

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 709

BY ROBERTS AND HILL

AN ACT

1 RELATING TO PURCHASING BY POLITICAL SUBDIVISIONS; AMENDING CHAPTER 28,
2 TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-2810, IDAHO
3 CODE, TO DEFINE TERMS, TO PROVIDE FOR THE USE OF AMERICAN MATERIALS IN
4 CERTAIN STATE CONTRACTS, TO PROVIDE EXEMPTIONS, TO PROVIDE FOR CERTAIN
5 PROCEDURES REGARDING EXEMPTIONS, TO PROVIDE FOR VIOLATIONS, TO PROVIDE
6 A PENALTY, TO PROVIDE FOR TRIBAL GOVERNMENTS, TO PROVIDE FOR NONMARKET
7 ECONOMY COUNTRIES, TO PROVIDE APPLICABILITY REGARDING INTERNATIONAL
8 AGREEMENTS, AND TO PROVIDE SEVERABILITY; AMENDING SECTION 67-9210,
9 IDAHO CODE, TO PROVIDE A CODE REFERENCE; AND DECLARING AN EMERGENCY AND
10 PROVIDING AN EFFECTIVE DATE.
11

12 Be It Enacted by the Legislature of the State of Idaho:

13 SECTION 1. That Chapter 28, Title 67, Idaho Code, be, and the same is
14 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
15 ignated as Section 67-2810, Idaho Code, and to read as follows:

16 67-2810. USE OF AMERICAN MATERIALS. (1) As used in this section:

17 (a) "Manufactured" means that:

18 (i) In the case of an iron or steel product, all manufacturing
19 must take place in the United States, except metallurgical pro-
20 cesses involving the refinement of steel additives; and

21 (ii) In the case of a manufactured good, a good will be considered
22 manufactured in the United States if:

23 1. All the manufacturing processes for the product take
24 place in the United States; and

25 2. All of the components of the product must be of United
26 States origin. A component of a product will be considered
27 of United States origin if all the manufacturing processes
28 take place in the United States, regardless of the origin of
29 its subcomponents.

30 (b) "Nonmarket economy country" is as defined in 19 U.S.C. 1677.

31 (c) "Public agency" means the state of Idaho, its departments, agen-
32 cies, boards, commissions, and institutions, and all units and politi-
33 cal subdivisions thereof, including local school districts.

34 (d) "Public buildings and public works" means any structure, building,
35 highway, waterway, street, bridge, transit system, airport or other
36 betterment, work or improvement whether of a permanent or temporary na-
37 ture and whether for governmental or proprietary use. The term includes
38 but is not limited to any railway, street railway, subway, elevated
39 and monorail passenger or passenger and rail rolling stock, self-pro-
40 pelled cars, gallery cars, locomotives, passenger buses, wires, poles,
41 and equipment for electrification of a transit system, rails, tracks,
42 roadbeds, guideways, elevated structures, buildings, schools, hospi-

1 tals, stations, terminals, docks, shelters, and repairs to any of these
2 buildings or works.

3 (e) "United States" means the United States of America and includes all
4 territory, continental or insular, subject to the jurisdiction of the
5 United States and tribal governments within such areas.

6 (2) Notwithstanding any other provision of this chapter or chapters
7 57 and 92, title 67, Idaho Code, each contract for the construction, re-
8 construction, alteration, repair, improvement, or maintenance of a public
9 building or public works made by a public agency shall contain a provision
10 that the iron, steel, and manufactured goods used or supplied in the perfor-
11 mance of the contract or any subcontract thereto shall be manufactured in the
12 United States.

13 (3) The provisions of subsection (2) of this section shall not apply in
14 any case or category of cases in which the executive head of a public agency
15 finds that:

16 (a) It would be inconsistent with the public interest;

17 (b) Such materials and products are not produced in the United States
18 in sufficient and reasonably available quantities and of a satisfactory
19 quality; or

20 (c) Inclusion of domestic material will increase the cost of the over-
21 all project contract by more than twenty-five percent (25%).

22 (4) If a public agency determines that an exemption from the provisions
23 of subsection (3) of this section applies, the public agency shall provide
24 notice of and an opportunity for public comment on the exemption at least
25 thirty (30) days before making a final determination on the exemption.

26 (a) Notice provided pursuant to this subsection shall:

27 (i) Include any information available to the public agency con-
28 cerning the request, including whether the request is exempt under
29 subsection (3) of this section; and

30 (ii) Be provided by electronic means, including on the official
31 public internet website of the public agency.

32 (b) If the public agency determines that an exemption pursuant to sub-
33 section (3) of this section applies, the public agency shall publish a
34 detailed justification for the exemption that:

35 (i) Addresses the public comments received pursuant to this sub-
36 section; and

37 (ii) Is published before a final determination of the exemption
38 takes effect.

39 (5) (a) No person shall willfully:

40 (i) Affix a label bearing a "Made in America" inscription or any
41 inscription with the same meaning to any iron, steel, or manufac-
42 tured good sold in or shipped to the United States that was not made
43 in the United States and that was used in projects to which this
44 section applies; or

45 (ii) Represent that any iron, steel, or manufactured good used in
46 projects to which this section applies that was not produced in the
47 United States was produced in the United States.

48 (b) If a public agency determines that any person willfully violated
49 the provisions of this subsection, such person shall be ineligible to
50 receive any contract or subcontract with this state.

1 (6) The protection and involvement of tribal governments within the
2 United States shall be considered a priority in all phases of public con-
3 struction projects that occur on tribal lands, with a focus on ensuring
4 meaningful consultation and collaboration with tribal governments in mat-
5 ters related to the use of American materials and any potential impact on
6 tribal lands or resources.

7 (7) No procurement, contract, or subcontract shall be made with any
8 vendor or entity that is incorporated in or has manufacturing facilities in
9 the United States that receives support from the government of a country that
10 is identified as a nonmarket economy country.

11 (a) The provisions of this section shall apply to any vendor or entity
12 that is incorporated in or has manufacturing facilities in the United
13 States and receives support from a nonmarket economy country that is
14 identified as a nonmarket economy country as of July 1, 2024.

15 (b) No exercise of pending procurements, purchases, or purchase op-
16 tions as a result of any agreement or contract made prior to July 1,
17 2024, shall be executed with a vendor or entity that is incorporated in
18 or has manufacturing facilities in the United States and receives sup-
19 port from a nonmarket economy country that is identified as a nonmarket
20 economy country as of July 1, 2024.

21 (8) The provisions of this section shall be applied in a manner consis-
22 tent with the state's obligations under any applicable international agree-
23 ments pertaining to government procurement.

24 (9) The provisions of this section are hereby declared to be severable
25 and if any provision of this section or the application of such provision to
26 any person or circumstance is declared invalid for any reason, such declara-
27 tion shall not affect the validity of the remaining portions of this section.

28 SECTION 2. That Section 67-9210, Idaho Code, be, and the same is hereby
29 amended to read as follows:

30 67-9210. AWARD OF CONTRACT. (1) The administrator shall award con-
31 tracts to, and place orders for property with, the lowest responsible
32 bidder. Qualifications for responsibility shall be prescribed by rule.
33 However, environmental, social, and governance standards may not be used as
34 a qualification for responsibility.

35 (2) ~~Where~~ Consistent with the provisions of section 67-2810, Idaho
36 Code, where both the bids and quality of property offered are the same,
37 preference shall be given to property of local and domestic production and
38 manufacture or from bidders having a significant Idaho economic presence as
39 defined in section 67-2349, Idaho Code. In connection with the award of any
40 contract for the placement of any order for state printing, binding, engrav-
41 ing or stationery work, the provisions of sections 60-101 and 60-103, Idaho
42 Code, shall apply to the extent that the same may be inconsistent with any
43 requirements contained in this section.

44 (3) In awarding contracts, the administrator shall not discriminate
45 against, or grant preferential treatment to, any individual or group on the
46 basis of race, sex, color, ethnicity, or national origin unless permitted by
47 an exception described in section 67-5909A, Idaho Code.

1 SECTION 3. An emergency existing therefor, which emergency is hereby
2 declared to exist, this act shall be in full force and effect on and after
3 July 1, 2024.