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1ST SESSION

H. R. 595

To require certain Federal agencies to use iron and steel produced in the United States in carrying out projects for the construction, alteration, or repair of a public building or public work, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 15, 2009

Mr. VISCLOSKY (for himself, Ms. SUTTON, Ms. KILPATRICK of Michigan, Ms. KAPTUR, Mr. WILSON of Ohio, Mr. TIM MURPHY of Pennsylvania, Mr. MURTHA, Mr. DOYLE, Mr. HOLDEN, Mr. COSTELLO, Mr. LIPINSKI, Mr. STUPAK, Mr. GENE GREEN of Texas, Mr. ALTMIRE, Mr. CARNEY, Mr. GERLACH, Mr. MICHAUD, Ms. DAHLKEMPER, Mr. HARE, Mr. KAGEN, Mr. SPACE, Mrs. CAPITO, Mr. PETERS, Mr. MCGOVERN, Mr. MASSA, Mr. MANZULLO, Mr. BRADY of Pennsylvania, Mr. WILSON of South Carolina, and Mr. UPTON) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committees on Homeland Security and Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require certain Federal agencies to use iron and steel produced in the United States in carrying out projects for the construction, alteration, or repair of a public building or public work, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “American Steel First
3 Act of 2009”.

4 **SEC. 2. USE OF IRON AND STEEL PRODUCED IN THE**
5 **UNITED STATES IN THE CONSTRUCTION OF**
6 **PUBLIC WORKS.**

7 (a) IN GENERAL.—Notwithstanding any other provi-
8 sion of law, the head of a covered Federal agency shall
9 not obligate or expend funds appropriated to the agency,
10 or provide financial assistance using funds appropriated
11 to the agency, for a project for the construction, alter-
12 ation, maintenance, or repair of a public building or public
13 work unless all of the iron and steel used in such project
14 is produced in the United States.

15 (b) EXCEPTIONS.—The provisions of subsection (a)
16 shall not apply to a covered Federal agency in any case
17 in which the head of the agency finds—

18 (1) that their application would be inconsistent
19 with the public interest;

20 (2) that iron and steel are not produced in the
21 United States in sufficient and reasonably available
22 quantities and of a satisfactory quality; or

23 (3) that inclusion of iron and steel produced in
24 the United States will increase the cost of the overall
25 project contract by more than 25 percent.

26 (c) WRITTEN JUSTIFICATION FOR WAIVER.—

1 (1) NOTICE AND COMMENT.—If the head of a
2 covered Federal agency determines that it is nec-
3 essary to waive the application of subsection (a)
4 based on a finding under subsection (b), the head of
5 the agency shall, before the waiver becomes effec-
6 tive—

7 (A) publish in the Federal Register a de-
8 tailed written justification as to why the waiver
9 is needed; and

10 (B) provide the public with a reasonable
11 period of time for notice and comment.

12 (2) ANNUAL REPORT.—Not later than one year
13 after the date of enactment of this Act, and annually
14 thereafter, the head of a covered Federal agency
15 shall submit to Congress a report on—

16 (A) any waivers granted by the head of the
17 agency under subsection (b) in the preceding
18 year, including justifications for the waivers;
19 and

20 (B) any obligation or expenditure of funds
21 by the head of the agency in the preceding year
22 that did not conform to the requirements of this
23 section due to limitations imposed by a treaty,
24 agreement, or other provision of law.

1 (d) RELATIONSHIP TO STATE REQUIREMENTS.—The
2 head of a covered Federal agency shall not impose any
3 limitation or condition on financial assistance provided
4 using funds appropriated to the agency that restricts any
5 State from imposing more stringent requirements than
6 this section on the use of iron and steel in foreign coun-
7 tries in projects carried out with such assistance or re-
8 stricts any recipient of such assistance from complying
9 with such State imposed requirements.

10 (e) INTENTIONAL VIOLATIONS.—If it has been deter-
11 mined by a court or Federal agency that any person inten-
12 tionally—

13 (1) affixed a label bearing a “Made in Amer-
14 ica” inscription, or any inscription with the same
15 meaning, to any product used in projects to which
16 this section applies, sold in or shipped to the United
17 States that was not made in the United States; or

18 (2) represented that any product used in
19 projects to which this section applies, sold in or
20 shipped to the United States that was not produced
21 in the United States, was produced in the United
22 States;

23 that person shall be ineligible, for a period of 6 years be-
24 ginning on the date of the determination, to receive any
25 contract or subcontract made with funds authorized to be

1 appropriated to the agency pursuant to the debarment,
2 suspension, and ineligibility procedures in subpart 9.4 of
3 chapter 1 of title 48, Code of Federal Regulations.

4 (f) LIMITATION ON APPLICABILITY OF WAIVERS TO
5 PRODUCTS PRODUCED IN CERTAIN FOREIGN COUN-
6 TRIES.—If the head of a covered Federal agency, in con-
7 sultation with the United States Trade Representative, de-
8 termines that—

9 (1) a foreign country is a party to an agree-
10 ment with the United States and pursuant to that
11 agreement the head of an agency of the United
12 States has waived the requirements of this section;
13 and

14 (2) the foreign country has violated the terms
15 of the agreement by discriminating against products
16 covered by this section that are produced in the
17 United States and are covered by the agreement,
18 the provisions of subsection (b) shall not apply with re-
19 spect to the head of the covered Federal agency in connec-
20 tion with products produced in that foreign country.

21 (g) RELATIONSHIP TO TRANSPORTATION PROVI-
22 SIONS.—Notwithstanding any provision of this section, the
23 requirements contained in section 313 of title 23, United
24 States Code, and sections 5323(j) and 50101 of title 49,

1 United States Code, as amended by this Act, shall con-
 2 tinue to apply.

3 (h) APPLICATION OF REQUIREMENTS TO ENTIRE
 4 PROJECT.—The requirement of subsection (a) and the ex-
 5 ceptions specified in subsection (b) apply to the total of
 6 obligations and expenditures for an entire project and not
 7 only to obligations and expenditures for component parts
 8 of such project.

9 (i) DEFINITIONS.—In this section, the following defi-
 10 nitions apply:

11 (1) COVERED FEDERAL AGENCY.—The term
 12 “covered Federal agency” means the Department of
 13 Homeland Security, the Department of Defense, and
 14 the Department of Transportation.

15 (2) PUBLIC BUILDING; PUBLIC WORK.—The
 16 terms “public building” and “public work” have the
 17 meanings given such terms in section 1 of the Buy
 18 American Act (41 U.S.C. 10c) and include airports,
 19 bridges, canals, dams, dikes, pipelines, railroads,
 20 multiline mass transit systems, roads, tunnels, har-
 21 bors, and piers.

22 **SEC. 3. BUY AMERICA REQUIREMENTS IN TRANSPOR-**
 23 **TATION LAWS.**

24 (a) HIGHWAYS.—Section 313 of title 23, United
 25 States Code, is amended—

1 (1) by redesignating subsections (c) through (f)
2 as subsections (d) through (g), respectively;

3 (2) by inserting after subsection (b) the fol-
4 lowing:

5 “(c) WRITTEN JUSTIFICATION FOR WAIVER.—

6 “(1) NOTICE AND COMMENT.—If the Secretary
7 determines that it is necessary to waive the applica-
8 tion of subsection (a) based on a finding under sub-
9 section (b), the Secretary shall, before the waiver be-
10 comes effective—

11 “(A) publish in the Federal Register a de-
12 tailed written justification as to why the waiver
13 is needed; and

14 “(B) provide the public with a reasonable
15 period of time for notice and comment.

16 “(2) ANNUAL REPORT.—Not later than one
17 year after the date of enactment of this paragraph,
18 and annually thereafter, the Secretary shall submit
19 to the Committee on Transportation and Infrastruc-
20 ture of the House of Representatives and the Com-
21 mittee on Environment and Public Works of the
22 Senate a report on—

23 “(A) any waivers granted under subsection
24 (b) in the preceding year, including justifica-
25 tions for the waivers; and

1 “(B) any obligation of funds by the Sec-
2 retary in the preceding year that did not con-
3 form to the requirements of this section due to
4 limitations imposed by a treaty, agreement, or
5 other provision of law.”; and

6 (3) by adding at the end the following:

7 “(h) APPLICATION OF REQUIREMENTS TO ENTIRE
8 PROJECT.—The requirement of subsection (a) and the ex-
9 ceptions specified in subsection (b) apply to the total of
10 obligations for an entire project and not only to obligations
11 for component parts of such project.”.

12 (b) PUBLIC TRANSPORTATION.—Section 5323(j) of
13 title 49, United States Code, is amended—

14 (1) by striking paragraph (3) and inserting the
15 following:

16 “(3) WRITTEN JUSTIFICATION FOR WAIVER.—

17 “(A) NOTICE AND COMMENT.—If the Sec-
18 retary determines that it is necessary to waive
19 the application of paragraph (1) based on a
20 finding under paragraph (2), the Secretary
21 shall, before the waiver becomes effective—

22 “(i) publish in the Federal Register a
23 detailed written justification as to why the
24 waiver is needed; and

1 “(ii) provide the public with a reason-
2 able period of time for notice and com-
3 ment.

4 “(B) ANNUAL REPORT.—Not later than
5 one year after the date of enactment of this
6 subparagraph, and annually thereafter, the Sec-
7 retary shall submit to the Committee on Trans-
8 portation and Infrastructure of the House of
9 Representatives and the Committee on Bank-
10 ing, Housing, and Urban Affairs of the Senate
11 a report on—

12 “(i) any waivers granted under para-
13 graph (2) in the preceding year, including
14 justifications for the waivers; and

15 “(ii) any obligation of funds by the
16 Secretary in the preceding year that did
17 not conform to the requirements of this
18 subsection due to limitations imposed by a
19 treaty, agreement, or other provision of
20 law.”; and

21 (2) by adding at the end the following:

22 “(10) APPLICATION OF REQUIREMENTS TO EN-
23 TIRE PROJECT.—The requirement of paragraph (1)
24 and the exceptions specified in paragraph (2) apply
25 to the total of obligations for an entire project and

1 not only to obligations for component parts of such
2 project.”.

3 (c) AIRPORTS.—Section 50101 of title 49, United
4 States Code, is amended—

5 (1) by redesignating subsection (c) as sub-
6 section (d);

7 (2) by inserting after subsection (b) the fol-
8 lowing:

9 “(c) WRITTEN JUSTIFICATION FOR WAIVER.—

10 “(1) NOTICE AND COMMENT.—If the Secretary
11 determines that it is necessary to waive the applica-
12 tion of subsection (a) based on a finding under sub-
13 section (b), the Secretary shall, before the waiver be-
14 comes effective—

15 “(A) publish in the Federal Register a de-
16 tailed written justification as to why the waiver
17 is needed; and

18 “(B) provide the public with a reasonable
19 period of time for notice and comment.

20 “(2) ANNUAL REPORT.—Not later than one
21 year after the date of enactment of this paragraph,
22 and annually thereafter, the Secretary shall submit
23 to the Committee on Transportation and Infra-
24 structure of the House of Representatives and the

1 Committee on Commerce, Science, and Transpor-
 2 tation of the Senate a report on—

3 “(A) any waivers granted under subsection
 4 (b) in the preceding year, including justifica-
 5 tions for the waivers; and

6 “(B) any obligation of funds by the Sec-
 7 retary in the preceding year that did not con-
 8 form to the requirements of this section due to
 9 limitations imposed by a treaty, agreement, or
 10 other provision of law.”; and

11 (3) by adding at the end the following:

12 “(d) APPLICATION OF REQUIREMENTS TO ENTIRE
 13 PROJECT.—The requirement of subsection (a) and the ex-
 14 ceptions specified in subsection (b) apply to the total of
 15 obligations for an entire project and not only to obligations
 16 for component parts of such project.”.

17 **SEC. 4. EFFECTIVE DATE.**

18 This Act, and the amendments made by this Act,
 19 shall apply to amounts appropriated or otherwise made
 20 available after the date of enactment of this Act.

