

116TH CONGRESS  
1ST SESSION

# H. R. 2342

To amend titles 10 and 41, United States Code, to provide a contracting preference for contractors that retain American jobs and purchase goods and services in the United States, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 18, 2019

Mr. RYAN introduced the following bill; which was referred to the Committee on Oversight and Reform, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend titles 10 and 41, United States Code, to provide a contracting preference for contractors that retain American jobs and purchase goods and services in the United States, 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 “Retain Act”.

5 **SEC. 2. FINDINGS.**

6 The Congress finds the following:

1           (1) Hundreds of American corporations are  
2 shipping thousands of jobs to foreign countries.

3           (2) United States companies either send Amer-  
4 ican jobs overseas, or choose to employ cheap over-  
5 seas labor, instead of American workers.

6           (3) Shifting of jobs occurs in all industry sec-  
7 tors including manufacturing, services, supply chain,  
8 and all others.

9 **SEC. 3. AMENDMENTS.**

10       (a) CIVILIAN AGENCY CONTRACTS.—

11           (1) AMENDMENT.—Chapter 47 of title 41,  
12 United States Code, is amended by adding at the  
13 end the following new section:

14 **“§ 4713. Preference for keeping jobs in the United**  
15 **States**

16       “(a) PREFERENCE.—The head of an executive agen-  
17 cy shall give a preference for an offeror that certifies to  
18 retain jobs performed in the United States (regardless of  
19 the citizenship of the employee) and uses products sub-  
20 stantially manufactured in the United States and services  
21 provided in the United States for the contract for which  
22 an offer is made.

23       “(b) APPLICABILITY TO SUBCONTRACTS.—The pref-  
24 erence described under subsection (a) applies to the award  
25 of a contract by an executive agency and the award of

1 any subcontract (at any tier) in the performance of such  
2 contract.

3 “(c) CERTIFICATION.—To be eligible for the pref-  
4 erence described under subsection (a), an offeror shall  
5 submit a certification that confirms the offeror and any  
6 subcontractor (if applicable)—

7 “(1) has not relocated jobs from the United  
8 States to foreign countries in the preceding five  
9 years;

10 “(2) has not established foreign facilities to per-  
11 form the same function that otherwise could have  
12 been performed in the United States with the inten-  
13 tion of manufacturing or providing the same service  
14 and importing the same product or service back to  
15 the United States;

16 “(3) will not relocate jobs from the United  
17 States to foreign countries during the period of per-  
18 formance of the contract; and

19 “(4) will use products substantially manufac-  
20 tured in the United States and services provided in  
21 the United States under the contract.

22 “(d) EXCEPTION TO CERTIFICATION.—Notwith-  
23 standing the requirements of the certification described  
24 under subsection (c), the head of an executive agency may  
25 except an offeror from any of the requirements if the ex-

1 ception is fully described and justified and one or more  
2 of the following conditions apply:

3           “(1) The products are not manufactured in the  
4           United States in sufficient and reasonably available  
5           commercial quantities and are not of satisfactory  
6           quality.

7           “(2) There is an unreasonable cost associated  
8           with the use of products substantially manufactured  
9           in the United States or services provided in the  
10          United States.

11          “(3) The use of products substantially manu-  
12          factured in the United States or services provided in  
13          the United States would be inconsistent with the  
14          public interest.

15          “(e) VIOLATION OF CERTIFICATION.—If the head of  
16          an executive agency determines that a contractor has sub-  
17          mitted a false statement or violated any of the require-  
18          ments of the certification described in subsection (c), the  
19          head of that executive agency shall terminate the contract  
20          for which the contractor received the preference described  
21          in subsection (a) and the contractor may not receive the  
22          preference for a period of not less than 5 years.

23          “(f) REPORT REQUIRED.—Not later than November  
24          1 of each year, the head of an executive agency shall sub-  
25          mit to Congress a report that includes the names of the

1 contractors that have submitted a false statement or vio-  
 2 lated any of the requirements of the certification described  
 3 in subsection (c) for the previous fiscal year.

4 “(g) APPLICABILITY TO PARENT COMPANIES AND  
 5 SUBSIDIARIES.—For purposes of this section, any prohibi-  
 6 tion on receiving a preference under subsection (e) applied  
 7 with respect to a contractor shall apply to any subsidiary  
 8 or parent company of the contractor.”.

9 (2) TECHNICAL AND CONFORMING AMEND-  
 10 MENT.—The table of sections at the beginning of  
 11 chapter 47 of title 41, United States Code, is  
 12 amended by adding at the end the following new  
 13 item:

“4713. Preference for keeping jobs in the United States.”.

14 (b) DEFENSE CONTRACTS.—

15 (1) AMENDMENT.—Chapter 137 of title 10,  
 16 United States Code, is amended by inserting after  
 17 section 2316 the following new section:

18 **“§ 2317. Preference for keeping jobs in the United**  
 19 **States**

20 “(a) PREFERENCE.—The head of an agency shall  
 21 give a preference for an offeror that certifies to retain jobs  
 22 performed in the United States (regardless of the citizen-  
 23 ship of the employee) in the United States and uses prod-  
 24 ucts substantially manufactured in the United States and

1 services provided in the United States for the contract for  
2 which an offer is made.

3 “(b) APPLICABILITY TO SUBCONTRACTS.—The pref-  
4 erence described under subsection (a) applies to the award  
5 of a contract by any agency named in section 2303 of this  
6 chapter and the award of any subcontract (at any tier)  
7 in the performance of such contract.

8 “(c) CERTIFICATION.—To be eligible for the pref-  
9 erence described under subsection (a), an offeror shall  
10 submit a certification that confirms the offeror and any  
11 subcontractor (if applicable)—

12 “(1) has not relocated jobs from the United  
13 States to foreign countries in the preceding five  
14 years;

15 “(2) has not established foreign facilities to per-  
16 form the same function that otherwise could have  
17 been performed in the United States with the inten-  
18 tion of manufacturing or providing the same service  
19 and importing the same product or service back to  
20 the United States;

21 “(3) will not relocate jobs from the United  
22 States to foreign countries during the period of per-  
23 formance of the contract; and

1           “(4) will use products substantially manufac-  
2           tured in the United States and services provided in  
3           the United States under the contract.

4           “(d) EXCEPTION TO CERTIFICATION.—Notwith-  
5           standing the requirements of the certification described  
6           under subsection (c), the head of an agency may except  
7           an offeror from any of the requirements if the exception  
8           is fully described and justified and one or more of the fol-  
9           lowing conditions apply:

10           “(1) The products are not manufactured in the  
11           United States in sufficient and reasonably available  
12           commercial quantities and are not of satisfactory  
13           quality.

14           “(2) There is an unreasonable cost associated  
15           with the use of products substantially manufactured  
16           in the United States or services provided in the  
17           United States.

18           “(3) The use of products substantially manu-  
19           factured in the United States or services provided in  
20           the United States would be inconsistent with the  
21           public interest.

22           “(e) VIOLATION OF CERTIFICATION.—If the head of  
23           an agency determines that a contractor has submitted a  
24           false statement or violated any of the requirements of the  
25           certification described in subsection (c), the head of that

1 agency shall terminate the contract for which the con-  
 2 tractor received the preference described in subsection (a)  
 3 and the contractor may not receive the preference for a  
 4 period of not less than 5 years.

5 “(f) REPORT REQUIRED.—Not later than November  
 6 1 of each year, the head of an agency shall submit to Con-  
 7 gress a report that includes the names of the contractors  
 8 that have submitted a false statement or violated any of  
 9 the requirements of the certification described in sub-  
 10 section (c) for the previous fiscal year.

11 “(g) APPLICABILITY TO PARENT COMPANIES AND  
 12 SUBSIDIARIES.—For purposes of this section, any prohibi-  
 13 tion on receiving a preference under subsection (e) applied  
 14 with respect to a contractor shall apply to any subsidiary  
 15 or parent company of the contractor.”.

16 (2) TECHNICAL AND CONFORMING AMEND-  
 17 MENT.—The table of sections at the beginning of  
 18 chapter 137 of title 10, United States Code, is  
 19 amended by inserting after the item relating to sec-  
 20 tion 2316 the following new item:

“2317. Preference for keeping jobs in the United States.”.

21 (c) REVISION OF FEDERAL ACQUISITION REGULA-  
 22 TION.—The Federal Acquisition Regulation shall be re-  
 23 vised to implement the amendment made by this section.

24 (d) EFFECTIVE DATE; APPLICABILITY.—The amend-  
 25 ments made by this section shall take effect on the date

1 of the enactment of this Act and shall apply with respect  
2 to any contract awarded on or after the date occurring  
3 180 days after such effective date.

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