

1 (a) Notwithstanding any other provision of law, each contract
2 for the construction, reconstruction, alteration, repair,
3 improvement or maintenance of a public building or public works
4 made by a public agency shall contain a provision that the
5 manufactured goods used or supplied in the performance of the
6 contract or any subcontract thereto shall be manufactured in the
7 United States.

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

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

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

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

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

22 (4) That a manufactured good is included on the applicable
23 annual lists of manufactured goods that have been identified by the
24 Department of Labor as not produced in the Untied States in

1 sufficient quantities in the previous calendar year;

2 (5) That a manufactured good is required for completion of the
3 project and its procurement was unplanned or is de minimis;

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

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

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

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

16 (1) The Department of Labor shall develop and reissue annually
17 thereafter and publish:

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

24 (B) A list of manufactured goods found not to be available, or

1 not known to be available based on existing information available,
2 pursuant to subdivision (2), subsection (c) of this section in the
3 previous calendar year.

4 (2) Safe harbor:

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

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

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

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

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

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

24 (D) Invite public comments as to items' availability for which

1 no determination on availability has been made.

2 (4) (A) The Department of Labor shall develop the lists over
3 a period not to exceed three years, provided that the manufactured
4 goods most commonly used in such projects for the construction,
5 reconstruction, alteration, repair, improvement or maintenance of
6 a public building or public works and the manufactured goods
7 determined to be available are included in the first publication of
8 the list; and

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

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

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

23 (1) Affixed a label bearing a "Made in America" inscription,
24 or any inscription with the same meaning, to any manufactured good

1 used in projects to which this section applies that was not made in
2 the United States;

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

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

11 (4) Violated any portion of this law.

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

16 **§21-16-3. Definitions.**

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

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

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

24 (A) In the case of a manufactured good, a good will be

1 considered manufactured in the United States if:

2 (i) All the manufacturing processes for the manufactured good
3 take place in the United States; and

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

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

13 (3) "Manufactured good" means:

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

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

19 (4) "Public Buildings and Public Works" means any structure,
20 building, highway, waterway, pipeline, treatment works, utility
21 system, street, bridge, transit system, airport or other
22 betterment, work or improvement whether of a permanent or temporary
23 nature and whether for governmental or proprietary use. The term
24 includes, but is not limited to, any tanks, culverts or pipelines,

1 railway, street railway, subway, elevated and monorail passenger or
2 passenger and rail rolling stock, self-propelled cars, gallery
3 cars, locomotives, passenger buses, wires, poles and equipment for
4 electrification of a transit system, rails, tracks, roadbeds,
5 guideways, elevated structures, buildings, schools, hospitals,
6 stations, terminals, docks, shelters and repairs to any of the
7 foregoing.

8 (5) "United States" means the United States of America and
9 includes all territory, continental or insular, subject to the
10 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, strike-throughs and
underscoring have been omitted.