

1 **H. B. 4263**

2
3 (By Delegates Barker, Caputo, Martin, Hamilton,
4 Butcher and Stowers)

5
6 [Introduced January 23, 2012; referred to the
7 Committee on the Judiciary then Finance.]

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new chapter, designated §5I-1-1, §5I-1-2,
12 §5I-1-3, §5I-1-4, §5I-1-5, §5I-1-6 and §5I-1-7, all relating
13 to creating the "Procurement of Domestic Products Act;"
14 requiring state agencies to purchase products manufactured in
15 the United States; permitting waivers; defining terms;
16 establishing penalties; and granting rule-making authority.

17 *Be it enacted by the Legislature of West Virginia:*

18 That the Code of West Virginia, 1931, as amended, be amended
19 by adding thereto a new chapter, designated §5I-1-1, §5I-1-2, §5I-
20 1-3, §5I-1-4, §5I-1-5, §5I-1-6 and §5I-1-7, all to read as follows:

21 **CHAPTER 5I. PROCUREMENT OF DOMESTIC PRODUCTS ACT.**

22 **ARTICLE 1. PROCUREMENT OF DOMESTIC PRODUCTS.**

23 **§5I-1-1. Short title.**

24 This chapter may be cited as the "Procurement of Domestic

1 Products Act."

2 **§5I-1-2. Definitions.**

3 As used in this chapter, the following terms have the meanings
4 ascribed to them in this section, unless the context in which the
5 term is used clearly requires another meaning:

6 (1) "Manufactured in the United States" means in the case of
7 assembled articles, materials or supplies, components,
8 subcomponents, parts and equipment used in manufacturing, final
9 assembly, processing, packaging, testing or other process that adds
10 value, quality or reliability occurs in the United States.

11 (2) "Procured products" means assembled articles, materials,
12 goods, equipment or supplies purchased by a state agency.

13 (3) "State agency" or "agency" means the State of West
14 Virginia, its departments, agencies, boards, commissions, and
15 institutions, and all units and political subdivisions, including
16 local school districts.

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

20 **§5I-1-3. Use of American products.**

21 (a) Each purchasing agency making purchases of procured
22 products shall promote the purchase of and give preference to
23 manufactured articles, materials and supplies that have been

1 manufactured in the United States. Procured products manufactured
2 in the United States shall be specified and purchased unless the
3 purchasing agency determines that the procured products are not
4 manufactured in the United States in reasonably available
5 quantities.

6 (b) If the state agency determines that it is necessary to
7 waive subsection (a) of this section the agency shall, before the
8 date on which the finding takes effect:

9 (1) Publish in the State Register a detailed written
10 justification as to why the waiver is needed;

11 (2) Consider all comments received during a thirty-day comment
12 period in evaluating the waiver requests; and

13 (3) Provide notice of the finding and an opportunity for
14 public comment on such finding for a reasonable period of time not
15 to exceed fifteen days.

16 (c) In the event a state agency grants such a waiver, the
17 agency shall work with the other relevant state agencies in
18 creating a plan to ensure a domestic supply will be available in
19 the future.

20 **§5I-1-4. Contracts; prequalification.**

21 Each contract awarded by a state agency on or after the
22 effective date of this chapter through the use of the preference
23 shall contain the contractor's certification that procured products

1 provided pursuant to the contract or a subcontract shall be
2 manufactured in the United States.

3 **§5I-1-5. Federal and state law.**

4 (a) Nothing in this chapter is intended to contravene any
5 existing treaty, law, agreement or regulation of the United States.
6 Contracts entered into in accordance with any treaty, law,
7 agreement or regulation of the United States shall not be in
8 violation of this act to the extent of that accordance. No
9 preference shall be granted under this chapter if that preference
10 would contravene any treaty, law, agreement, or regulation of the
11 United States.

12 (b) The preference required by this chapter is in addition to
13 any other preference afforded by state law.

14 **§5I-1-6. Penalties.**

15 If a contractor is awarded a contract through the use of a
16 preference under this chapter and knowingly supplies procured
17 products under that contract that are not manufactured in the
18 United States, then: (1) The contractor is barred from obtaining
19 any state contract for a period of five years after the violation
20 is discovered by the state agency; (2) the state agency may void
21 the contract; and (3) the state agency may recover damages in a
22 civil action in an amount three times the value of the preference.

23 **§5I-1-7. Rulemaking.**

1 All state agencies shall propose rules for legislative
2 approval pursuant to article three, chapter twenty-nine-a of this
3 code to implement the requirements of this section.

NOTE: The purpose of this bill is to create the "Procurement of Domestic Products Act." The bill requires state agencies to purchase products manufactured in the United States and permits waivers. The bill defines terms. The bill establishes penalties. The bill also grants rule-making authority.

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