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S. 1303

To ensure that certain Federal infrastructure programs require the use of materials produced in the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 22, 2021

Mr. BROWN (for himself, Mr. PORTMAN, Mr. PETERS, and Mr. BRAUN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To ensure that certain Federal infrastructure programs require the use of materials produced in the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Build America, Buy
5 America Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) the United States must make significant in-
2 vestments to install, upgrade, or replace the public
3 works infrastructure of the United States;

4 (2) with respect to investments in the infra-
5 structure of the United States, taxpayers expect that
6 their public works infrastructure will be produced in
7 the United States by American workers;

8 (3) United States taxpayer dollars invested in
9 public infrastructure should not be used to reward
10 companies that have moved their operations, invest-
11 ment dollars, and jobs to foreign countries or foreign
12 factories, particularly those that do not share or
13 openly flout the commitments of the United States
14 to environmental, worker, and workplace safety pro-
15 tections;

16 (4) in procuring materials for public works
17 projects, entities using taxpayer-financed Federal as-
18 sistance should give a commonsense procurement
19 preference for the materials and products produced
20 by companies and workers in the United States in
21 accordance with the high ideals embodied in the en-
22 vironmental, worker, workplace safety, and other
23 regulatory requirements of the United States;

24 (5) the benefits of domestic content preferences
25 extend beyond economics;

1 (6) by incentivizing domestic manufacturing,
2 domestic content preferences reinvest tax dollars in
3 companies and processes using the highest labor and
4 environmental standards in the world;

5 (7) strong domestic content preference policies
6 act to prevent shifts in production to countries that
7 rely on production practices that are significantly
8 less energy efficient and far more polluting than
9 those in the United States;

10 (8) for over 75 years, Buy America and other
11 domestic preference laws have been part of the
12 United States procurement policy, ensuring that the
13 United States can build and rebuild the infrastruc-
14 ture of the United States with high-quality Amer-
15 ican-made materials;

16 (9) Buy America laws create demand for do-
17 mestically produced goods, helping to sustain and
18 grow domestic manufacturing and the millions of
19 jobs domestic manufacturing supports throughout
20 product supply chains;

21 (10) as of the date of enactment of this Act,
22 domestic procurement preference policies apply to all
23 Federal Government procurement and to various
24 Federal-aid infrastructure programs;

1 (11) a robust domestic manufacturing sector is
2 a vital component of the national security of the
3 United States;

4 (12) as more manufacturing operations of the
5 United States have moved offshore, the strength and
6 readiness of the defense industrial base of the
7 United States has been diminished; and

8 (13) domestic procurement preference laws—

9 (A) are fully consistent with the inter-
10 national obligations of the United States; and

11 (B) together with the government procure-
12 ments to which the laws apply, are important
13 levers for ensuring that United States manufac-
14 turers can access the government procurement
15 markets of the trading partners of the United
16 States.

17 **SEC. 3. DEFINITIONS.**

18 In this Act:

19 (1) DEFICIENT PROGRAM.—The term “deficient
20 program” means a program identified by the head of
21 a Federal agency under section 4(c).

22 (2) DOMESTIC CONTENT PROCUREMENT PREF-
23 ERENCE.—The term “domestic content procurement
24 preference” means a requirement that no amounts
25 made available through a program for Federal finan-

1 cial assistance may be obligated for a project un-
2 less—

3 (A) all iron and steel used in the project
4 are produced in the United States; or

5 (B) the manufactured products used in the
6 project are produced in the United States.

7 (3) FEDERAL AGENCY.—The term “Federal
8 agency” has the meaning given the term “agency”
9 in section 552(f) of title 5, United States Code.

10 (4) FEDERAL FINANCIAL ASSISTANCE.—

11 (A) IN GENERAL.—The term “Federal fi-
12 nancial assistance” has the meaning given the
13 term in section 200.40 of title 2, Code of Fed-
14 eral Regulations (or successor regulations).

15 (B) INCLUSION.—The term “Federal fi-
16 nancial assistance” includes all expenditures by
17 a Federal agency for an infrastructure project.

18 (5) INFRASTRUCTURE.—The term “infrastruc-
19 ture” includes, at a minimum, the structures, facili-
20 ties, and equipment for, in the United States—

21 (A) roads, highways, and bridges;

22 (B) public transportation;

23 (C) dams, ports, harbors, and other mari-
24 time facilities;

- 1 (D) intercity passenger and freight rail-
- 2 roads;
- 3 (E) freight and intermodal facilities;
- 4 (F) airports;
- 5 (G) water systems, including drinking
- 6 water and wastewater systems;
- 7 (H) electrical transmission facilities and
- 8 systems;
- 9 (I) utilities;
- 10 (J) broadband infrastructure; and
- 11 (K) buildings and real property.

12 (6) PRODUCED IN THE UNITED STATES.—The
13 term “produced in the United States” means, in the
14 case of iron or steel products, that all manufacturing
15 processes, from the initial melting stage through the
16 application of coatings, occurred in the United
17 States.

18 (7) PROJECT.—The term “project” means the
19 construction, alteration, maintenance, or repair of
20 infrastructure in the United States.

21 **SEC. 4. IDENTIFICATION OF DEFICIENT PROGRAMS.**

22 (a) IN GENERAL.—Not later than 60 days after the
23 date of enactment of this Act, the head of each Federal
24 agency shall—

1 (1) submit to the Office of Management and
2 Budget and to Congress, including a separate notice
3 to each appropriate congressional committee, a re-
4 port that identifies each Federal financial assistance
5 program for infrastructure administered by the Fed-
6 eral agency; and

7 (2) publish in the Federal Register the report
8 under paragraph (1).

9 (b) REQUIREMENTS.—In the report under subsection
10 (a), the head of each Federal agency shall, for each Fed-
11 eral financial assistance program—

12 (1) identify all domestic content procurement
13 preferences applicable to the Federal financial as-
14 sistance;

15 (2) assess the applicability of the domestic con-
16 tent procurement preference requirements, includ-
17 ing—

18 (A) section 313 of title 23, United States
19 Code;

20 (B) section 5323(j) of title 49, United
21 States Code;

22 (C) section 22905(a) of title 49, United
23 States Code;

24 (D) section 50101 of title 49, United
25 States Code;

1 (E) section 603 of the Federal Water Pol-
2 lution Control Act (33 U.S.C. 1388);

3 (F) section 1452(a)(4) of the Safe Drink-
4 ing Water Act (42 U.S.C. 300j–12(a)(4));

5 (G) section 5035 of the Water Infrastruc-
6 ture Finance and Innovation Act of 2014 (33
7 U.S.C. 3914);

8 (H) any domestic content procurement
9 preference included in an appropriations Act;
10 and

11 (I) any other domestic content procure-
12 ment preference in Federal law (including regu-
13 lations);

14 (3) provide details on any applicable domestic
15 content procurement preference requirement, includ-
16 ing the purpose, scope, applicability, and any excep-
17 tions and waivers issued under the requirement; and

18 (4) include a description of the type of infra-
19 structure projects that receive funding under the
20 program, including information relating to—

21 (A) the number of entities that are partici-
22 pating in the program;

23 (B) the amount of Federal funds that are
24 made available for the program for each fiscal
25 year; and

1 (C) any other information the head of the
2 Federal agency determines to be relevant.

3 (c) LIST OF DEFICIENT PROGRAMS.—In the report
4 under subsection (a), the head of each Federal agency
5 shall include a list of Federal financial assistance pro-
6 grams for infrastructure identified under that subsection
7 for which a domestic content procurement preference re-
8 quirement—

9 (1) does not apply; or

10 (2) is subject to a waiver of general applica-
11 bility not limited to the use of specific products for
12 use in a specific project.

13 **SEC. 5. APPLICATION OF BUY AMERICA PREFERENCE.**

14 (a) IN GENERAL.—Not later than 180 days after the
15 date of enactment of this Act, the head of each Federal
16 agency shall ensure that none of the funds made available
17 for a Federal financial assistance program for infrastruc-
18 ture, including each deficient program, may be used for
19 a project unless all of the iron, steel, and manufactured
20 products used in the project are produced in the United
21 States.

22 (b) WAIVER.—The head of a Federal agency that ap-
23 plies a domestic content procurement preference under
24 this section may waive the application of that preference

1 in any case in which the head of the Federal agency finds
2 that—

3 (1) applying the domestic content procurement
4 preference would be inconsistent with the public in-
5 terest;

6 (2) types of iron, steel, or manufactured prod-
7 ucts are not produced in the United States in suffi-
8 cient and reasonably available quantities or of a sat-
9 isfactory quality; or

10 (3) the inclusion of iron, steel, or manufactured
11 products produced in the United States will increase
12 the cost of the overall project by more than 25 per-
13 cent.

14 (c) WRITTEN JUSTIFICATION.—Before issuing a
15 waiver under subsection (b), the head of the Federal agen-
16 cy shall—

17 (1) publish in the Federal Register and make
18 publicly available in an easily accessible location on
19 the website of the Federal agency a detailed written
20 explanation for the proposed determination to issue
21 the waiver; and

22 (2) provide a reasonable period for public com-
23 ment on the proposed waiver.

24 (d) PROHIBITION ON WAIVERS OF GENERAL APPLI-
25 CABILITY.—A waiver issued under subsection (b) shall be

1 limited to the use of specific products for use in a specific
2 project.

3 (e) CONSISTENCY WITH INTERNATIONAL AGREE-
4 MENTS.—This section shall be applied in a manner con-
5 sistent with United States obligations under international
6 agreements.

7 **SEC. 6. OMB GUIDANCE.**

8 The Director of the Office of Management and Budg-
9 et shall—

10 (1) issue guidance to the head of each Federal
11 agency—

12 (A) to assist in identifying deficient pro-
13 grams under section 4(c); and

14 (B) to assist in applying new domestic con-
15 tent procurement preferences under section 5;
16 and

17 (2) if necessary, amend subtitle A of title 2,
18 Code of Federal Regulations (or successor regula-
19 tions), to ensure that domestic content procurement
20 preference requirements required by this Act or
21 other Federal law are imposed through the terms
22 and conditions of awards of Federal financial assist-
23 ance.

1 **SEC. 7. APPLICATION.**

2 (a) IN GENERAL.—This Act shall apply to a Federal
3 financial assistance program for infrastructure only to the
4 extent that a domestic content procurement preference as
5 described in section 5 does not already apply to iron, steel,
6 and manufactured products.

7 (b) SAVINGS PROVISION.—Nothing in this Act affects
8 a domestic content procurement preference for a Federal
9 financial assistance program for infrastructure that is in
10 effect and that meets the requirements of section 5.

