

**SENATE BILL NO. 213**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

**BY SENATOR ELLIS**

**Introduced: 2/21/12**

**Referred: Labor and Commerce, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act requiring certain products used in public agency construction contracts to be**  
2 **made in the United States."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **\* Section 1.** AS 36.90 is amended by adding a new section to article 4 to read:

5 **Sec. 36.90.310. Use of materials manufactured in the United States.** (a)

6 Notwithstanding any other provision of law, a public agency shall include in a  
7 construction contract entered into by the public agency a provision under which the  
8 contractor agrees that every product used or supplied by the contractor and any  
9 subcontractors in the performance of the contract, including any subcontract, will be  
10 made in the United States.

11 (b) A product shall be considered to be made in the United States under this  
12 section if

13 (1) the components of the product are made primarily of iron or steel,  
14 and all manufacturing of the product takes place in the United States, except

1 metallurgical processes involving the refinement of steel; or

2 (2) the product is not made primarily of iron or steel, and all of

3 (A) the manufacturing processes of the product take place in  
4 the United States; and

5 (B) the components of the product are made in the United  
6 States, even if the subcomponents originate in another country.

7 (c) Except as provided by (f) of this section, a public agency may, on request,  
8 waive the requirement in (a) of this section for a construction contract if the  
9 commissioner or executive head of the public agency determines that

10 (1) the requirement is not consistent with the public interest;

11 (2) the materials are not made in the United States in a sufficient  
12 quantity that is reasonably available and of a satisfactory quality; or

13 (3) inclusion of materials made in the United States will increase the  
14 cost of the contract by more than 25 percent.

15 (d) Before a public agency issues a waiver under (c) of this section, the public  
16 agency shall

17 (1) place on the Alaska Online Public Notice System (AS 44.62.175) a  
18 notice that gives a detailed written justification why the waiver satisfies the  
19 requirements of (c) of this section and that allows persons to provide comments to the  
20 public agency for a reasonable period of time; and

21 (2) consider all comments received under (1) of this subsection.

22 (e) A person is not eligible to receive a construction contract under (a) of this  
23 section or to receive a subcontract from the contractor if a court, state agency, or a  
24 federal agency, after notice and an opportunity to be heard, determines the person  
25 intentionally

26 (1) placed a label stating "made in America," or other wording with the  
27 same meaning, on a product used in a construction contract to which this section  
28 applies, and the product was not made in the United States; or

29 (2) falsely represented to a public agency that a product used in a  
30 construction contract to which this section applies was made in the United States.

31 (f) A public agency may not waive the requirements of (a) of this section for a

1 construction contract if the commissioner or executive head of the public agency, after  
2 consulting with the United States Trade Representative, determines that the product is  
3 made in a foreign country and that the foreign country

4 (1) is a party to an agreement with the United States, and, under that  
5 agreement, the head of a federal agency of the United States has waived the  
6 requirements of this section; and

7 (2) has violated the terms of the agreement identified in (1) of this  
8 subsection by discriminating against construction products that are made in the United  
9 States and that are covered by the agreement.

10 (g) In this section,

11 (1) "construction" means the process of building, altering, repairing,  
12 maintaining, improving, demolishing, planning, or designing a public work, whether  
13 the public work is permanent or temporary; in this paragraph, "public work" includes a  
14 public highway, a structure, a building, a utility, infrastructure, railroad equipment,  
15 passenger buses, transit system equipment, and Alaska marine highway vessels;

16 (2) "contractor" means a person who enters into a construction contract  
17 with a public agency;

18 (3) "intentionally" has the meaning given in AS 11.81.900;

19 (4) "public agency" means a department, institution, board,  
20 commission, division, authority, public corporation, committee, school district,  
21 political subdivision, or other administrative unit of a municipality, of a political  
22 subdivision, or of the executive or legislative branch of state government, including  
23 the University of Alaska, the Alaska Aerospace Corporation, the Alaska Housing  
24 Finance Corporation, the Alaska Industrial Development and Export Authority, the  
25 Alaska Energy Authority, the Alaska Railroad Corporation, and a regional educational  
26 attendance area;

27 (5) "United States" means the United States of America, the District of  
28 Columbia, the Commonwealth of Puerto Rico, and the territorial possessions of the  
29 United States of America.

30 \* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to  
31 read:

1           APPLICABILITY. This Act applies to construction contracts entered into on or after  
2 the effective date of this Act that are subject to AS 36.90.310, added by sec. 1 of this Act. In  
3 this section, "construction" has the meaning given in AS 36.90.310(g), added by sec. 1 of this  
4 Act.