

112TH CONGRESS  
1ST SESSION

# H. R. 3647

To improve transparency and accountability in the waiver process of the Buy America requirement for certain transportation provisions.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 13, 2011

Ms. SUTTON (for herself, Mr. LIPINSKI, Mr. HASTINGS of Florida, Ms. KAPTUR, Mr. RYAN of Ohio, Mr. HOLDEN, Mr. MURPHY of Connecticut, Mr. YARMUTH, Mr. ANDREWS, Mr. CRITZ, and Mr. GENE GREEN of Texas) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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## A BILL

To improve transparency and accountability in the waiver process of the Buy America requirement for certain transportation provisions.

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 “Keep Americans Work-  
5       ing Building Our Transportation Infrastructure Act”.

1 **SEC. 2. HIGHWAYS.**

2 (a) **WAIVER REQUIREMENT.**—Section 313 of title 23,  
3 United States Code, is amended by adding at the end the  
4 following:

5 “(g) **WAIVER REQUIREMENTS.**—

6 “(1) **NOTICE OF WAIVER REQUEST.**—The Sec-  
7 retary shall publish on the Internet any request for  
8 a waiver and provide an opportunity for public com-  
9 ment on the intent to issue a waiver for a period of  
10 not less than 15 days. The Secretary shall consider  
11 all comments received during the comment period in  
12 evaluating the waiver request.

13 “(2) **REQUIREMENTS FOR WAIVER FINDING.**—If  
14 the Secretary makes a finding under subsection (b)  
15 with respect to a project, the Secretary—

16 “(A) shall publish in the Federal Register,  
17 before the date on which such finding takes ef-  
18 fect, a detailed written justification as to the  
19 reasons that such finding is needed;

20 “(B) shall provide notice of such finding  
21 and an opportunity for public comment on such  
22 finding for a reasonable time period, but not  
23 less than 15 days;

24 “(C) shall review all comments received  
25 during the comment period after notice of the  
26 finding; and

1           “(D) may terminate or modify a finding  
2           based on comments received after the effective  
3           date of the finding.

4           “(3) LIMITATION ON STATUTORY CONSTRU-  
5           TION.—Nothing in paragraph (2) shall be construed  
6           to require the effective date of a finding referred to  
7           in such paragraph to be delayed until after the close  
8           of the public comment period referred to in para-  
9           graph (2)(B).

10          “(h) ANNUAL REPORTS.—Not later than February 1  
11          of each year beginning after the date of enactment of the  
12          Keep Americans Working Building Our Transportation  
13          Infrastructure Act, the Secretary shall submit to the Com-  
14          mittee on Transportation and Infrastructure of the House  
15          of Representatives and the Committee on Environment  
16          and Public Works of the Senate a report on the projects  
17          for which the Secretary made findings under subsection  
18          (b) during the preceding calendar year and the justifica-  
19          tions for such findings.”.

20          (b) REPEALS.—

21                 (1) WAIVER NOTIFICATION AND ANNUAL RE-  
22                 PORTS.—Section 117 of the SAFETEA-LU Tech-  
23                 nical Corrections Act of 2008 is repealed.

24                 (2) PUBLIC COMMENTS TO WAIVE CERTAIN RE-  
25                 QUIREMENTS.—Section 123 of title I of division A of

1 the Consolidated Appropriations Act, 2010 is re-  
2 pealed.

3 **SEC. 3. TRANSIT.**

4 Section 5323(j)(3) of title 49, United States Code,  
5 is amended to read as follows:

6 “(3) WAIVER REQUIREMENTS.—

7 “(A) NOTICE OF WAIVER REQUEST.—The Sec-  
8 retary shall publish on the Internet any request for  
9 a waiver and provide an opportunity for public com-  
10 ment on the intent to issue a waiver for a period of  
11 not less than 15 days. The Secretary shall consider  
12 all comments received during the comment period in  
13 evaluating the waiver request.

14 “(B) REQUIREMENTS FOR WAIVER FINDING.—  
15 If the Secretary makes a finding under paragraph  
16 (2) with respect to a project, the Secretary—

17 “(i) shall publish in the Federal Register,  
18 before the date on which such finding takes ef-  
19 fect, a detailed written justification as to the  
20 reasons that such finding is needed;

21 “(ii) shall provide notice of such finding  
22 and an opportunity for public comment on such  
23 finding for a reasonable time period, but not  
24 less than 15 days;

1           “(iii) shall review all comments received  
2           during the comment period after notice of the  
3           finding; and

4           “(iv) may terminate or modify a finding  
5           based on comments received after the effective  
6           date of the finding.

7           “(C) LIMITATION ON STATUTORY CONSTRU-  
8           TION.—Nothing in subparagraph (B) shall be con-  
9           strued to require the effective date of a finding re-  
10          ferred to in such subparagraph to be delayed until  
11          after the close of the public comment period referred  
12          to in subparagraph (B)(ii).

13          “(D) ANNUAL REPORTS.—Not later than Feb-  
14          ruary 1 of each year beginning after the date of en-  
15          actment of the Keep Americans Working Building  
16          Our Transportation Infrastructure Act, the Sec-  
17          retary shall submit to the Committee on Transpor-  
18          tation and Infrastructure of the House of Represent-  
19          atives and the Committee on Environment and Pub-  
20          lic Works of the Senate a report on the projects for  
21          which the Secretary made findings under paragraph  
22          (2) during the preceding calendar year and the jus-  
23          tifications for such findings.”.

1 **SEC. 4. AVIATION.**

2 Section 50101 of title 49, United States Code, is  
3 amended by adding at the end the following:

4 “(d) WAIVER REQUIREMENTS.—

5 “(1) NOTICE OF WAIVER REQUEST.—The Sec-  
6 retary shall publish on the Internet any request for  
7 a waiver and provide an opportunity for public com-  
8 ment on the intent to issue a waiver for a period of  
9 not less than 15 days. The Secretary shall consider  
10 all comments received during the comment period in  
11 evaluating the waiver request.

12 “(2) REQUIREMENTS FOR WAIVER FINDING.—If  
13 the Secretary makes a finding under subsection (b)  
14 with respect to a project, the Secretary—

15 “(A) shall publish in the Federal Register,  
16 before the date on which such finding takes ef-  
17 fect, a detailed written justification as to the  
18 reasons that such finding is needed;

19 “(B) shall provide notice of such finding  
20 and an opportunity for public comment on such  
21 finding for a reasonable time period, but not  
22 less than 15 days;

23 “(C) shall review all comments received  
24 during the comment period after notice of the  
25 finding; and

1           “(D) may terminate or modify a finding  
2           based on comments received after the effective  
3           date of the finding.

4           “(3) LIMITATION ON STATUTORY CONSTRU-  
5           TION.—Nothing in paragraph (2) shall be construed  
6           to require the effective date of a finding referred to  
7           in such paragraph to be delayed until after the close  
8           of the public comment period referred to in para-  
9           graph (2)(B).

10          “(e) ANNUAL REPORTS.—Not later than February 1  
11 of each year beginning after the date of enactment of the  
12 Keep Americans Working Building Our Transportation  
13 Infrastructure Act, the Secretary shall submit to the Com-  
14 mittee on Transportation and Infrastructure of the House  
15 of Representatives and the Committee on Environment  
16 and Public Works of the Senate a report on the projects  
17 for which the Secretary made findings under subsection  
18 (b) during the preceding calendar year and the justifica-  
19 tions for such findings.”.

20 **SEC. 5. RAIL.**

21          (a) WAIVER REQUIREMENTS.—Section 24405(a)(4)  
22 of title 49, United States Code, is amended to read as  
23 follows:

24          “(4) WAIVER REQUIREMENTS.—

1           “(A) NOTICE OF WAIVER REQUEST.—The Sec-  
2           retary shall publish on the Internet any request for  
3           a waiver and provide an opportunity for public com-  
4           ment on the intent to issue a waiver for a period of  
5           not less than 15 days. The Secretary shall consider  
6           all comments received during the comment period in  
7           evaluating the waiver request.

8           “(B) REQUIREMENTS FOR WAIVER FINDING.—  
9           If the Secretary makes a finding under paragraph  
10          (2) with respect to a project, the Secretary—

11                 “(i) shall publish in the Federal Register,  
12                 before the date on which such finding takes ef-  
13                 fect, a detailed written justification as to the  
14                 reasons that such finding is needed;

15                 “(ii) shall provide notice of such finding  
16                 and an opportunity for public comment on such  
17                 finding for a reasonable time period, but not  
18                 less than 15 days;

19                 “(iii) shall review all comments received  
20                 during the comment period after notice of the  
21                 finding; and

22                 “(iv) may terminate or modify a finding  
23                 based on comments received after the effective  
24                 date of the finding.



1           “(C) LIMITATION ON STATUTORY CONSTRUC-  
2           TION.—Nothing in subparagraph (B) shall be con-  
3           strued to require the effective date of a finding re-  
4           ferred to in such subparagraph to be delayed until  
5           after the close of the public comment period referred  
6           to in subparagraph (B)(ii).”.

7           (b) ANNUAL REPORTS.—Section 24405(a)(5) of title  
8 49, United States Code, is amended to read as follows:

9           “(5) ANNUAL REPORTS.—Not later than February 1  
10 of each year beginning after the date of enactment of the  
11 Keep Americans Working Building Our Transportation  
12 Infrastructure Act, the Secretary shall submit to the Com-  
13 mittee on Transportation and Infrastructure of the House  
14 of Representatives and the Committee on Environment  
15 and Public Works of the Senate a report on the projects  
16 for which the Secretary made findings under paragraph  
17 (2) during the preceding calendar year and the justifica-  
18 tions for such findings.”.

19 **SEC. 6. AMTRAK.**

20           Section 24305(f) of title 49, United States Code, is  
21 amended by adding at the end the following:

22           “(5) WAIVER REQUIREMENTS.—

23           “(A) NOTICE OF WAIVER REQUEST.—The Sec-  
24           retary shall publish on the Internet any request for  
25           a waiver and provide an opportunity for public com-

1       ment on the intent to issue a waiver for a period of  
2       not less than 15 days. The Secretary shall consider  
3       all comments received during the comment period in  
4       evaluating the waiver request.

5               “(B) REQUIREMENTS FOR WAIVER FINDING.—

6       If the Secretary makes a finding under paragraph  
7       (4) with respect to a project, the Secretary—

8               “(i) shall publish in the Federal Register,  
9               before the date on which such finding takes ef-  
10              fect, a detailed written justification as to the  
11              reasons that such finding is needed;

12              “(ii) shall provide notice of such finding  
13              and an opportunity for public comment on such  
14              finding for a reasonable time period, but not  
15              less than 15 days;

16              “(iii) shall review all comments received  
17              during the comment period after notice of the  
18              finding; and

19              “(iv) may terminate or modify a finding  
20              based on comments received after the effective  
21              date of the finding.

22               “(C) LIMITATION ON STATUTORY CONSTRUC-

23       TION.—Nothing in subparagraph (B) shall be con-  
24       strued to require the effective date of a finding re-  
25       ferred to in such subparagraph to be delayed until

1 after the close of the public comment period referred  
2 to in subparagraph (B)(ii).

3 “(D) ANNUAL REPORTS.—Not later than Feb-  
4 ruary 1 of each year beginning after the date of en-  
5 actment of the Keep Americans Working Building  
6 Our Transportation Infrastructure Act, the Sec-  
7 retary shall submit to the Committee on Transpor-  
8 tation and Infrastructure of the House of Represent-  
9 atives and the Committee on Environment and Pub-  
10 lic Works of the Senate a report on the projects for  
11 which the Secretary made findings under paragraph  
12 (4) during the preceding calendar year and the jus-  
13 tifications for such findings.”.

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