of Labor; and

5 (B) The Department of Labor shall, prior to Fiscal Year 2018,  
6 make a recommendation to the Legislature as to whether the  
7 preference provided in section two of this article may be  
8 increased for offers offering to supply manufactured goods that are  
9 predominantly comprised of components or subcomponents mined,  
10 produced or manufactured in the United States.

11 (3) "Manufactured good" means:

12 (A) An article, material, or supply brought to a construction  
13 site for incorporation into a public building or public work. The  
14 term should also include those items brought to the site  
15 preassembled from articles, materials or supplies; and

16 (B) Articles, materials or supplies acquired for public use.

17 (4) "Public Buildings and Public Works" means any structure,  
18 building, highway, waterway, pipeline, treatment works, utility  
19 system, street, bridge, transit system, airport or other  
20 betterment, work or improvement whether of a permanent or temporary  
21 nature and whether for governmental or proprietary use. The term  
22 includes, but is not limited to, any tanks, culverts or pipelines,  
23 railway, street railway, subway, elevated and monorail passenger or  
24 passenger and rail rolling stock, self-propelled cars, gallery

1 cars, locomotives, passenger buses, wires, poles and equipment for  
2 electrification of a transit system, rails, tracks, roadbeds,  
3 guideways, elevated structures, buildings, schools, hospitals,  
4 stations, terminals, docks, shelters and repairs to any of the  
5 foregoing.

6 (5) "United States" means the United States of America and  
7 includes all territory, continental or insular, subject to the  
8 jurisdiction of the United States.

NOTE: The purpose of this bill is to require the use of American manufactured goods in the construction, alteration or repair of public buildings and public works.

This article is new; therefore, it has been completely underscored.