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SENATE BILL NO. 601

Offered January 19, 2012

A BILL to amend the Code of Virginia by adding in Chapter 43 of Title 2.2 an article numbered 7, consisting of sections numbered 2.2-4378 through 2.2-4381, relating to a requirement that American iron, steel, and manufactured goods be used in public works projects.

Patron—Saslaw

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 43 of Title 2.2 an article numbered 7, consisting of sections numbered 2.2-4378 through 2.2-4381, as follows:

Article 7.

Buy America Act.

§ 2.2-4378. Definitions.

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

"Manufactured in the United States" (i) in the case of an iron or steel product, means that all manufacturing processes took place in the United States except metallurgical processes involving the refinement of steel additives; and (ii) in the case of a manufactured good, means (a) all of the manufacturing processes for the product took place in the United States and (b) all of the components of the product are of United States origin. A component shall be considered a product of United States origin if all of the manufacturing processes took place in the United States regardless of the origin of its subcomponents.

"Public buildings and public works" means any structure, building, highway, waterway, street, bridge, transit system, airport or other betterment, work, or improvement whether of a permanent or temporary nature and whether for governmental or proprietary use. The term includes any railway, streetcar, subway, elevated and monorail rolling stock, locomotives, passenger buses, wires, poles and equipment for electrification of a transit system, rails, tracks, roadbeds, guideways, elevated structures, school, hospital, station, terminal, dock, or shelter and includes repairs to any of the foregoing.

§ 2.2-4379. Use of American materials.

A. Notwithstanding any provision of this chapter to the contrary, each public contract for the construction, reconstruction, alteration, repair, improvement, or maintenance of a public building or public works shall contain a provision that the iron, steel, and manufactured goods used or supplied in the performance of the public contract or any subcontract thereto shall be manufactured in the United States.

B. The provisions of subsection A shall not apply where the public body finds:

1. The application of the provisions of subsection A would be inconsistent with the public interest;

2. Iron, steel, and manufactured goods necessary for the public improvement or public works are not manufactured within the United States in sufficient and reasonably available quantities or with satisfactory quality; or

3. Using iron, steel, and manufactured goods that are manufactured within the United States will increase the cost of the public contract by 25 percent or more.

C. If the public body determines that the provisions of subsection A shall not apply to the public contract based on a finding under subsection B, the public agency shall, before the date on which such finding takes effect:

1. Publish in the Register of Regulations a detailed written justification as to why the provisions of subsection A shall not apply;

2. Consider all comments received during the comment period in evaluating the decision that the provisions of subsection A shall not apply; and

3. Provide notice of its finding and an opportunity for public comment on such finding for a reasonable period not to exceed 15 days.

§ 2.2-4380. Violations.

If it is determined by a court of proper jurisdiction or federal or state agency that any person intentionally (i) affixed a label bearing a "Made in America" inscription, or any inscription with the same meaning, to any product used in public buildings or public works to which this article applies, sold in or shipped to the United States that was not manufactured in the United States, or (ii) represented that any product used in public buildings or public works to which this article applies, sold in or shipped to the United States that was not manufactured in the United States, was manufactured in

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59 *the United States, that person shall be ineligible to receive any contract or subcontract with the*
60 *Commonwealth or any other public body.*

61 *§ 2.2-4381. Limitation on exception to requirements for products produced in certain foreign*
62 *countries.*

63 *The provisions of subsection B of § 2.2-4379 shall not apply to products that are produced in a*
64 *foreign country if a public body, in consultation with the United States Trade Representative, determines*
65 *that:*

66 *1. The foreign country is a party to an agreement with the United States and pursuant to that*
67 *agreement the head of an agency of the United States has waived the requirements of this article; and*

68 *2. The foreign country has violated the terms of the agreement by discriminating against products*
69 *covered by subsection A of § 2.2-4379 that are manufactured in the United States and covered by the*
70 *agreement.*