
Capital Budget Committee

HB 1256

Brief Description: Concerning products manufactured in the United States for the purposes of public works projects.

Sponsors: Representatives Hill, Ormsby, Ramel, Macri, Nance and Parshley.

Brief Summary of Bill

- Requires that public works projects receiving more than \$500,000 of state capital funds must require that the iron, steel, aluminum, and manufactured products used or supplied in the performance of the contract or any subcontract be manufactured in the United States, unless otherwise exempted.
- Establishes a waiver process for the requirement that certain products used in public works projects be manufactured in the United States.
- Provides for the debarment of public works contractors who represent that certain products used in a public works project were manufactured in the United States if the products were not manufactured in the United States.

Hearing Date: 1/30/25

Staff: Robert Hatfield (786-7117).

Background:

Public works.

Public works include all work, construction, alterations, repairs, or improvements, other than ordinary maintenance, executed at the cost of the state or of any municipality. A competitive bidding process is required for most public works projects. State law generally requires agencies

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to award public works contracts to a responsible bidder with the lowest responsive bid.

The Build America, Buy America Act.

The Build America, Buy America was enacted as part of the Infrastructure Investment and Jobs Act on November 15, 2021. The Build America, Buy America Act established a domestic content procurement preference for all federal financial assistance obligated for infrastructure projects after May 14, 2022. The domestic content procurement preference requires that all iron, steel, manufactured products, and construction materials used in covered infrastructure projects be produced in the United States.

The Build America, Buy America Act Definitions.

Multiple terms are defined in the Build America, Buy America Act and its implementing regulations:

- "Manufactured product" means articles, materials, or supplies that have been: (i) processed into a specific form and shape; or (ii) combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. If an item is classified as an iron or steel product, a construction material, or a section 70917(c) material as defined in Title 2, Part 184 of the Code of Federal Regulations, then it is not a manufactured product for the purposes of public works procurement requirements. However, an article, material, or supply classified as a manufactured product may include components that are construction materials, iron or steel products, or section 70917(c) materials.
- "Produced in the United States" means: (a) for iron or steel products, all manufacturing processes, from the initial melting stage through the application of coatings, took place in the United States; and (b) for a manufactured product: (i) The product was manufactured in the United States; and (ii) the cost of the components of the product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product.
- "Section 70917(c) materials" means cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

Debarment.

In public works contracting, debarment is the process by which a contractor is prohibited from submitting a bid, having a bid considered, or entering into a public works contract.

Summary of Bill:

Domestic Content Requirements for Public Works Projects.

The state, a school district, or a municipality entering into a contract for the construction, reconstruction, alteration, repair, improvement, or maintenance of a public building or other public works project receiving more than \$500,000 of state funds in a state capital budget or financed through a financing contract must require that the iron, steel, aluminum, and

manufactured products used or supplied in the performance of the contract or any subcontract be manufactured in the United States, unless otherwise exempted.

For the purposes of the requirements described above, "municipality" means every city, county, town, port district, district, or other public agency authorized by law to require the execution of public work. The domestic content requirements may be waived by the Director of the Office of Financial Management on behalf of the state, by a school district superintendent on behalf of a school district, or by the executive head of a municipality on behalf of a municipality, if he or she determines that:

- meeting the requirements would be inconsistent with the public interest;
- such materials and products are not produced in the United States in sufficient or reasonably available quantities and of satisfactory quality; or
- inclusion of domestically produced material will increase the cost of the overall project contract by more than 25 percent.

Prior to issuing a waiver, the director, superintendent, or executive head must provide public notice on the agency website of the proposed waiver and an opportunity for public comment on the proposal for at least 30 days before making a final determination. The public notice must include information used in making the decision to propose a waiver and the public must be given the opportunity to provide comments electronically. The director, superintendent, or executive head must publish on the agency website a detailed justification of the decision made that addresses the public comments received. The publication must take place prior to the waiver taking effect.

Debarment.

A contract for a public works project must contain a provision that if a court or a federal or state agency determines that a party to the contract or subcontract has intentionally committed certain specified acts, that party is ineligible to bid or enter into any public works contract or subcontract pursuant to debarment provisions provided under Washington's public works law. The specified acts are:

- affixing a label bearing a "Made in America" inscription, or any inscription with the same meaning, to any iron, steel, aluminum, or manufactured product used in public works projects subject to Washington's public works law that was not manufactured in the United States; or
- representing that any iron, steel, aluminum, or manufactured product used in public works projects subject to Washington's public works law that was not manufactured in the United States, was manufactured in the United States.

Definitions.

The following terms are defined:

- "Manufactured product" means: articles, materials, or supplies that have been: (i) processed into a specific form and shape; or (ii) combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. If an item is classified as an iron or steel product, a construction material, or a

section 70917(c) material as defined in Title 2, Part 184 of the Code of Federal Regulations as it existed on December 1, 2024, then it is not a manufactured product for the purposes of public works procurement requirements. However, an article, material, or supply classified as a manufactured product may include components that are construction materials, iron or steel products, or section 70917(c) materials.

- "Manufactured in the United States" means: (a) for iron or steel products, all manufacturing processes, from the initial melting stage through the application of coatings, took place in the United States; and (b) for a manufactured product: (i) the product was manufactured in the United States; and (ii) the cost of the components of the product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product.

Adoption of Rules.

Any rules adopted pursuant to the bill must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

Severability.

If any part of the bill is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding does not affect the operation of the remainder of the bill in its application to the agencies concerned.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.