

112TH CONGRESS  
1ST SESSION

# H. R. 2423

To amend title 41, United States Code, to increase the American-made content requirement for the Buy American Act, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 6, 2011

Mr. HINCHEY introduced the following bill; which was referred to the Committee on Oversight and Government Reform

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## A BILL

To amend title 41, United States Code, to increase the American-made content requirement for the Buy American Act, 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 “The Buy American  
5 Enhancement Act of 2011”.

6 **SEC. 2. DOMESTIC CONTENT REQUIREMENT FOR THE BUY**  
7 **AMERICAN ACT.**

8 (a) **SUBSTANTIALLY ALL DEFINED.**—Section 8301  
9 of title 41, United States Code, is amended—

1 (1) by redesignating paragraph (2) as para-  
2 graph (3); and

3 (2) by inserting after paragraph (1) the fol-  
4 lowing new paragraph:

5 “(2) SUBSTANTIALLY ALL.—Articles, materials,  
6 or supplies shall be treated as made substantially all  
7 from articles, materials, or supplies mined, pro-  
8 duced, or manufactured in the United States if the  
9 cost of the domestic components of such articles,  
10 materials, or supplies exceeds 75 percent of the total  
11 cost of all components of such articles, materials, or  
12 supplies.”.

13 (b) EFFECTIVE DATE.—The amendment made by  
14 subsection (a) shall take effect not later than 180 days  
15 after the date of the enactment of this Act.

16 **SEC. 3. REQUIREMENT FOR INDIRECT CONTRACTS TO COM-**  
17 **PLY WITH THE BUY AMERICAN ACT.**

18 (a) CONTRACT REQUIREMENT.—The head of each  
19 Federal agency shall ensure that each contract described  
20 in subsection (b) awarded by such Federal agency includes  
21 a provision requiring any articles, materials, and supplies  
22 provided under the contract to comply with chapter 83 of  
23 title 41, United States Code (popularly referred to as the  
24 “Buy American Act”), subject to the exceptions to that

1 chapter provided in the Trade Agreements Act of 1979  
2 (19 U.S.C. 2501 et seq.) or otherwise provided by law.

3 (b) **CONTRACTS DESCRIBED.**—The contracts de-  
4 scribed in this subsection include each of the following:

5 (1) Housing leases, including military housing  
6 provided by a private entity.

7 (2) Power purchase agreements.

8 (3) Enhanced-use leases.

9 (4) Energy savings performance contracts.

10 (5) Utility energy service contracts.

11 **SEC. 4. BUY AMERICAN WAIVER REPORTING REQUIRE-**  
12 **MENT.**

13 (a) **WAIVER DEFINED.**—Section 8301 of title 41,  
14 United States Code, as amended by section 2, is further  
15 amended by adding at the end the following new para-  
16 graph:

17 “(4) **WAIVER.**—The term ‘waiver’ means, with  
18 respect to the acquisition of an article, material, or  
19 supply for public use, the inapplicability of this  
20 chapter to the acquisition by reason of any of the  
21 following:

22 “(A) A determination by the head of the  
23 Federal agency concerned that the acquisition  
24 is inconsistent with the public interest.

1           “(B) A determination by the head of the  
2 Federal agency concerned that the cost of the  
3 acquisition is unreasonable.

4           “(C) Use outside of the United States.

5           “(D) A determination by the head of the  
6 Federal agency concerned that the article, ma-  
7 terial, or supply is not mined, produced, or  
8 manufactured in the United States in sufficient  
9 and reasonably available commercial quantities  
10 of a satisfactory quality.

11           “(E) Procured under a contract with an  
12 award value that is not more than the micro-  
13 purchase threshold under section 1902 of this  
14 title.

15           “(F) An exception under the Trade Agree-  
16 ments Act of 1979 (19 U.S.C. 2501 et seq.).

17           “(G) Any other exception otherwise pro-  
18 vided by law.”.

19           (b) **WAIVER REPORTING REQUIREMENT.**—Section  
20 8302 of title 41, United States Code, is amended by add-  
21 ing at the end the following new section:

22           “(c) **WAIVER REPORTING REQUIREMENT.**—The head  
23 of each Federal agency shall establish a location on the  
24 website of such agency for the publication of waivers ac-  
25 cessible by the public and shall publish a list at such loca-

1 tion of each waiver granted under this chapter not later  
2 than 30 days after such waiver is granted.”.

3 (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall take effect not later than 180 days after  
5 the date of the enactment of this Act.

6 **SEC. 5. IMPLEMENTATION THROUGH THE FEDERAL ACQUI-**  
7 **SITION REGULATION.**

8 Not later than 180 days after the date of the enact-  
9 ment of this Act, the Federal Acquisition Regulation shall  
10 be revised as necessary to implement the provisions of this  
11 Act.

12 **SEC. 6. DEFINITIONS.**

13 In this Act:

14 (1) ENERGY SAVINGS PERFORMANCE CON-  
15 TRACT.—The term “energy savings performance  
16 contract” has the meaning given that term under  
17 section 436.31 of title 10, Code of Federal Regula-  
18 tions.

19 (2) FEDERAL AGENCY.—The term “Federal  
20 agency” means any executive agency (as defined in  
21 section 133 of title 41, United States Code) or any  
22 establishment in the legislative or judicial branch of  
23 the Federal Government.

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