

The Committee on Industry and Labor moves to amend the bill by striking out everything after the enacting clause, and inserting in lieu thereof the following:

"That the Code of West Virginia, 1931, be amended by adding thereto five new sections, designated § 5-22-3, § 5-22-4, § 5-22-5, § 5-22-6 and § 5-22-7, all to read as follows:

**ARTICLE 22. Government Construction Contracts.**

**§5-22-3. Definitions.**

As used in this article, unless the content clearly requires a different meaning:

(1) "Item(s)" or "Item(s) of goods or equipment" means:

(A) Commodities, supplies, materials, equipment and any other items provided for in the contract that will remain affixed to the real property, or buildings constructed thereon, but does not mean a vendor's equipment that does not remain with or otherwise become the property of the state; and

(B) An individual item, or collection of identical items, which cost \$10,000 or more, but in the case of a collection of identical items shall not include any subsequent or extra purchases of the identical items for less than \$10,000.

(2) "Manufactured in the United States" means that the item is produced in the United States, manufactured in the United States or assembled in the United States from component parts or materials,

regardless of origin.

(3) "Public agency" or "public entity" means the State of West Virginia, its departments, agencies, boards, commissions, and institutions, and all units and political subdivisions thereof, including local school districts;

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

**§5-22-4. Use of items manufactured in the United States.**

(a) In any instance that a contract subject to the bidding requirements of this article is estimated to exceed \$500,000 all solicitations requesting bids, and any subsequent contracts, shall specify and require that any item of goods or equipments used or supplied in the performance of the contract or any subcontract thereto shall be manufactured in the United States.

(b) Each public agency shall call for the use of items of goods or equipments manufactured in the United States in the design and engineering specifications for the projects to be performed under contracts subject to the bidding requirements of this article.

(c) Notwithstanding any provisions of subsections (a) and (b) of this section, any person responding to a solicitation for bids or designs may apply, with sufficient evidence in support of their application, to the public entity accepting public contract bids for a waiver to use foreign goods and equipment under the following

conditions:

(1) The specified goods and equipment are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements;

(2) The item of goods or equipment manufactured in the United States exceed the cost of comparable foreign-made goods or equipment by more than ten percent of the cost of that item; or

(3) In the case of a repair or maintenance project, the specified items of goods or equipment have already been installed during a previous project and replacing those items with items manufactured in the United States would create an unreasonable hardship.

(d) The public entity accepting public contract bids shall:

(1) Implement procedures for issuance of a final decision on waiver requests pursuant to subsection (c); and

(2) Shall report its final decision with findings to the Division of Labor.

(e) The public entity accepting public contract bids shall have authority to request that vendors provide, within 5 business days of the request, any documentation that the contracting authority deems necessary to verify compliance with this section;

(f) No bid shall be approved that does not comply with the requirements of this section.

**§5-22-5. Annual lists of items availability and nonavailability**

(a) The Division of Labor shall develop and publish at least

annually, for use by public entities accepting public contract bids, the following:

(1) A list of items of goods or equipments deemed to qualify as manufactured in the United States for purposes of this article;

(2) A list of items of goods or equipments which are not manufactured in the United States and for which a waiver can be granted pursuant to subsection (c) of section 4 of this article.

(b) The annual lists developed by the Division of Labor are for guidance to persons submitting bids or designs, and a person can not be penalized under section 6 of this article for relying on these annual lists, however the public entity accepting public contract bids has final authority to grant or deny waivers pursuant to subsection (d) of section 4 of this article.

(c) In developing the lists or contracting for the development of the lists, the Division of Labor shall implement procedures to promote public input. In doing so, the Division of Labor shall annually:

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

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

(3) Invite public comments as to items' availability for which no determination on availability has been made; and

(4) Publish the lists on the publicly accessible Internet website of the state and in the West Virginia Purchasing Bulletin.

(d) (1) The Division of Labor shall develop the first annual lists over a period not to exceed three years, provided that the items of goods or equipments most commonly used in such projects to be performed by contracts subject to the bidding requirements of this article which are determined to be manufactured in the United States are included in the first publication of the annual list; and

(2) The Division of Labor shall develop a process to annually review and amend the lists required under section in accordance with the requirements for public input under subsection (c) of this section.

**§5-22-6. Violations and Enforcement.**

(a) Intentional Violations. -- Any person who has responded to a solicitation for bids or designs shall be subject to the conditions set out in subsection (b) if it is determined by the Division of Labor that the person intentionally:

(1) Represented that any item of goods or equipment used in projects to which this section applies were not manufactured in the United States, when in fact the item was manufactured in the United States; or

(2) Represented that any item of goods or equipment used in projects to which this section applies were manufactured in the United States, when in fact the item was not manufactured in the United States.

(b) If a person is found to have committed a violation as

described in subsection (a) of this section, they:

(1) On first offense, shall be suspended from bidding on any other state construction projects for a period of ninety days; and

(2) On second offense, shall be suspended from bidding on any other state construction projects for a period of one year; and

(3) On third or more offenses, shall be subject to debarment provided for under article three of chapter five-a of this code.

(c) The Division of Labor shall have authority to review all projects subject to the requirements of this article for any violations as described in subsection (a) of section, and:

(1) Upon a determination that a person has violated the provision of subsection (a) of this section, the Division of Labor shall issue a cease and desist order requiring such person to immediately cease all practices in violation of this section; and

(2) After affording an opportunity for a hearing, the Division of Labor shall issue a final order indicating a violation of this section, and publish the final order in sufficient manner to inform all public entities accepting public contract bids of the person's status with regards to suspension or disbarment.

#### **§5-22-7. Rules.**

(a) A public entity accepting public contract bids shall adopt rules, applicable to the bidding process for that public entity, as are necessary to carry out the provisions of this article pursuant to the provisions the state administrative procedures act.

(b) The Division of Labor shall adopt rules as are necessary

to carry out their responsibilities under this article pursuant to the provisions of article three, chapter twenty-nine-a [§§ 29A-3-1 et seq.] of this code.

(c) The Division of Labor or any public entity accepting public contract bids may disseminate educational or any other materials designed to assist persons with regards to compliance to the provisions of this article.