

112TH CONGRESS
1ST SESSION

S. 1210

To improve domestic procurement policies by providing rules and guidance, waiver notices, and departmental and agency actions applicable to the domestic content standards of Federal grants administered by the Department of Transportation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 15, 2011

Mr. BROWN of Ohio (for himself and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To improve domestic procurement policies by providing rules and guidance, waiver notices, and departmental and agency actions applicable to the domestic content standards of Federal grants administered by the Department of Transportation, 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 “Strengthening Manu-
5 facturing and Rebuilding Transit Act of 2011” or the
6 “SMART Act”.

1 **SEC. 2. PREFERENCE IN AWARDING COMPETITIVE TRANS-**
2 **PORTATION INFRASTRUCTURE GRANTS.**

3 (a) PREFERENCE.—In awarding grants for projects
4 that include the purchase of transit vehicle rolling stock,
5 rail, and supporting equipment, the Secretary of Trans-
6 portation shall give preference to a project if the manufac-
7 tured goods to be purchased have a domestic content per-
8 centage that—

9 (1) exceeds otherwise applicable Federal re-
10 quirements; and

11 (2) in the case of rolling stock, is consistent
12 with industry-recognized standards, if available.

13 (b) COVERED GRANTS.—The grants referred to in
14 subsection (a) are discretionary or competitive grants,
15 loans, loan guarantees, and lines of credit—

16 (1) authorized under chapter 53 of title 49,
17 United States Code;

18 (2) used to fund in full or in part projects eligi-
19 ble for Federal assistance under such chapter; or

20 (3) provided by the Department of Transpor-
21 tation for entities eligible for financial assistance
22 under chapter 53 of title 49, United States Code.

23 **SEC. 3. INCREASING THE TRANSPARENCY OF DOMESTIC**
24 **CONTENT WAIVERS.**

25 (a) CLARITY IN DOMESTIC CONTENT REGULA-
26 TIONS.—The Secretary of Transportation shall establish

1 a centralized Web site that provides rules and guidance,
2 waiver notices, and departmental and agency actions ap-
3 plicable to the domestic content standards of the Federal-
4 aid programs within the jurisdiction of the Department
5 of Transportation.

6 (b) TRANSPARENCY IN WAIVERS.—

7 (1) PUBLIC TRANSPORTATION ASSISTANCE.—

8 Section 5323(j) of title 49, United States Code, is
9 amended—

10 (A) in paragraph (2)(C)(i), by inserting

11 “(excluding labor costs involved in final assem-
12 bly)” after “United States”;

13 (B) by striking paragraph (4);

14 (C) by redesignating paragraph (5) as
15 paragraph (4); and

16 (D) by inserting after paragraph (4), as
17 redesignated, the following:

18 “(5) LIMITATIONS ON WAIVERS.—

19 “(A) REQUESTS FOR WAIVERS.—Not later than
20 7 days after the Secretary receives a written request
21 for a waiver of any requirement under this sub-
22 section or section 5307(d)(1)(E)(iii), the Secretary
23 shall—

1 “(i) publish the request on a publicly avail-
2 able agency Web site in an easily identifiable lo-
3 cation; and

4 “(ii) provide the public with at least 30
5 days for notice and comment before issuing the
6 requested waiver.

7 “(B) WAIVERS GRANTED.—Not later than 30
8 days after the Secretary decides to waive any re-
9 quirement under this subsection or section
10 5307(d)(1)(E)(iii), the Secretary shall publish the
11 decision and the justification for such decision in the
12 Federal Register and on the publicly available Web
13 site described in subparagraph (A).

14 “(C) NOTIFICATION OF THE OFFICE OF MAN-
15 AGEMENT AND BUDGET.—If the Secretary grants a
16 waiver of any requirement under this subsection or
17 section 5307(d)(1)(E)(iii), the Secretary shall sub-
18 mit to the Director of the Office of Management and
19 Budget—

20 “(i) a notification of the application of the
21 exception; and

22 “(ii) a statement describing the procure-
23 ment and the exception being applied.”.

24 (2) AMTRAK.—Section 24305(f) of title 49,
25 United States Code, is amended—

1 (A) in paragraph (4), by striking “exempt
2 Amtrak from this subsection” and inserting
3 “waive paragraph (2)”; and

4 (B) by adding at the end the following:

5 “(5) LIMITATIONS ON WAIVERS.—

6 “(A) REQUESTS FOR WAIVERS.—Not later than
7 7 days after the Secretary of Transportation receives
8 a written request for a waiver of paragraph (2), the
9 Secretary shall—

10 “(i) publish the request on a publicly avail-
11 able agency Web site in an easily identifiable lo-
12 cation; and

13 “(ii) provide the public with at least 30
14 days for notice and comment before issuing the
15 requested waiver.

16 “(B) WAIVERS GRANTED.—Not later than 30
17 days after the Secretary decides to waive paragraph
18 (2), the Secretary shall publish the decision and the
19 justification for such decision in the Federal Reg-
20 ister and on the publicly available Web site described
21 in subparagraph (A).

22 “(C) NOTIFICATION OF THE OFFICE OF MAN-
23 AGEMENT AND BUDGET.—If the Secretary grants a
24 waiver of paragraph (2), the Secretary shall submit

1 to the Director of the Office of Management and
2 Budget—

3 “(i) a notification of the application of the
4 exception; and

5 “(ii) a statement describing the procure-
6 ment and the exception being applied.”.

7 (3) INTERCITY PASSENGER RAIL SERVICE.—
8 Section 24405(a) of title 49, United States Code, is
9 amended—

10 (A) by redesignating paragraphs (7)
11 through (11) as paragraphs (8) through (12),
12 respectively; and

13 (B) by inserting after paragraph (6) the
14 following:

15 “(7) LIMITATIONS ON WAIVERS.—

16 “(A) REQUESTS FOR WAIVERS.—Not later than
17 7 days after the Secretary of Transportation receives
18 a written request for a waiver of any requirement
19 under this subsection, the head of such agency
20 shall—

21 “(i) publish the request on a publicly avail-
22 able agency Web site in an easily identifiable lo-
23 cation; and

1 “(ii) provide the public with a minimum of
2 30 days for notice and comment before issuing
3 the requested waiver.

4 “(B) WAIVERS GRANTED.—Not later than 30
5 days after the Secretary decides to waive any re-
6 quirement under this subsection, the Secretary shall
7 publish the decision and the justification for such
8 decision in the Federal Register and on the publicly
9 available Web site described in subparagraph (A).

10 “(C) NOTIFICATION OF THE OFFICE OF MAN-
11 AGEMENT AND BUDGET.—If the Secretary grants a
12 waiver of any requirement under this subsection, the
13 Secretary shall submit to the Director of the Office
14 of Management and Budget—

15 “(i) a notification of the application of the
16 exception; and

17 “(ii) a statement describing the procure-
18 ment and the exception being applied.”.

19 **SEC. 4. REQUIREMENT FOR ANNUAL REPORTING ON EX-**
20 **CEPTIONS TO DOMESTIC SOURCE REQUIRE-**
21 **MENTS FOR TRANSPORTATION INVEST-**
22 **MENTS.**

23 (a) IN GENERAL.—Not later than 60 days after the
24 end of a fiscal year, the Inspector General of the Depart-
25 ment of Transportation shall submit a report to Congress

1 on the acquisitions supported by Federal transportation
2 infrastructure investments which did not satisfy applicable
3 domestic content standards.

4 (b) CONTENTS OF REPORT.—The report submitted
5 under subsection (a) shall include, for the fiscal year cov-
6 ered by such report—

7 (1) the number of all domestic content waivers
8 issued for transportation infrastructure, rolling
9 stock, and supporting equipment purchases;

10 (2) the countries and specifications of the prod-
11 ucts for which waivers were granted;

12 (3) an itemized list of all waivers granted with
13 respect to articles, materials, and supplies;

14 (4) any law that requires procurement of goods
15 from a domestic source;

16 (5) a citation to the treaty, international agree-
17 ment, or other law under which each waiver was
18 granted, if applicable;

19 (6) the specific exception under the applicable
20 domestic content standards that was used to pur-
21 chase such articles, materials, or supplies, if any ar-
22 ticles, materials, or supplies were acquired from enti-
23 ties that manufacture articles, materials, or supplies
24 outside of the United States; and

25 (7) a summary of—

1 (A) the total procurement funds expended
2 on articles, materials, and supplies manufac-
3 tured inside the United States; and

4 (B) the total procurement funds expended
5 on articles, materials, and supplies manufac-
6 tured outside of the United States.

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