

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1154 be amended to read as follows:

1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
3 "SECTION 1. IC 5-16-8-1.5 IS ADDED TO THE INDIANA CODE
4 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
5 **1, 2012]: Sec. 1.5. For purposes of this chapter, a product is**
6 **considered to be "manufactured in the United States" if the**
7 **following apply:**
8 **(1) In the case of an iron, steel, or foundry product, all**
9 **manufacturing takes place in the United States. However, it**
10 **is not necessary for metallurgical processes involving the**
11 **refinement of steel additives to take place in the United States.**
12 **(2) In the case of a product other than a product described in**
13 **subdivision (1), both of the following apply:**
14 **(A) All the manufacturing processes for the product take**
15 **place in the United States.**
16 **(B) All the manufacturing processes for all components of**
17 **the product take place in the United States, regardless of**
18 **the origin of subcomponents of each product component.**
19 SECTION 2. IC 5-16-8-2, AS AMENDED BY P.L.6-2007,
20 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
21 JULY 1, 2012]: Sec. 2. ~~(a)~~ Each public agency shall require that every
22 contract for the construction, reconstruction, alteration, repair,
23 improvement, or maintenance of public works ~~contain~~ **contains** a
24 provision that, if any steel ~~or~~ **products**, foundry products, **or other**
25 **products** are to be used or supplied in the performance of the contract
26 or subcontract, only steel ~~or~~ **products**, foundry products, **and other**
27 **products** made in the United States shall be used or supplied in the
28 performance of the contract or any of the subcontracts. ~~unless the head~~
29 ~~of the public agency determines; in writing; that the cost of steel or~~
30 ~~foundry products is considered to be unreasonable.~~

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

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

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

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

22 SECTION 3. IC 5-16-8-3.5 IS ADDED TO THE INDIANA CODE
 23 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 24 1, 2012]: **Sec. 3.5. A person may not be considered responsible for
 25 purposes of awarding a public works contract by a public agency
 26 if a court with jurisdiction or a federal or state agency determines
 27 that the person has intentionally done either of the following:**

28 (1) The person has affixed to a product:

29 (A) to which this chapter applies;

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

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

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

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

35 (A) to which this chapter applies;

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

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

38 was manufactured in the United States.

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

46 (1) The application of section 2 of this chapter with respect to

- 1 **the product is inconsistent with the public interest.**
2 **(2) The product is not produced in the United States in sufficient**
3 **quantities or of a satisfactory quality to meet the requirements**
4 **of the contract.**
5 **(3) Requiring that the product be made in the United States**
6 **will increase the cost of the overall project by more than**
7 **twenty-five percent (25%).**
8 **(b) If a determination is made under subsection (a), the head of**
9 **the public agency must do the following before the determination**
10 **becomes effective:**
11 **(1) Publish notice:**
12 **(A) in the Indiana Register, if the public agency is a state**
13 **agency; or**
14 **(B) under IC 5-3-1 if the public agency is not a state**
15 **agency;**
16 **giving a detailed explanation of the reasons why section 2 of**
17 **this chapter cannot be applied with respect to the particular**
18 **product. The notice must state that the public will be provided**
19 **an opportunity to comment on the proposed determination for**
20 **a period that ends on the fifteenth day after the date the notice**
21 **is published.**
22 **(2) Consider all comments received during the comment**
23 **period in deciding whether the proposed determination should**
24 **become effective.**
25 **(c) The head of a public agency may modify or withdraw a**
26 **proposed determination based on comments received under**
27 **subsection (b).**
28 **(d) If the head of a public agency, in consultation with the**
29 **United States Trade Representative, determines that:**
30 **(1) a foreign nation is a party to an agreement with the United**
31 **States, and under that agreement the head of an agency of the**
32 **United States has waived the requirements of section 2 of this**
33 **chapter; and**
34 **(2) the foreign nation has violated the terms of the agreement**
35 **with the United States by discriminating against products:**
36 **(A) manufactured in the United States; and**
37 **(B) covered by this chapter and the agreement;**
38 **the head of the public agency may not make a determination under**
39 **subsection (a) with respect to a product made in the foreign nation.**
40 SECTION 5. IC 5-22-15-7, AS AMENDED BY P.L.122-2011,
41 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2012]: Sec. 7. (a) An offeror may claim one (1) of the
43 following types of preference for which the offeror is eligible:
44 (1) An Indiana business preference under rules adopted under
45 section 20 of this chapter or IC 4-13.6-6-2.5.
46 (2) A preference for supplies as provided by sections 16, 18, 19,

- 1 and 24 of this chapter.
- 2 (3) An Indiana small business preference as provided by section
- 3 23 of this chapter.
- 4 (4) An Indiana farm product preference as provided by section
- 5 23.5 of this chapter.
- 6 (b) An offeror may not claim more than one (1) preference as
- 7 provided by sections 16, 18, 19, and 24 of this chapter for a given
- 8 supply item.
- 9 (c) ~~This section does not:~~
- 10 ~~(1) apply to; or~~
- 11 ~~(2) limit;~~
- 12 ~~action of the Indiana department of administration under rules adopted~~
- 13 ~~under section 21 of this chapter."~~
- 14 Page 3, between lines 1 and 2, begin a new paragraph and insert:
- 15 "SECTION 7. IC 5-22-15-21 IS REPEALED [EFFECTIVE JULY
- 16 1, 2012]. Sec. 21. (a) This section does not apply to the state lottery
- 17 commission created by IC 4-30-3-1.
- 18 (b) A governmental body shall adopt rules to promote the purchase
- 19 of supplies manufactured in the United States:
- 20 (c) Rules adopted under subsection (b) shall provide that supplies
- 21 manufactured in the United States shall be specified and purchased
- 22 unless the governmental body determines that any of the following
- 23 apply:
- 24 (1) The supplies are not manufactured in the United States in
- 25 reasonably available quantities:
- 26 (2) The price of the supplies manufactured in the United States
- 27 exceeds by an unreasonable amount the price of available and
- 28 comparable supplies manufactured outside the United States:
- 29 (3) The quality of the supplies is substantially less than the quality
- 30 of comparably priced available supplies manufactured outside the
- 31 United States:
- 32 (4) The purchase of supplies manufactured in the United States is
- 33 not in the public interest.
- 34 SECTION 8. IC 5-22-15.5 IS ADDED TO THE INDIANA CODE
- 35 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 36 JULY 1, 2012]:
- 37 **Chapter 15.5. Purchasing Supplies Manufactured in the United**
- 38 **States**
- 39 **Sec. 1. As used in this chapter, "product" refers to a supply**
- 40 **item.**
- 41 **Sec. 2. For purposes of this chapter, a product is considered to**
- 42 **be "manufactured in the United States" if the following apply:**
- 43 **(1) In the case of an iron, steel, or foundry product, all**
- 44 **manufacturing takes place in the United States. However, it**
- 45 **is not necessary for metallurgical processes involving the**
- 46 **refinement of steel additives to take place in the United States.**

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

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

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

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

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

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

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

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

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

24 **(b) If a determination is made under subsection (a), the**
 25 **purchasing agency must do the following before the determination**
 26 **becomes effective:**

27 **(1) Publish notice:**

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

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

32 **giving a detailed explanation of the reasons why section 3 of**
 33 **this chapter cannot be applied with respect to the particular**
 34 **product. The notice must state that the public will be provided**
 35 **an opportunity to comment on the proposed determination for**
 36 **a period that ends on the fifteenth day after the date the notice**
 37 **is published.**

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

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

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

45 **(1) a foreign nation is a party to an agreement with the United**
 46 **States and under that agreement the head of an agency of the**
 47 **United States has waived the requirements of section 3 of this**

- 1 chapter; and
 2 (2) the foreign nation has violated the terms of the agreement
 3 with the United States by discriminating against products:
 4 (A) manufactured in the United States; and
 5 (B) covered by this chapter and the agreement;
 6 the purchasing agency may not make a determination under
 7 subsection (a) with respect to a product made in the foreign nation.
 8 **Sec. 5. A person may not be considered responsible for purposes**
 9 **of awarding a contract under this article if a court with**
 10 **jurisdiction or a federal or state agency determines that the person**
 11 **has intentionally done either of the following:**
 12 (1) The person has affixed to a product:
 13 (A) to which this chapter applies;
 14 (B) that is sold in or shipped to the United States; and
 15 (C) that was not manufactured in the United States;
 16 a label bearing the words "Made in America" or any other
 17 words with the same meaning.
 18 (2) The person has represented that a product:
 19 (A) to which this chapter applies;
 20 (B) that is sold in or shipped to the United States; and
 21 (C) that was not manufactured in the United States;
 22 was manufactured in the United States."
 23 Renumber all SECTIONS consecutively.
 (Reference is to EHB 1154 as printed February 8, 2012.)

Senator LANANE