

110TH CONGRESS  
1ST SESSION

# S. 581

To amend the Buy American Act to increase the requirement for American-made content, to tighten the waiver provisions, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2007

Mr. FEINGOLD 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 amend the Buy American Act to increase the requirement for American-made content, to tighten the waiver provisions, 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 “Buy American Im-  
5       provement Act of 2007”.

6       **SEC. 2. REQUIREMENTS FOR WAIVERS.**

7       (a) IN GENERAL.—Section 2 of the Buy American  
8       Act (41 U.S.C. 10a) is amended—

9               (1) by striking “Notwithstanding” and insert-  
10       ing the following:

1 “(a) IN GENERAL.—Notwithstanding”; and

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

3 “(b) SPECIAL RULES.—The following rules shall  
4 apply in carrying out the provisions of subsection (a):

5 “(1) PUBLIC INTEREST WAIVER.—A determina-  
6 tion that it is not in the public interest to enter into  
7 a contract in accordance with this Act may not be  
8 made after a notice of solicitation of offers for the  
9 contract is published in accordance with section 18  
10 of the Office of Federal Procurement Policy Act (41  
11 U.S.C. 416) and section 8(e) of the Small Business  
12 Act (15 U.S.C. 637(e)).

13 “(2) DOMESTIC BIDDER.—A Federal agency  
14 entering into a contract shall give preference to a  
15 company submitting an offer on the contract that  
16 manufactures in the United States the article, mate-  
17 rial, or supply for which the offer is solicited, if—

18 “(A) that company’s offer is substantially  
19 the same as an offer made by a company that  
20 does not manufacture the article, material, or  
21 supply in the United States; or

22 “(B) that company is the only company  
23 that manufactures in the United States the ar-  
24 ticle, material, or supply for which the offer is  
25 solicited.

1           “(3) USE OUTSIDE THE UNITED STATES.—

2                   “(A) IN GENERAL.—Subsection (a) shall  
3           apply without regard to whether the articles,  
4           materials, or supplies to be acquired are for use  
5           outside the United States if the articles, mate-  
6           rials, or supplies are not needed on an urgent  
7           basis or if they are acquired on a regular basis.

8                   “(B) COST ANALYSIS.—In any case in  
9           which the articles, materials, or supplies are to  
10          be acquired for use outside the United States  
11          and are not needed on an urgent basis, before  
12          entering into a contract an analysis shall be  
13          made of the difference in the cost of acquiring  
14          the articles, materials, or supplies from a com-  
15          pany manufacturing the articles, materials, or  
16          supplies in the United States (including the  
17          cost of shipping) and the cost of acquiring the  
18          articles, materials, or supplies from a company  
19          manufacturing the articles, materials, or sup-  
20          plies outside the United States (including the  
21          cost of shipping).

22                  “(4) DOMESTIC AVAILABILITY.—The head of a  
23          Federal agency may not make a determination under  
24          subsection (a) that an article, material, or supply is  
25          not mined, produced, or manufactured, as the case

1 may be, in the United States in sufficient and rea-  
2 sonably available commercial quantities and of satis-  
3 factory quality, unless the head of the agency has  
4 conducted a study and, on the basis of such study,  
5 determined that—

6 “(A) domestic production cannot be initi-  
7 ated to meet the procurement needs; and

8 “(B) a comparable article, material, or  
9 supply is not available from a company in the  
10 United States.

11 “(c) REPORTS.—

12 “(1) IN GENERAL.—Not later than 180 days  
13 after the end of each of fiscal years 2007 through  
14 2011, the head of each Federal agency shall submit  
15 to the Committee on Homeland Security and Gov-  
16 ernmental Affairs of the Senate and the Committee  
17 on Oversight and Government Reform of the House  
18 of Representatives a report on the amount of the ac-  
19 quisitions made by the agency in that fiscal year of  
20 articles, materials, or supplies purchased from enti-  
21 ties that manufacture the articles, materials, or sup-  
22 plies outside of the United States.

23 “(2) CONTENTS OF REPORT.—The report re-  
24 quired by paragraph (1) shall separately include, for  
25 the fiscal year covered by such report—

1           “(A) the dollar value of any articles, mate-  
2           rials, or supplies that were manufactured out-  
3           side the United States;

4           “(B) an itemized list of all waivers granted  
5           with respect to such articles, materials, or sup-  
6           plies under this Act, and a citation to the trea-  
7           ty, international agreement, or other law under  
8           which each waiver was granted;

9           “(C) if any articles, materials, or supplies  
10          were acquired from entities that manufacture  
11          articles, materials, or supplies outside the  
12          United States, the specific exception under this  
13          section that was used to purchase such articles,  
14          materials, or supplies; and

15          “(D) a summary of—

16               “(i) the total procurement funds ex-  
17               pended on articles, materials, and supplies  
18               manufactured inside the United States;  
19               and

20               “(ii) the total procurement funds ex-  
21               pended on articles, materials, and supplies  
22               manufactured outside the United States.

23          “(3) PUBLIC AVAILABILITY.—The head of each  
24          Federal agency submitting a report under paragraph

1 (1) shall make the report publicly available to the  
2 maximum extent practicable.

3 “(4) EXCEPTION FOR INTELLIGENCE COMMU-  
4 NITY.—This subsection shall not apply to acqui-  
5 sitions made by an agency, or component thereof, that  
6 is an element of the intelligence community as speci-  
7 fied in, or designated under, section 3(4) of the Na-  
8 tional Security Act of 1947 (50 U.S.C. 401a(4)).”.

9 (b) DEFINITIONS.—Section 1 of the Buy American  
10 Act (41 U.S.C. 10c) is amended by adding at the end the  
11 following:

12 “(c) FEDERAL AGENCY.—The term ‘Federal agency’  
13 means any executive agency (as defined in section 4(1)  
14 of the Office of Federal Procurement Policy Act (41  
15 U.S.C. 403(1))) or any establishment in the legislative or  
16 judicial branch of the Federal Government.

17 “(d) SUBSTANTIALLY ALL.—Articles, materials, or  
18 supplies shall be treated as made substantially all from  
19 articles, materials, or supplies mined, produced, or manu-  
20 factured in the United States, if the cost of the domestic  
21 components of such articles, materials, or supplies exceeds  
22 75 percent of the total cost of all components of such arti-  
23 cles, materials, or supplies.”.

24 (c) CONFORMING AMENDMENTS.—

1           (1) Section 2 of the Buy American Act (41  
2           U.S.C. 10a) is amended by striking “department or  
3           independent establishment” and inserting “Federal  
4           agency”.

5           (2) Section 3 of such Act (41 U.S.C. 10b) is  
6           amended—

7                   (A) in subsection (a), by striking “depart-  
8                   ment or independent establishment” and insert-  
9                   ing “Federal agency”; and

10                   (B) in subsection (b), by striking “depart-  
11                   ment, bureau, agency, or independent establish-  
12                   ment” and inserting “Federal agency”.

13           (3) Section 633 of the National Military Estab-  
14           lishment Appropriation Act, 1950 (41 U.S.C. 10d) is  
15           amended by striking “department or independent es-  
16           tablishment” and inserting “Federal agency”.

17 **SEC. 3. GAO REPORT AND RECOMMENDATIONS.**

18           (a) REPORT ON SCOPE OF WAIVERS.—Not later than  
19           180 days after the date of the enactment of this Act, the  
20           Comptroller General of the United States shall report to  
21           Congress recommendations to be used in determining, for  
22           purposes of applying the waiver provision of section 2(a)  
23           of the Buy American Act, as redesignated by section 2(a)  
24           of this Act, whether acquiring articles, materials, and sup-

1 plies mined, produced, or manufactured in the United  
2 States would—

3           (1) involve unreasonable cost; or

4           (2) be inconsistent with the public interest.

5       (b) RECOMMENDATIONS.—The report described in  
6 subsection (a) shall include recommendations—

7           (1) for a statutory definition of unreasonable  
8       cost and for standards for determining inconsistency  
9       with the public interest; and

10          (2) for establishing procedures for applying the  
11       waiver provisions of the Buy American Act that can  
12       be consistently applied.

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