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# SENATE BILL No. 401

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-16-8; IC 5-22.

**Synopsis:** Buy American in public works and purchasing. Provides that every public works contract must require that products used or supplied under the contract must be manufactured in the United States. Provides that this requirement does not apply to a particular product if the head of the public agency letting the public works contract makes a written determination that: (1) the application of the requirement to the product is inconsistent with the public interest; (2) the product is not produced in the United States in sufficient quantities or of a satisfactory quality to meet the requirements of the contract; or (3) requiring the product to be made in the United States will increase the cost of the overall public works project by more than twenty-five percent (25%). Provides an opportunity for public comment before an agency head's determination waiving the requirement becomes effective. Provides that a person that makes certain false representations relating to the country of manufacture of a product may not be considered responsible for purposes of awarding a public works contract. Enacts a parallel statute relating to public purchasing by the state and political subdivisions. Repeals a superseded public purchasing statute relating to the purchase of supplies manufactured in the United States.

**Effective:** July 1, 2012.

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January 9, 2012, read first time and referred to Committee on Tax and Fiscal Policy.

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Second Regular Session 117th General Assembly (2012)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

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# SENATE BILL No. 401



A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 5-16-8-1.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2012]: **Sec. 1.5. For purposes of this chapter, a product is**  
4 **considered to be "manufactured in the United States" if the**  
5 **following apply:**

6 (1) **In the case of an iron, steel, or foundry product, all**  
7 **manufacturing takes place in the United States. However, it**  
8 **is not necessary for metallurgical processes involving the**  
9 **refinement of steel additives to take place in the United States.**

10 (2) **In the case of a product other than a product described in**  
11 **subdivision (1), both of the following apply:**

12 (A) **All the manufacturing processes for the product take**  
13 **place in the United States.**

14 (B) **All the manufacturing processes for all components of**  
15 **the product take place in the United States, regardless of**  
16 **the origin of subcomponents of each product component.**

17 SECTION 2. IC 5-16-8-2, AS AMENDED BY P.L.6-2007,



1 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 2 JULY 1, 2012]: Sec. 2. ~~(a)~~ Each public agency shall require that every  
 3 contract for the construction, reconstruction, alteration, repair,  
 4 improvement, or maintenance of public works ~~contain~~ **contains** a  
 5 provision that, if any steel ~~or products~~, foundry products, ~~or other~~  
 6 **products** are to be used or supplied in the performance of the contract  
 7 or subcontract, only steel ~~or products~~, foundry products, ~~and other~~  
 8 **products** made in the United States shall be used or supplied in the  
 9 performance of the contract or any of the subcontracts. ~~unless the head~~  
 10 ~~of the public agency determines, in writing, that the cost of steel or~~  
 11 ~~foundry products is considered to be unreasonable.~~

12 (b) The head of each public agency shall issue rules which provide  
 13 that, for purposes of subsection (a), the bid or offered price of any steel  
 14 or foundry products of domestic origin is not considered unreasonable  
 15 if the price does not exceed the sum of:

16 (1) the bid or offered price of like steel or foundry products of  
 17 foreign origin (including any applicable duty); plus

18 (2) a differential of fifteen percent (15%) of the bid or offered  
 19 price of the steel or foundry products of foreign origin.

20 However, the fifteen percent (15%) differential provided by  
 21 subdivision (2) may be increased to twenty-five percent (25%), if the  
 22 head of the public agency determines that use of steel or foundry  
 23 products of domestic origin would benefit the local or state economy  
 24 through improved job security and employment opportunity. Whenever  
 25 the head of a public agency determines that the differential should be  
 26 increased above fifteen percent (15%) for a particular project, the head  
 27 of the agency shall file a report with the governor and the legislative  
 28 services agency detailing the reasons for such determination and the  
 29 probable impact on the economy of the use of domestic steel or foundry  
 30 castings in the project. A report filed under this subsection with the  
 31 legislative services agency must be in an electronic format under  
 32 IC 5-14-6.

33 SECTION 3. IC 5-16-8-3.5 IS ADDED TO THE INDIANA CODE  
 34 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 35 1, 2012]: Sec. 3.5. **A person may not be considered responsible for**  
 36 **purposes of awarding a public works contract by a public agency**  
 37 **if a court with jurisdiction or a federal or state agency determines**  
 38 **that the person has intentionally done either of the following:**

39 (1) **The person has affixed to a product:**

40 (A) **to which this chapter applies;**

41 (B) **that is sold in or shipped to the United States; and**

42 (C) **that was not manufactured in the United States;**



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a label bearing the words "Made in America" or any other words with the same meaning.

**(2) The person has represented that a product:**

**(A) to which this chapter applies;**

**(B) that is sold in or shipped to the United States; and**

**(C) that was not manufactured in the United States;**

**was manufactured in the United States.**

SECTION 4. IC 5-16-8-4, AS AMENDED BY P.L.6-2007, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 4. **(a) A provision contained in a contract under section 2 of this chapter does not apply to a particular product if the head of the public agency determines, in writing, that steel or foundry products are makes a written determination that any of the following apply:**

**(1) The application of section 2 of this chapter with respect to the product is inconsistent with the public interest.**

**(2) The product is not produced in the United States in sufficient quantities or of a satisfactory quality to meet the requirements of the contract.**

**(3) Requiring that the product be made in the United States will increase the cost of the overall project by more than twenty-five percent (25%).**

**(b) If a determination is made under subsection (a), the head of the public agency must do the following before the determination becomes effective:**

**(1) Publish notice:**

**(A) in the Indiana Register, if the public agency is a state agency; or**

**(B) under IC 5-3-1 if the public agency is not a state agency;**

**giving a detailed explanation of the reasons why section 2 of this chapter cannot be applied with respect to the particular product. The notice must state that the public will be provided an opportunity to comment on the proposed determination for a period that ends on the fifteenth day after the date the notice is published.**

**(2) Consider all comments received during the comment period in deciding whether the proposed determination should become effective.**

**(c) The head of a public agency may modify or withdraw a proposed determination based on comments received under subsection (b).**

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1 (d) If the head of a public agency, in consultation with the  
2 United States Trade Representative, determines that:

3 (1) a foreign nation is a party to an agreement with the United  
4 States, and under that agreement the head of an agency of the  
5 United States has waived the requirements of section 2 of this  
6 chapter; and

7 (2) the foreign nation has violated the terms of the agreement  
8 with the United States by discriminating against products:

9 (A) manufactured in the United States; and

10 (B) covered by this chapter and the agreement;

11 the head of the public agency may not make a determination under  
12 subsection (a) with respect to a product made in the foreign nation.

13 SECTION 5. IC 5-22-15-7, AS AMENDED BY P.L.122-2011,  
14 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
15 JULY 1, 2012]: Sec. 7. (a) An offeror may claim one (1) of the  
16 following types of preference for which the offeror is eligible:

17 (1) An Indiana business preference under rules adopted under  
18 section 20 of this chapter or IC 4-13.6-6-2.5.

19 (2) A preference for supplies as provided by sections 16, 18, 19,  
20 and 24 of this chapter.

21 (3) An Indiana small business preference as provided by section  
22 23 of this chapter.

23 (4) An Indiana farm product preference as provided by section  
24 23.5 of this chapter.

25 (b) An offeror may not claim more than one (1) preference as  
26 provided by sections 16, 18, 19, and 24 of this chapter for a given  
27 supply item.

28 (c) This section does not:

29 (1) apply to; or

30 (2) limit;

31 action of the Indiana department of administration under rules adopted  
32 under section 21 of this chapter.

33 SECTION 6. IC 5-22-15-21 IS REPEALED [EFFECTIVE JULY 1,  
34 2012]. Sec. 21: (a) This section does not apply to the state lottery  
35 commission created by IC 4-30-3-1.

36 (b) A governmental body shall adopt rules to promote the purchase  
37 of supplies manufactured in the United States.

38 (c) Rules adopted under subsection (b) shall provide that supplies  
39 manufactured in the United States shall be specified and purchased  
40 unless the governmental body determines that any of the following  
41 apply:

42 (1) The supplies are not manufactured in the United States in

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1 reasonably available quantities.

2 (2) The price of the supplies manufactured in the United States  
3 exceeds by an unreasonable amount the price of available and  
4 comparable supplies manufactured outside the United States.

5 (3) The quality of the supplies is substantially less than the quality  
6 of comparably priced available supplies manufactured outside the  
7 United States.

8 (4) The purchase of supplies manufactured in the United States is  
9 not in the public interest.

10 SECTION 7. IC 5-22-15.5 IS ADDED TO THE INDIANA CODE  
11 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
12 JULY 1, 2012]:

13 **Chapter 15.5. Purchasing Supplies Manufactured in the United**  
14 **States**

15 **Sec. 1. As used in this chapter, "product" refers to a supply**  
16 **item.**

17 **Sec. 2. For purposes of this chapter, a product is considered to**  
18 **be "manufactured in the United States" if the following apply:**

19 (1) In the case of an iron, steel, or foundry product, all  
20 manufacturing takes place in the United States. However, it  
21 is not necessary for metallurgical processes involving the  
22 refinement of steel additives to take place in the United States.

23 (2) In the case of a product other than a product described in  
24 subdivision (1), both of the following apply:

25 (A) All the manufacturing processes for the product take  
26 place in the United States.

27 (B) All the manufacturing processes for all components of  
28 the product take place in the United States, regardless of  
29 the origin of subcomponents of each product component.

30 **Sec. 3. (a) A governmental body shall adopt rules to promote the**  
31 **purchase of products manufactured in the United States.**

32 (b) Except as provided in section 4 of this chapter, rules adopted  
33 under subsection (a) must provide that products manufactured in  
34 the United States shall be specified and purchased.

35 **Sec. 4. (a) Rules adopted under section 3 of this chapter do not**  
36 **apply to a particular product if the purchasing agency determines**  
37 **that any of the following apply:**

38 (1) The application of this section with respect to the product  
39 is inconsistent with the public interest.

40 (2) The product is not produced in the United States in  
41 sufficient quantities or of a satisfactory quality to meet the  
42 requirements of the purchase.

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1           **(3) Requiring that the product be made in the United States**  
 2           **will increase the cost of the overall purchase by more than**  
 3           **twenty-five percent (25%).**

4           **(b) If a determination is made under subsection (a), the**  
 5           **purchasing agency must do the following before the determination**  
 6           **becomes effective:**

7           **(1) Publish notice:**

8           **(A) in the Indiana Register, if the purchasing agency is a**  
 9           **state agency; or**

10           **(B) under IC 5-3-1 if the purchasing agency is not a state**  
 11           **agency;**

12           **giving a detailed explanation of the reasons why section 3 of**  
 13           **this chapter cannot be applied with respect to the particular**  
 14           **product. The notice must state that the public will be provided**  
 15           **an opportunity to comment on the proposed determination for**  
 16           **a period that ends on the fifteenth day after the date the notice**  
 17           **is published.**

18           **(2) Consider all comments received during the comment**  
 19           **period in deciding whether the proposed determination should**  
 20           **become effective.**

21           **(c) The purchasing agency may modify or withdraw a proposed**  
 22           **determination based on comments received under subsection (b).**

23           **(d) If the purchasing agency, in consultation with the United**  
 24           **States Trade Representative, determines that:**

25           **(1) a foreign nation is a party to an agreement with the United**  
 26           **States and under that agreement the head of an agency of the**  
 27           **United States has waived the requirements of section 3 of this**  
 28           **chapter; and**

29           **(2) the foreign nation has violated the terms of the agreement**  
 30           **with the United States by discriminating against products:**

31           **(A) manufactured in the United States; and**

32           **(B) covered by this chapter and the agreement;**

33           **the purchasing agency may not make a determination under**  
 34           **subsection (a) with respect to a product made in the foreign nation.**

35           **Sec. 5. A person may not be considered responsible for purposes**  
 36           **of awarding a contract under this article if a court with**  
 37           **jurisdiction or a federal or state agency determines that the person**  
 38           **has intentionally done either of the following:**

39           **(1) The person has affixed to a product:**

40           **(A) to which this chapter applies;**

41           **(B) that is sold in or shipped to the United States; and**

42           **(C) that was not manufactured in the United States;**

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1 a label bearing the words "Made in America" or any other  
2 words with the same meaning.  
3 (2) The person has represented that a product:  
4 (A) to which this chapter applies;  
5 (B) that is sold in or shipped to the United States; and  
6 (C) that was not manufactured in the United States;  
7 was manufactured in the United States.

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