

116TH CONGRESS  
1ST SESSION

# S. 2056

To ensure that certain Federal infrastructure programs require the use of materials produced in the United States, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 8, 2019

Mr. BROWN (for himself, Mr. PORTMAN, Mr. BRAUN, and Mr. PETERS) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To ensure that certain Federal infrastructure programs require the use of materials produced in the United States, 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 “Build America, Buy  
5 America Act”.

**6 SEC. 2. FINDINGS.**

7       Congress finds that—

1                             (1) the United States must make significant in-  
2                             vestments to install, upgrade, or replace the public  
3                             works infrastructure of the United States;

4                             (2) with respect to investments in the infra-  
5                             structure of the United States, taxpayers expect that  
6                             their public works infrastructure will be produced in  
7                             the United States by American workers;

8                             (3) United States taxpayer dollars invested in  
9                             public infrastructure should not be used to reward  
10                            companies that have moved their operations, invest-  
11                            ment dollars, and jobs to foreign countries or foreign  
12                            factories, particularly those that do not share or  
13                            openly flout the commitments of the United States  
14                            to environmental, worker, and workplace safety pro-  
15                            tections;

16                            (4) in procuring materials for public works  
17                            projects, entities using taxpayer-financed Federal as-  
18                            sistance should give a commonsense procurement  
19                            preference for the materials and products produced  
20                            by companies and workers in the United States in  
21                            accordance with the high ideals embodied in the en-  
22                            vironmental, worker, workplace safety, and other  
23                            regulatory requirements of the United States;

24                            (5) the benefits of domestic content preferences  
25                            extend beyond economics;

1                         (6) by incentivizing domestic manufacturing,  
2                         domestic content preferences reinvest tax dollars in  
3                         companies and processes using the highest labor and  
4                         environmental standards in the world;

5                         (7) strong domestic content preference policies  
6                         act to prevent shifts in production to countries that  
7                         rely on production practices that are significantly  
8                         less energy efficient and far more polluting than  
9                         those in the United States;

10                         (8) for over 75 years, Buy America and other  
11                         domestic preference laws have been part of the  
12                         United States procurement policy, ensuring that the  
13                         United States can build and rebuild the infrastruc-  
14                         ture of the United States with high-quality Amer-  
15                         ican-made materials;

16                         (9) Buy America laws create demand for do-  
17                         mestically produced goods, helping to sustain and  
18                         grow domestic manufacturing and the millions of  
19                         jobs domestic manufacturing supports throughout  
20                         product supply chains;

21                         (10) as of the date of enactment of this Act,  
22                         domestic procurement preference policies apply to all  
23                         Federal Government procurement and to various  
24                         Federal-aid infrastructure programs;

1                         (11) a robust domestic manufacturing sector is  
2                         a vital component of the national security of the  
3                         United States;

4                         (12) as more manufacturing operations of the  
5                         United States have moved offshore, the strength and  
6                         readiness of the defense industrial base of the  
7                         United States has been diminished; and

8                         (13) domestic procurement preference laws—

9                             (A) are fully consistent with the inter-  
10                         national obligations of the United States; and

11                             (B) together with the government procure-  
12                         ments to which the laws apply, are important  
13                         levers for ensuring that United States manufac-  
14                         turers can access the government procurement  
15                         markets of the trading partners of the United  
16                         States.

17 **SEC. 3. DEFINITIONS.**

18                         In this Act:

19                             (1) DEFICIENT PROGRAM.—The term “deficient  
20                         program” means a program identified by the head of  
21                         a Federal agency under section 4(c).

22                             (2) DOMESTIC CONTENT PROCUREMENT PREF-  
23                         ERENCE.—The term “domestic content procurement  
24                         preference” means a requirement that no amounts  
25                         made available through a program for Federal finan-

1       cial assistance may be obligated for a project un-  
2       less—

- 3                     (A) all iron and steel used in the project  
4        are produced in the United States; or  
5                     (B) the manufactured products used in the  
6        project are produced in the United States.

7                     (3) FEDERAL AGENCY.—The term “Federal  
8        agency” has the meaning given the term “agency”  
9        in section 552(f) of title 5, United States Code.

10          (4) FEDERAL FINANCIAL ASSISTANCE.—

11                     (A) IN GENERAL.—The term “Federal fi-  
12        nancial assistance” has the meaning given the  
13        term in section 200.40 of title 2, Code of Fed-  
14        eral Regulations (or successor regulations).

15                     (B) INCLUSION.—The term “Federal fi-  
16        nancial assistance” includes all expenditures by  
17        a Federal agency for an infrastructure project.

18                     (5) INFRASTRUCTURE.—The term “infrastruc-  
19        ture” includes, at a minimum, the structures, facili-  
20        ties, and equipment for, in the United States—

- 21                         (A) roads, highways, and bridges;  
22                         (B) public transportation;  
23                         (C) dams, ports, harbors, and other mari-  
24        time facilities;

## 21 SEC. 4. IDENTIFICATION OF DEFICIENT PROGRAMS.

22 (a) IN GENERAL.—Not later than 60 days after the  
23 date of enactment of this Act, the head of each Federal  
24 agency shall—

7                   (2) publish in the Federal Register the report  
8 under paragraph (1).

9       (b) REQUIREMENTS.—In the report under subsection  
10 (a), the head of each Federal agency shall, for each Fed-  
11 eral financial assistance program—

12                   (1) identify all domestic content procurement  
13                 preferences applicable to the Federal financial as-  
14                 sistance;

20 (B) section 5323(j) of title 49, United  
21 States Code:

(C) section 22905(a) of title 49, United States Code:

24 (D) section 50101 of title 49, United  
25 States Code:

(E) section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1388);

(F) section 1452(a)(4) of the Safe Drinking Water Act (42 U.S.C. 300j-12(a)(4));

(G) section 5035 of the Water Infrastructure Finance and Innovation Act of 2014 (33 U.S.C. 3914);

(H) any domestic content procurement preference included in an appropriations Act; and

(I) any other domestic content procurement preference in Federal law (including regulations);

(3) provide details on any applicable domestic content procurement preference requirement, including the purpose, scope, applicability, and any exceptions and waivers issued under the requirement; and

(4) include a description of the type of infrastructure projects that receive funding under the program, including information relating to—

(A) the number of entities that are participating in the program;

(B) the amount of Federal funds that are made available for the program for each fiscal year; and

(C) any other information the head of the Federal agency determines to be relevant.

3 (c) LIST OF DEFICIENT PROGRAMS.—In the report  
4 under subsection (a), the head of each Federal agency  
5 shall include a list of Federal financial assistance pro-  
6 grams for infrastructure identified under that subsection  
7 for which a domestic content procurement preference re-  
8 quirement—

9 (1) does not apply; or

10                         (2) is subject to a waiver of general applica-  
11                         bility not limited to the use of specific products for  
12                         use in a specific project.

## 13 SEC. 5. APPLICATION OF BUY AMERICA PREFERENCE.

14 (a) IN GENERAL.—Not later than 180 days after the  
15 date of enactment of this Act, the head of each Federal  
16 agency shall ensure that none of the funds made available  
17 for a Federal financial assistance program for infrastruc-  
18 ture, including each deficient program, may be used for  
19 a project unless all of the iron, steel, and manufactured  
20 products used in the project are produced in the United  
21 States.

22 (b) WAIVER.—The head of a Federal agency that ap-  
23 plies a domestic content procurement preference under  
24 this section may waive the application of that preference

1 in any case in which the head of the Federal agency finds  
2 that—

3                 (1) applying the domestic content procurement  
4                 preference would be inconsistent with the public in-  
5                 terest;

6                 (2) types of iron, steel, or manufactured prod-  
7                 ucts are not produced in the United States in suffi-  
8                 cient and reasonably available quantities or of a sat-  
9                 isfactory quality; or

10                 (3) the inclusion of iron, steel, or manufactured  
11                 products produced in the United States will increase  
12                 the cost of the overall project by more than 25 per-  
13                 cent.

14                 (c) WRITTEN JUSTIFICATION.—Before issuing a  
15 waiver under subsection (b), the head of the Federal agen-  
16 cy shall—

17                 (1) publish in the Federal Register and make  
18                 publicly available in an easily accessible location on  
19                 the website of the Federal agency a detailed written  
20                 explanation for the proposed determination to issue  
21                 the waiver; and

22                 (2) provide a reasonable period for public com-  
23                 ment on the proposed waiver.

24                 (d) PROHIBITION ON WAIVERS OF GENERAL APPLI-  
25 CABILITY.—A waiver issued under subsection (b) shall be

1 limited to the use of specific products for use in a specific  
2 project.

3 (e) CONSISTENCY WITH INTERNATIONAL AGREEMENTS.—This section shall be applied in a manner consistent with United States obligations under international agreements.

7 **SEC. 6. OMB GUIDANCE.**

8 The Director of the Office of Management and Budget shall—

10 (1) issue guidance to the head of each Federal agency—

12 (A) to assist in identifying deficient programs under section 4(c); and

14 (B) to assist in applying new domestic content procurement preferences under section 5; and

17 (2) if necessary, amend subtitle A of title 2, Code of Federal Regulations (or successor regulations), to ensure that domestic content procurement preference requirements required by this Act or other Federal law are imposed through the terms and conditions of awards of Federal financial assistance.

1   **SEC. 7. APPLICATION.**

2       (a) IN GENERAL.—This Act shall apply to a Federal  
3 financial assistance program for infrastructure only to the  
4 extent that a domestic content procurement preference as  
5 described in section 5 does not already apply to iron, steel,  
6 and manufactured products.

7       (b) SAVINGS PROVISION.—Nothing in this Act affects  
8 a domestic content procurement preference for a Federal  
9 financial assistance program for infrastructure that is in  
10 effect and that meets the requirements of section 5.

