

111TH CONGRESS  
2D SESSION

# S. 4034

To support United States manufacturing 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.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 16, 2010

Mr. BROWN of Ohio (for himself and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To support United States manufacturing 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 2010” 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 title 23 or 49, United  
 17 States Code;

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

20 (3) for transportation infrastructure projects  
 21 funded under any Act that appropriates amounts for  
 22 the Department of Transportation.

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 website 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) BUY AMERICA.—Section 313 of title 23,  
 8 United States Code, is amended by adding at the  
 9 end the following:

10 “(g) OTHER LIMITATIONS ON WAIVERS.—

11 “(1) REQUESTS FOR WAIVERS.—Not later than  
 12 7 days after a Federal agency receives a written re-  
 13 quest for a waiver of any requirement under this  
 14 section, the head of such agency shall—

15 “(A) publish the request on a publicly  
 16 available agency website in an easily identifiable  
 17 location; and

18 “(B) provide the public with a minimum of  
 19 30 days for notice and comment before issuing  
 20 the requested waiver.

21 “(2) WAIVERS GRANTED.—Not later than 30  
 22 days after a Federal agency decides to waive any re-  
 23 quirement under this section, the head of the agency  
 24 shall publish the decision and the justification for

such decision in the Federal Register and on the publicly available website described in paragraph (1).

“(3) NOTIFICATION OF THE OFFICE OF MANAGEMENT AND BUDGET.—Each Federal agency that grants a waiver of any requirement under this section shall submit to the Director of the Office of Management and Budget—

“(A) a notification of the application of the exception; and

“(B) a statement describing the procurement and the exception being applied.”.

(2) PUBLIC TRANSPORTATION ASSISTANCE.—Section 5323(j) of title 49, United States Code, is amended by adding at the end the following:

“(7) LIMITATIONS ON WAIVERS.—

“(A) REQUESTS FOR WAIVERS.—Not later than 7 days after a Federal agency receives a written request for a waiver of any requirement under this subsection or section 5307(d)(1)(E)(iii), the head of such agency shall—

“(i) publish the request on a publicly available agency website in an easily identifiable location; and

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

4 “(B) WAIVERS GRANTED.—Not later than  
5 30 days after a Federal agency decides to waive  
6 any requirement under this subsection or sec-  
7 tion 5307(d)(1)(E)(iii), the head of the agency  
8 shall publish the decision and the justification  
9 for such decision in the Federal Register and  
10 on the publicly available website described in  
11 subparagraph (A).

12 “(C) NOTIFICATION OF THE OFFICE OF  
13 MANAGEMENT AND BUDGET.—Each Federal  
14 agency that grants a waiver of any requirement  
15 under this subsection or section  
16 5307(d)(1)(E)(iii) shall submit to the Director  
17 of the Office of Management and Budget—

18 “(i) a notification of the application of  
19 the exception; and

20 “(ii) a statement describing the pro-  
21 curement and the exception being ap-  
22 plied.”.

23 (3) AMTRAK.—Section 24305(f) of title 49,  
24 United States Code, is amended by adding at the  
25 end the following:

1 “(5) LIMITATIONS ON WAIVERS.—

2 “(A) REQUESTS FOR WAIVERS.—Not later  
3 than 7 days after a Federal agency receives a  
4 written request for a waiver of any requirement  
5 under this subsection, the head of such agency  
6 shall—

7 “(i) publish the request on a publicly  
8 available agency website in an easily identi-  
9 fiable location; and

10 “(ii) provide the public with a min-  
11 imum of 30 days for notice and comment  
12 before issuing the requested waiver.

13 “(B) WAIVERS GRANTED.—Not later than  
14 30 days after a Federal agency decides to waive  
15 any requirement under this subsection, the head  
16 of the agency shall publish the decision and the  
17 justification for such decision in the Federal  
18 Register and on the publicly available website  
19 described in subparagraph (A).

20 “(C) NOTIFICATION OF THE OFFICE OF  
21 MANAGEMENT AND BUDGET.—Each Federal  
22 agency that grants a waiver of any requirement  
23 under this subsection shall submit to the Direc-  
24 tor of the Office of Management and Budget—

1 “(i) a notification of the application of  
2 the exception; and

3 “(ii) a statement describing the pro-  
4 curement and the exception being ap-  
5 plied.”.

6 (4) INTERCITY PASSENGER RAIL SERVICE.—  
7 Section 24405(a) of title 49, United States Code, is  
8 amended by adding at the end the following:

9 “(12) LIMITATIONS ON WAIVERS.—

10 “(A) REQUESTS FOR WAIVERS.—Not later  
11 than 7 days after a Federal agency receives a  
12 written request for a waiver of any requirement  
13 under this subsection, the head of such agency  
14 shall—

15 “(i) publish the request on a publicly  
16 available agency website in an easily identi-  
17 fiable location; and

18 “(ii) provide the public with a min-  
19 imum of 30 days for notice and comment  
20 before issuing the requested waiver.

21 “(B) WAIVERS GRANTED.—Not later than  
22 30 days after a Federal agency decides to waive  
23 any requirement under this subsection, the head  
24 of the agency shall publish the decision and the  
25 justification for such decision in the Federal

1 Register and on the publicly available website  
2 described in subparagraph (A).

3 “(C) NOTIFICATION OF THE OFFICE OF  
4 MANAGEMENT AND BUDGET.—Each Federal  
5 agency that grants a waiver of any requirement  
6 under this subsection shall submit to the Direc-  
7 tor of the Office of Management and Budget—

8 “(i) a notification of the application of  
9 the exception; and

10 “(ii) a statement describing the pro-  
11 curement and the exception being ap-  
12 plied.”.

13 (c) REQUIREMENT FOR ANNUAL REPORTING ON EX-  
14 CEPTIONS TO DOMESTIC SOURCE REQUIREMENTS FOR  
15 TRANSPORTATION INVESTMENTS.—

16 (1) REPORT REQUIREMENT.—

17 (A) IN GENERAL.—Not later than 60 days  
18 after the end of a fiscal year, the Inspector  
19 General of the Department of Transportation  
20 shall submit a report to Congress on the acqui-  
21 sitions supported by Federal transportation in-  
22 frastructure investments which did not satisfy  
23 applicable domestic content standards.

24 (B) CONTENTS OF REPORT.—The report  
25 submitted under subparagraph (A) shall in-



1           clude, for the fiscal year covered by such re-  
2           port—

3                   (i) the number of all domestic content  
4                   waivers issued for transportation infra-  
5                   structure, rolling stock, and supporting  
6                   equipment purchases;

7                   (ii) the countries and specifications of  
8                   the products for which waivers were grant-  
9                   ed;

10                  (iii) an itemized list of all waivers  
11                  granted with respect to articles, materials,  
12                  and supplies;

13                  (iv) any law that requires procure-  
14                  ment of goods from a domestic source;

15                  (v) a citation to the treaty, inter-  
16                  national agreement, or other law under  
17                  which each waiver was granted, if applica-  
18                  ble;

19                  (vi) the specific exception under the  
20                  applicable domestic content standards that  
21                  was used to purchase such articles, mate-  
22                  rials, or supplies, if any articles, materials,  
23                  or supplies were acquired from entities  
24                  that manufacture articles, materials, or  
25                  supplies outside of the United States; and

1 (vii) a summary of—

2 (I) the total procurement funds  
3 expended on articles, materials, and  
4 supplies manufactured inside the  
5 United States; and

6 (II) the total procurement funds  
7 expended on articles, materials, and  
8 supplies manufactured outside of the  
9 United States.

10 **SEC. 4. LINK DOMESTIC MANUFACTURERS TO TRANSPOR-**  
11 **TATION INFRASTRUCTURE AND ROLLING**  
12 **STOCK OPPORTUNITIES.**

13 The Secretary of Transportation is authorized to  
14 work with the Hollings Manufacturing Partnership Pro-  
15 gram and other manufacturing-related local inter-  
16 mediaries designated by the Secretary to develop a multi-  
17 agency comprehensive plan to expand domestic rail and  
18 transit vehicle supply chains with involvement from other  
19 applicable Federal agencies or industry consortiums—

20 (1) to identify United States manufacturers  
21 currently producing, or capable of producing, transit  
22 and rail vehicles, supporting equipment, component  
23 parts, or similarly performing products;

24 (2) to work with partners to identify and ad-  
25 dress gaps in domestic supply chains; and

1           (3) to establish and carry out a program to  
2       award grants to eligible entities in accordance with  
3       this Act.

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