

115TH CONGRESS
2D SESSION

S. 2731

To expand domestic content requirements for certain shipboard components,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 23, 2018

Ms. BALDWIN introduced the following bill; which was read twice and referred
to the Committee on Homeland Security and Governmental Affairs

A BILL

To expand domestic content requirements for certain
shipboard components, 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 “Made in America Ship-
5 building Act of 2018”.

6 **SEC. 2. DOMESTIC SHIPBUILDING REQUIREMENT.**

7 (a) IN GENERAL.—The head of an executive agency
8 may not enter into a contract related to the acquisition,
9 construction, or conversion of a vessel unless the vessel
10 is to be constructed or converted in the United States.

1 (b) EXECUTIVE AGENCY DEFINED.—In this section,
 2 the term “executive agency” has the meaning given the
 3 term in section 133 of title 41, United States Code.

4 **SEC. 3. DOMESTIC SOURCING REQUIREMENT FOR SHIP-**
 5 **BOARD COMPONENTS.**

6 (a) IN GENERAL.—Chapter 47 of title 41, United
 7 States Code, is amended by adding at the end the fol-
 8 lowing new section:

9 **“§ 4713. Domestic sourcing requirement for ship-**
 10 **board components**

11 **“(a) REQUIREMENT FOR UNITED STATES MANUFAC-**
 12 **TURE.—**

13 **“(1) LIMITATION ON PROCUREMENTS.—**The
 14 head of an executive agency may procure any of the
 15 following components for vessels only if the items
 16 are manufactured in the United States:

17 **“(A) IN GENERAL.—**The following compo-
 18 nents for vessels:

19 **“(i) Air circuit breakers.**

20 **“(ii) Welded shipboard anchor and**
 21 **mooring chain with a diameter of four**
 22 **inches or less.**

23 **“(iii) Auxiliary equipment, including**
 24 **pumps, for all shipboard services.**

1 “(iv) Propulsion system components
2 (engines, reduction gears, and propellers).

3 “(v) Shipboard cranes.

4 “(vi) Spreaders for shipboard cranes.

5 “(vii) Capstans.

6 “(viii) Winches.

7 “(ix) Hoists.

8 “(x) Outboard motors.

9 “(xi) Windlasses.

10 “(B) OTHER COMPONENTS.—The following
11 components of vessels, to the extent they are
12 unique to marine applications: gyrocompasses,
13 electronic navigation chart systems, steering
14 controls, pumps, propulsion and machinery con-
15 trol systems, and totally enclosed lifeboats.

16 “(C) VALVES AND MACHINE TOOLS.—
17 Items in the following categories:

18 “(i) Powered and non-powered valves
19 in Federal Supply Classes 4810 and 4820
20 used in piping for naval surface ships and
21 submarines.

22 “(ii) Machine tools in the Federal
23 Supply Classes for metal-working machin-
24 ery numbered 3405, 3408, 3410 through
25 3419, 3426, 3433, 3438, 3441 through

1 3443, 3445, 3446, 3448, 3449, 3460, and
2 3461.

3 “(2) APPLICABILITY TO CERTAIN ITEMS.—
4 Paragraph (1) does not apply to a procurement of
5 spare or repair parts needed to support components
6 for vessels produced or manufactured outside the
7 United States.

8 “(3) WAIVER AUTHORITY.—The head of an ex-
9 ecutive agency may waive the limitation in para-
10 graph (1) with respect to the procurement of an
11 item listed in that paragraph if the head of the
12 agency determines that any of the following apply:

13 “(A) Application of the limitation would
14 increase the cost of the overall acquisition by
15 more than 25 percent or cause unreasonable
16 delays to be incurred.

17 “(B) Satisfactory quality items manufac-
18 tured by a domestic entity are not available or
19 domestic production of such items cannot be
20 initiated without significantly delaying the
21 project for which the item is to be acquired.

22 “(C) Application of the limitation would
23 result in the existence of only one domestic
24 source for the item.

1 “(D) Application of the limitation is not in
2 the national security interests of the United
3 States.

4 “(4) IMPLEMENTATION OF WAIVER AUTHOR-
5 ITY.—

6 “(A) NON-DELEGATION OF AUTHORITY.—
7 The head of an agency may not delegate the
8 waiver authority under paragraph (3).

9 “(B) PUBLICATION.—Not later than 30
10 days after exercising the waiver authority under
11 paragraph (3), the head of the agency shall
12 publish in an easily identifiable location on the
13 website of the agency information regarding the
14 waiver, including a detailed justification for the
15 waiver.

16 “(5) ANNUAL REPORT.—Not later than 180
17 days after the end of each fiscal year, the head of
18 each executive agency that has used a waiver de-
19 scribed in this section in the fiscal year shall submit
20 to the Committee on Homeland Security and Gov-
21 ernmental Affairs of the Senate and the Committee
22 on Oversight and Government Reform of the House
23 of Representatives a report on the total amount of
24 waivers used and detailed information regarding and
25 justification for the waiver.

1 “(b) COMPONENTS CONTAINING SPECIALTY MET-
2 ALS.—

3 “(1) LIMITATION ON PROCUREMENTS.—The
4 head of an executive agency may not enter into a
5 contract for the procurement of end items or compo-
6 nents for ships that contain a specialty metal not
7 melted or produced in the United States.

8 “(2) AVAILABILITY EXCEPTION.—

9 “(A) IN GENERAL.—Paragraph (1) does
10 not apply to the extent that the head of an ex-
11 ecutive agency determines that compliant spe-
12 cialty metal of satisfactory quality and suffi-
13 cient quantity, and in the required form, cannot
14 be procured as and when needed. For purposes
15 of the preceding sentence, the term ‘compliant
16 specialty metal’ means specialty metal melted or
17 produced in the United States.

18 “(B) APPLICABILITY.—This paragraph ap-
19 plies to prime contracts and subcontracts at
20 any tier under such contracts.

21 “(3) EXCEPTION FOR CERTAIN ACQUISI-
22 TIONS.—Paragraph (1) does not apply to the fol-
23 lowing:

1 “(A) Acquisitions outside the United
2 States in support of combat operations or in
3 support of contingency operations.

4 “(B) Acquisitions for which the use of pro-
5 cedures other than competitive procedures has
6 been approved on the basis of section 3304(c)
7 of this title, relating to unusual and compelling
8 urgency of need.

9 “(4) EXCEPTION RELATING TO AGREEMENTS
10 WITH FOREIGN GOVERNMENTS.—Paragraph (1) does
11 not preclude the acquisition of a specialty metal if—

12 “(A) the acquisition is necessary—

13 “(i) to comply with agreements with
14 foreign governments requiring the United
15 States to purchase supplies from foreign
16 sources for the purposes of offsetting sales
17 made by the United States Government or
18 United States firms under approved pro-
19 grams serving defense requirements; or

20 “(ii) in furtherance of agreements
21 with foreign governments in which both
22 such governments agree to remove barriers
23 to purchases of supplies produced in the
24 other country or services performed by
25 sources of the other country; and

1 “(B) any such agreement with a foreign
2 government complies, where applicable, with the
3 requirements of section 36 of the Arms Export
4 Control Act (22 U.S.C. 2776) and with section
5 2457 of title 10.

6 “(5) EXCEPTION FOR SMALL PURCHASES.—
7 Paragraph (1) does not apply to acquisitions in
8 amounts not greater than the simplified acquisition
9 threshold referred to in section 134 of this title.

10 “(6) EXCEPTION FOR PURCHASES OF ELEC-
11 TRONIC COMPONENTS.—Paragraph (1) does not
12 apply to acquisitions of electronic components, un-
13 less the head of the agency, with the concurrence of
14 the Secretary of Defense and upon the recommenda-
15 tion of the Strategic Materials Protection Board
16 pursuant to section 187 of title 10, determines that
17 the domestic availability of a particular electronic
18 component is critical to national security.

19 “(7) APPLICABILITY TO ACQUISITIONS OF COM-
20 MERCIAL ITEMS.—

21 “(A) IN GENERAL.—Except as provided in
22 subparagraphs (B) and (C), this section applies
23 to acquisitions of commercial items, notwith-
24 standing sections 1906 and 1907 of this title.

1 “(B) EXCEPTIONS.—This section does not
2 apply to contracts or subcontracts for the ac-
3 quisition of commercially available off-the-shelf
4 items, as defined in section 104 of this title,
5 other than—

6 “(i) contracts or subcontracts for the
7 acquisition of specialty metals, including
8 mill products, such as bar, billet, slab,
9 wire, plate and sheet, that have not been
10 incorporated into end items, subsystems,
11 assemblies, or components;

12 “(ii) contracts or subcontracts for the
13 acquisition of forgings or castings of spe-
14 cialty metals, unless such forgings or cast-
15 ings are incorporated into commercially
16 available off-the-shelf end items, sub-
17 systems, or assemblies;

18 “(iii) contracts or subcontracts for
19 commercially available high performance
20 magnets unless such high performance
21 magnets are incorporated into commer-
22 cially available off-the-shelf end items or
23 subsystems; and

1 “(iv) contracts or subcontracts for
2 commercially available off-the-shelf fas-
3 teners, unless such fasteners are—

4 “(I) incorporated into commer-
5 cially available off-the-shelf end items,
6 subsystems, assemblies, or compo-
7 nents; or

8 “(II) purchased as provided in
9 subparagraph (C).

10 “(C) INAPPLICABILITY TO CERTAIN FAS-
11 TENERS.—This subsection does not apply to
12 fasteners that are commercial items that are
13 purchased under a contract or subcontract with
14 a manufacturer of such fasteners, if the manu-
15 facturer has certified that it will purchase, dur-
16 ing the relevant calendar year, an amount of
17 domestically melted specialty metal, in the re-
18 quired form, for use in the production of such
19 fasteners for sale to executive agencies and
20 other customers, that is not less than 50 per-
21 cent of the total amount of the specialty metal
22 that it will purchase to carry out the production
23 of such fasteners.

24 “(8) EXCEPTIONS FOR PURCHASES OF SPE-
25 CIALTY METALS BELOW MINIMUM THRESHOLD.—

1 “(A) IN GENERAL.—Notwithstanding para-
2 graph (1), the head of an executive agency may
3 accept delivery of an item containing specialty
4 metals that were not melted in the United
5 States if the total amount of noncompliant spe-
6 cialty metals in the item does not exceed 2 per-
7 cent of the total weight of specialty metals in
8 the item.

9 “(B) EXCEPTION.—This paragraph does
10 not apply to high performance magnets.

11 “(9) STREAMLINED COMPLIANCE FOR COMMER-
12 CIAL DERIVATIVE MILITARY ARTICLES.—

13 “(A) IN GENERAL.—Paragraph (1) shall
14 not apply to an item acquired under a prime
15 contract if the head of an executive agency de-
16 termines that—

17 “(i) the item is a commercial deriva-
18 tive military article; and

19 “(ii) the contractor certifies that the
20 contractor and its subcontractors have en-
21 tered into a contractual agreement, or
22 agreements, to purchase an amount of do-
23 mestically melted specialty metal in the re-
24 quired form, for use during the period of
25 contract performance in the production of

1 the commercial derivative military article
2 and the related commercial article, that is
3 not less than the greater of—

4 “(I) an amount equivalent to 120
5 percent of the amount of specialty
6 metal that is required to carry out the
7 production of the commercial deriva-
8 tive military article (including the
9 work performed under each sub-
10 contract); or

11 “(II) an amount equivalent to 50
12 percent of the amount of specialty
13 metal that is purchased by the con-
14 tractor and its subcontractors for use
15 during such period in the production
16 of the commercial derivative military
17 article and the related commercial ar-
18 ticle.

19 “(B) DETERMINATION OF AMOUNT OF
20 SPECIALTY METAL REQUIRED.—For the pur-
21 poses of this paragraph, the amount of specialty
22 metal that is required to carry out the produc-
23 tion of the commercial derivative military article
24 includes specialty metal contained in any item,
25 including commercially available off-the-shelf

1 items, incorporated into such commercial deriv-
2 ative military article.

3 “(10) NATIONAL SECURITY WAIVER.—

4 “(A) IN GENERAL.—Notwithstanding para-
5 graph (1), the head of an executive agency may
6 accept the delivery of an end item containing
7 noncompliant materials if the head of the exec-
8 utive agency determines in writing that accept-
9 ance of such end item is necessary to the na-
10 tional security interests of the United States.

11 “(B) REQUIREMENTS.—A written deter-
12 mination under subparagraph (A)—

13 “(i) shall specify the quantity of end
14 items to which the waiver applies and the
15 time period over which the waiver applies;
16 and

17 “(ii) shall be provided to Congress
18 prior to making such a determination (ex-
19 cept that in the case of an urgent national
20 security requirement, such certification
21 may be provided to Congress up to 7 days
22 after it is made).

23 “(C) KNOWING OR WILLFUL NONCOMPLI-
24 ANCE.—

1 “(i) DETERMINATION.—In any case in
2 which the head of an executive agency
3 makes a determination under subpara-
4 graph (A), the head of the executive agen-
5 cy shall determine whether or not the non-
6 compliance was knowing and willful.

7 “(ii) NOT KNOWING OR WILLFUL
8 NONCOMPLIANCE.—If the head of the exec-
9 utive agency determines that the non-
10 compliance was not knowing or willful, the
11 head of the executive agency shall ensure
12 that the contractor or subcontractor re-
13 sponsible for the noncompliance develops
14 and implements an effective plan to ensure
15 future compliance.

16 “(iii) KNOWING OR WILLFUL NON-
17 COMPLIANCE.—If the head of the executive
18 agency determines that the noncompliance
19 was knowing or willful, the head of the ex-
20 ecutive agency shall—

21 “(I) require the development and
22 implementation of a plan to ensure fu-
23 ture compliance; and

24 “(II) consider suspending or de-
25 barring the contractor or subcon-

1 tractor until such time as the con-
2 tractor or subcontractor has effec-
3 tively addressed the issues that lead to
4 such noncompliance.

5 “(11) SPECIALTY METAL DEFINED.—In this
6 subsection, the term ‘specialty metal’ means any of
7 the following:

8 “(A) Steel—

9 “(i) with a maximum alloy content ex-
10 ceeding one or more of the following limits:
11 manganese, 1.65 percent; silicon, 0.60 per-
12 cent; or copper, 0.60 percent; or

13 “(ii) containing more than 0.25 per-
14 cent of any of the following elements: alu-
15 minum, chromium, cobalt, columbium, mo-
16 lybdenum, nickel, titanium, tungsten, or
17 vanadium.

18 “(B) Metal alloys consisting of nickel, iron-
19 nickel, and cobalt base alloys containing a total
20 of other alloying metals (except iron) in excess
21 of 10 percent.

22 “(C) Titanium and titanium alloys.

23 “(D) Zirconium and zirconium base alloys.

24 “(12) ADDITIONAL DEFINITIONS.—In this sub-
25 section:

1 “(A) The term ‘United States’ includes
2 possessions of the United States.

3 “(B) The term ‘component’ has the mean-
4 ing provided in section 105 of this title.

5 “(C) The term ‘acquisition’ has the mean-
6 ing provided in section 131 of this title.

7 “(D) The term ‘required form’—

8 “(i) shall not apply to end items or to
9 their components at any tier; and

10 “(ii) means in the form of mill prod-
11 uct, such as bar, billet, wire, slab, plate or
12 sheet, and in the grade appropriate for the
13 production of—

14 “(I) a finished end item delivered
15 to the executive agency; or

16 “(II) a finished component as-
17 sembled into an end item delivered to
18 the executive agency.

19 “(E) The term ‘commercially available off-
20 the-shelf’ has the meaning provided in section
21 104 of this title.

22 “(F) The term ‘assemblies’ means items
23 forming a portion of a system or subsystem
24 that can be provisioned and replaced as an enti-

1 ty and which incorporates multiple, replaceable
2 parts.

3 “(G) The term ‘commercial derivative mili-
4 tary article’ means an item procured by the De-
5 partment of Defense that is or will be produced
6 using the same production facilities, a common
7 supply chain, and the same or similar produc-
8 tion processes that are used for the production
9 of articles predominantly used by the general
10 public or by nongovernmental entities for pur-
11 poses other than governmental purposes.

12 “(H) The term ‘subsystem’ means a func-
13 tional grouping of items that combine to per-
14 form a major function within an end item, such
15 as electrical power, attitude control, and propul-
16 sion.

17 “(I) The term ‘end item’ means the final
18 production product when assembled or com-
19 pleted, and ready for issue, delivery, or deploy-
20 ment.

21 “(J) The term ‘subcontract’ includes a
22 subcontract at any tier.

23 “(c) USE OF UNITED STATES STEEL, IRON, ALU-
24 MINUM, AND MANUFACTURED PRODUCTS.—

1 “(1) IN GENERAL.—The head of an executive
2 agency may not enter into a contract related to the
3 construction of a vessel unless the steel, iron, alu-
4 minum, and manufactured products to be used in
5 the construction of the vessel are produced in the
6 United States.

7 “(2) EXCEPTIONS.—The provisions of para-
8 graph (1) shall not apply where the head of an exec-
9 utive agency finds—

10 “(A) that their application would be incon-
11 sistent with the public interest;

12 “(B) that such materials and products are
13 not produced in the United States in sufficient
14 and reasonably available quantities and of a
15 satisfactory quality; or

16 “(C) that inclusion of domestic material
17 will increase the cost of the overall project con-
18 tract by more than 25 percent.

19 “(3) IMPLEMENTATION OF EXCEPTIONS.—

20 “(A) NON-DELEGATION OF AUTHORITY.—
21 The head of an agency may not delegate the
22 authority to make a finding described in para-
23 graph (2).

24 “(B) PUBLICATION.—Not later than 30
25 days after making a finding described in para-

1 graph (2), the head of the agency shall publish
2 in an easily identifiable location on the website
3 of the agency information regarding the finding,
4 including a detailed justification for the excep-
5 tion.

6 “(4) ANNUAL REPORT.—Not later than 180
7 days after the end of each fiscal year, the head of
8 each executive agency that has made an exception
9 finding described in paragraph (2) in the fiscal year
10 shall submit to the Committee on Homeland Secu-
11 rity and Governmental Affairs of the Senate and the
12 Committee on Oversight and Government Reform of
13 the House of Representatives a report on the total
14 amount of exceptions used and detailed information
15 regarding and justification for the exceptions.

16 “(5) CALCULATION OF COMPONENT COST.—For
17 purposes of this subsection, in calculating compo-
18 nents’ costs, labor costs involved in final assembly
19 shall not be included in the calculation.

20 “(6) INTENTIONAL VIOLATIONS.—If it has been
21 determined by a court or Federal agency that any
22 person intentionally—

23 “(A) affixed a label bearing a ‘Made in
24 America’ inscription, or any inscription with the
25 same meaning, to any product used in projects

1 to which this section applies, sold in or shipped
2 to the United States that was not made in the
3 United States; or

4 “(B) represented that any product used in
5 projects to which this section applies, sold in or
6 shipped to the United States that was not pro-
7 duced in the United States, was produced in
8 the United States;

9 that person shall be debarred from contracting with
10 the Federal Government for a period of not less
11 than 5 years.”.

12 (b) CLERICAL AMENDMENT.—The table of sections
13 at the beginning of such chapter is amended by adding
14 after the item relating to section 4712 the following new
15 item:

“4713. Domestic sourcing requirement for shipboard components.”.

16 **SEC. 4. CONFORMING AMENDMENTS RELATED TO DEPART-**
17 **MENT OF DEFENSE PROVISIONS.**

18 (a) USE OF UNITED STATES STEEL, IRON, ALU-
19 MINUM, AND MANUFACTURED PRODUCTS.—

20 (1) IN GENERAL.—Chapter 137 of title 10,
21 United States Code, is amended by adding at the
22 end the following new section:

1 **“§ 2339a. Use of United States steel, iron, aluminum,**
2 **and manufactured products in ship-**
3 **building**

4 “(a) IN GENERAL.—The head of an agency may not
5 enter into a contract related to the construction of a vessel
6 unless the steel, iron, aluminum, and manufactured prod-
7 ucts to be used in the construction of the vessel are pro-
8 duced in the United States.

9 “(b) EXCEPTIONS.—The provisions of subsection (a)
10 shall not apply where the head of the agency finds—

11 “(1) that their application would be inconsistent
12 with the public interest;

13 “(2) that such materials and products are not
14 produced in the United States in sufficient and rea-
15 sonably available quantities and of a satisfactory
16 quality; or

17 “(3) that inclusion of domestic material will in-
18 crease the cost of the overall project contract by
19 more than 25 percent.

20 “(c) IMPLEMENTATION OF EXCEPTIONS.—

21 “(1) NON-DELEGATION OF AUTHORITY.—The
22 head of an agency may not delegate the authority to
23 make a finding described in subsection (b).

24 “(2) PUBLICATION.—Not later than 30 days
25 after making a finding described in subsection (b),
26 the head of the agency shall publish in an easily

1 identifiable location on the website of the agency in-
2 formation regarding the finding, including a detailed
3 justification for the exception.

4 “(d) ANNUAL REPORT.—Not later than 180 days
5 after the end of each fiscal year, the head of each executive
6 agency that has made an exception finding described in
7 subsection (b) in the fiscal year shall submit to the Com-
8 mittees on Armed Services of the Senate and the House
9 of Representatives a report on the total amount of excep-
10 tions used and detailed information regarding and jus-
11 tification for the exceptions.

12 “(e) CALCULATION OF COMPONENT COST.—For pur-
13 poses of this section, in calculating components’ costs,
14 labor costs involved in final assembly shall not be included
15 in the calculation.

16 “(f) INTENTIONAL VIOLATIONS.—If it has been de-
17 termined by a court or Federal agency that any person
18 intentionally—

19 “(1) affixed a label bearing a ‘Made in Amer-
20 ica’ inscription, or any inscription with the same
21 meaning, to any product used in projects to which
22 this section applies, sold in or shipped to the United
23 States that was not made in the United States; or

24 “(2) represented that any product used in
25 projects to which this section applies, sold in or

1 shipped to the United States that was not produced
 2 in the United States, was produced in the United
 3 States;
 4 that person shall be debarred from contracting with the
 5 Federal Government for a period of not less than 5
 6 years.”.

7 (2) CLERICAL AMENDMENT.—The table of sec-
 8 tions at the beginning of such chapter is amended
 9 by adding after the item relating to section 2339 the
 10 following new item:

“2339a. Use of United States steel, iron, aluminum, and manufactured products
 in shipbuilding.”.

11 (b) MISCELLANEOUS LIMITATIONS ON THE PRO-
 12 CUREMENT OF GOODS OTHER THAN UNITED STATES
 13 GOODS.—

14 (1) IN GENERAL.—Section 2534(a)(3)(A) of
 15 title 10, United States Code, is amended by adding
 16 at the end the following new clauses:

17 “(iv) Auxiliary equipment, including
 18 pumps, for all shipboard services.

19 “(v) Propulsion system components (en-
 20 gines, reduction gears, and propellers).

21 “(vi) Shipboard cranes.

22 “(vii) Spreaders for shipboard cranes.

23 “(viii) Capstans.

24 “(ix) Winches.

1 “(x) Hoists.

2 “(xi) Outboard motors.

3 “(xii) Windlasses.”.

4 (2) APPLICABILITY OF PREVIOUSLY SUNSETTED
5 PROVISIONS.—Subsection (c)(2)(C) of section 2534
6 of title 10, United States Code, is amended by strik-
7 ing “shall cease to be effective on October 1, 2005”
8 and inserting “shall be in effect during—

9 “(i) the period beginning on the date of
10 the enactment of this paragraph and ending on
11 October 1, 1996; and

12 “(ii) the period beginning on the date of
13 the enactment of the Made in America Ship-
14 building Act of 2018.”.

15 **SEC. 5. APPLICABILITY.**

16 The requirements under this Act and the amend-
17 ments made by this Act—

18 (1) apply to contracts entered into on or after
19 the date of the enactment of this Act; and

20 (2) do not apply to—

21 (A) contracts entered into before the date
22 of the enactment of this Act; or

23 (B) options included as part of such con-
24 tracts as of such date of enactment.

○