

1 **Senate Bill No. 381**

2 (By Senators Miller, Yost, Klempa, Wills, Laird, D. Facemire,
3 Chafin, Foster, Kessler (Mr. President), Plymale and Jenkins)

4 _____
5 [Introduced January 23, 2012; referred to the Committee on
6 Government Organization; and then to the Committee on Finance.]

7 _____ **FISCAL
NOTE**

8
9
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 and §5I-1-4, all relating to creating the West
13 Virginia Buy American Act; requiring public agency
14 construction contracts for public buildings or public works
15 contain a provision that the iron, steel, manufactured goods,
16 coal and timber used or supplied be manufactured or produced
17 in the United States; permitting waivers; providing remedies
18 for intentional violations; defining terms; making findings;
19 and declaring policy.

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

21 That the Code of West Virginia, 1931, as amended, be amended
22 by adding thereto a new chapter, designated §5I-1-1, §5I-1-2, §5I-
23 1-3 and §5I-1-4, all to read as follows:

1 **CHAPTER 5I. WEST VIRGINIA BUY AMERICAN ACT.**

2 **ARTICLE 1. WEST VIRGINIA BUY AMERICAN.**

3 **§5I-1-1. Short title.**

4 This act may be cited as the "West Virginia Buy American Act."

5 **§5I-1-2. Findings and declaration of policy.**

6 (a) *Findings.* -- The Legislature finds that:

7 (1) The production of iron, steel, manufactured goods, coal
8 and timber provides jobs and family income to many individuals in
9 this state and, in turn, the jobs and family incomes of millions of
10 persons in the United States;

11 (2) The taxes paid to the state and its political subdivisions
12 by employers and employees engaged in the production and sale of
13 iron, steel, manufactured goods, coal and timber are a large source
14 of public revenues for West Virginia;

15 (3) The economy and general welfare of West Virginia and its
16 people and the economy and general welfare of the United States are
17 inseparably linked to the preservation and development of
18 manufacturing, harvesting and mineral extraction industries in this
19 state, as well as all the other states of the nation;

20 (4) The state's taxpayer dollars are better spent if
21 reinvested with its individual and employer taxpayers in order to
22 foster job retention and growth, particularly within the
23 manufacturing, harvesting and mineral extraction sectors, and to

1 ensure a broad and healthy tax base for future investments vital to
2 the state's infrastructure; and

3 (5) West Virginia's procurement policies should reflect the
4 state's and the nation's principles ensuring that the products of
5 those companies and workers who abide by our workplace safety and
6 environmental laws and regulations should be rewarded with a
7 commonsense preference in government contracting.

8 (b) *Declaration of policy.* -- It is the policy of West
9 Virginia that all public officials and agencies should aid and
10 promote the economy of the state and the United States by requiring
11 a preference for the procurement of iron, steel, manufactured
12 goods, coal and timber produced in the United States in all
13 contracts for the construction, reconstruction, repair, improvement
14 or maintenance of public works.

15 **§5I-1-3. Use of American materials.**

16 (a) Notwithstanding any other provision of law, each contract
17 for the construction, reconstruction, alteration, repair,
18 improvement or maintenance of a public building or public works
19 made by a public agency shall contain a provision that the iron,
20 steel, manufactured goods, coal and timber used or supplied in the
21 performance of the contract or any subcontract thereto shall be
22 manufactured or produced in the United States.

23 (b) Subsection (a) of this section does not apply where the

1 head of a public agency finds:

2 (1) That its application would be inconsistent with the public
3 interest;

4 (2) That such materials and products are not produced in the
5 United States in sufficient and reasonably available quantities and
6 of a satisfactory quality; or

7 (3) That inclusion of domestic material will increase the cost
8 of the overall project contract by more than twenty-five percent.

9 (c) If the public agency determines that it is necessary to
10 waive the application of subsection (a) of this section based on a
11 finding under subsection (b) of this section, the agency shall,
12 before the date on which the finding takes effect:

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

15 (2) Consider all comments received during the comment period
16 in evaluating the waiver requests; and

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

20 (d) *Intentional Violations.* -- A person shall be ineligible to
21 receive any contract or subcontract with this state or any
22 political subdivision if a court or federal or state agency
23 determines that any person intentionally:

1 (1) Affixed a label bearing a "Made in America" or "Produced
2 in America" inscription, or any inscription with the same meaning,
3 to any product used in projects to which this section applies, sold
4 in or shipped to the United States that was not made or produced in
5 the United States; or

6 (2) Represented that any product used in projects to which
7 this section applies, sold in or shipped to the United States that
8 was not produced in the United States, was produced in the United
9 States.

10 (e) *Limitation on Applicability of Waivers to Products*
11 *Produced in Certain Foreign Countries.* -- Subsection (b) of this
12 section does not apply to products produced in a foreign country if
13 the head of a public agency, in consultation with the United States
14 Trade Representative, determines that:

15 (1) The foreign country is a party to an agreement with the
16 United States and pursuant to that agreement the head of an agency
17 of the United States has waived the requirements of this section;
18 and

19 (2) The foreign country has violated the terms of the
20 agreement by discriminating against products covered by this
21 section that are produced in the United States and are covered by
22 the agreement.

23 **§5I-1-4. Definitions.**

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

4 (1) "Manufactured" means:

5 (A) In the case of an iron or steel product all manufacturing
6 must take place in the United States, except metallurgical
7 processes involving the refinement of steel additives; or (B) In the
8 case of a manufactured good, a good will be considered manufactured
9 in the United States if:

10 (i) All the manufacturing processes for the product take place
11 in the United States; and

12 (ii) All of the components of the product are of United States
13 origin. A component will be considered of a product of United
14 States origin if all the manufacturing processes take place in the
15 United States, regardless of the origin of its subcomponents.

16 (2) "Public agency" or "agency" means the State of West
17 Virginia, its departments, agencies, boards, commissions, and
18 institutions, and all units and political subdivisions, including
19 local school districts.

20 (3) "Public buildings" and "public works" mean any structure,
21 building, highway, waterway, street, bridge, transit system,
22 airport or other betterment, work or improvement whether of a
23 permanent or temporary nature and whether for governmental or

1 proprietary use. The term includes, but is not limited to, any
2 railway, street railway, subway, elevated and monorail passenger or
3 passenger and rail rolling stock, self-propelled cars, gallery
4 cars, locomotives, passenger buses, wires, poles and equipment for
5 electrification of a transit system, rails, tracks, roadbeds, guide
6 ways, elevated structures, buildings, schools, hospitals, stations,
7 terminals, docks, shelters and repairs to any of the foregoing.

8 (4) "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 create the "West Virginia Buy American Act." The bill requires public agency construction contracts for public buildings or public works contain a provision that the iron, steel, manufactured goods, coal and timber used or supplied be manufactured or produced in the United States. The bill permits waivers and provides remedies for intentional violations. The bill also makes findings, declares policy and defines terms.

This chapter is new; therefore, strike-throughs and underscoring have been omitted.