

Senate File 2287 - Introduced

SENATE FILE 2287
BY COMMITTEE ON ECONOMIC
GROWTH/REBUILD IOWA

(SUCCESSOR TO SF 2222)

A BILL FOR

1 An Act requiring American products to be used for public
2 improvements, providing a penalty, and including
3 applicability provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 73.22 Title.

2 This division may be cited as the "*Iowa Buy American Act*".

3 Sec. 2. NEW SECTION. 73.23 Definitions.

4 1. "*Construction*" includes reconstruction, alteration,
5 repair, improvement, and maintenance.

6 2. "*Governmental unit*" means the state, or any county, city,
7 or other political subdivision or any department, division,
8 board, or other agency of any of these entities.

9 3. "*Manufactured in the United States*" means:

10 a. For an iron or steel product, all the manufacturing of
11 the iron or steel product, other than metallurgical processes
12 involving the refinement of steel additives, took place in the
13 United States.

14 b. For a manufactured good which is not an iron or steel
15 product, all of the following:

16 (1) All the manufacturing processes for the manufactured
17 good took place in the United States.

18 (2) All of the components of the manufactured good are
19 of United States origin. A component shall be considered of
20 United States origin if all of the component's manufacturing
21 processes took place in the United States, regardless of the
22 origin of its subcomponents.

23 4. "*Public improvement*" means any structure, building,
24 highway, waterway, street, bridge, transit system, airport, or
25 other betterment, work, or improvement, whether of a permanent
26 or temporary nature and whether for governmental or proprietary
27 use.

28 5. "*United States*" means the United States of America and
29 includes all territory, continental or insular, subject to the
30 jurisdiction of the United States.

31 Sec. 3. NEW SECTION. 73.24 Use of American products for
32 public improvements required.

33 Each contract for the construction of a public improvement
34 made by a governmental unit shall contain a provision requiring
35 that the iron, steel, and manufactured goods used or supplied

1 in the performance of the contract or any subcontract thereto
2 be manufactured in the United States.

3 Sec. 4. NEW SECTION. 73.25 Waiver.

4 1. Section 73.24 may be waived for a contract for the
5 construction of a public improvement made by a governmental
6 unit if a person with the necessary authority for the
7 governmental unit finds any of the following:

8 a. Application of section 73.24 would be contrary to the
9 public interest.

10 b. The products necessary for the public improvement are
11 not produced in the United States in sufficient and reasonably
12 available quantities and of a satisfactory quality.

13 c. Application of section 73.24 would increase the cost of
14 the contract by more than five percent.

15 2. If a person with the necessary authority for a
16 governmental unit determines that a waiver pursuant to this
17 section may be appropriate, the person shall do all of the
18 following before granting a waiver:

19 a. Prepare a detailed, written justification as to why
20 the waiver is needed. The justification shall be published
21 on the governmental unit's internet site and at least once in
22 a newspaper of general circulation in any county where the
23 public improvement will occur. The justification shall also
24 be made available to any member of the public upon request.
25 The justification shall include notice of the opportunity for
26 public comment required by paragraph "b".

27 b. Provide an opportunity for public comment on the
28 justification for a reasonable period of time not to exceed
29 fifteen days.

30 c. Consider all comments received during the comment period
31 in evaluating whether to waive section 73.24.

32 3. If a person with the necessary authority for a
33 governmental unit, in consultation with the United States trade
34 representative, determines all of the following regarding a
35 foreign country, this subsection shall not apply to products

1 manufactured in that foreign country:

2 a. The foreign country is a party to an agreement with the
3 United States, and, pursuant to the agreement, the head of a
4 federal agency has waived the requirements of this division.

5 b. The foreign country has violated the terms of the
6 agreement by discriminating against products covered by this
7 agreement and by this division that are produced in the United
8 States.

9 Sec. 5. NEW SECTION. 73.26 **Penalty.**

10 A person shall be ineligible to receive any contract or
11 subcontract with a governmental unit if a court or federal or
12 state agency determines that the person intentionally did any
13 of the following:

14 1. Represented that any product used in a public improvement
15 to which this division applies was manufactured in the United
16 States when the product was not manufactured in the United
17 States.

18 2. Affixed a label bearing a "Made in America" inscription,
19 or any inscription with the same meaning, to any product used
20 in a public improvement to which this division applies when the
21 product was not manufactured in the United States.

22 Sec. 6. IMPLEMENTATION OF ACT. Section 25B.2, subsection
23 3, shall not apply to this Act.

24 Sec. 7. APPLICABILITY. This Act applies to public
25 improvement contracts entered into on or after July 1, 2012.

26 EXPLANATION

27 This bill requires each contract for the construction of
28 a public improvement made by a governmental unit to contain
29 a provision requiring that the iron, steel, and manufactured
30 goods used or supplied in the performance of the contract or
31 any subcontract be manufactured in the United States. The bill
32 provides definitions for "construction", "manufactured in the
33 United States", and "public improvement".

34 The bill provides that the requirement may be waived if a
35 person with the necessary authority for a governmental unit

1 finds that application of the requirement would be contrary to
2 the public interest, that the products necessary for the public
3 improvement are not produced in the United States in sufficient
4 and reasonably available quantities and of a satisfactory
5 quality, or that the requirement would increase the cost of the
6 contract by more than 5 percent.

7 The bill provides that before a person can grant a waiver of
8 the requirement, the person must publish and make available a
9 detailed, written justification as to why the waiver is needed.
10 The justification is to include notice of an opportunity for
11 public comment. The comment period is to be for a reasonable
12 period of time not to exceed 15 days. The person must consider
13 all comments received during the comment period in evaluating
14 whether to grant a waiver. The bill limits waiver authority
15 for foreign countries which violate the terms of certain trade
16 agreements with the United States.

17 The bill provides that a person is ineligible to receive
18 any contract or subcontract with a governmental unit if a
19 court or federal or state agency determines that the person
20 intentionally represented that any product used in a public
21 improvement was manufactured in the United States when the
22 product was not manufactured in the United States or affixed
23 a label bearing a "Made in America" inscription, or any
24 inscription with the same meaning, to any product used in a
25 public improvement when the product was not manufactured in the
26 United States.

27 The bill may include a state mandate as defined in Code
28 section 25B.3. The bill makes inapplicable Code section 25B.2,
29 subsection 3, which would relieve a political subdivision from
30 complying with a state mandate if funding for the cost of
31 the state mandate is not provided or specified. Therefore,
32 political subdivisions are required to comply with any state
33 mandate included in the bill.

34 The bill applies to public improvement contracts entered
35 into on or after July 1, 2012.