

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: S3/4/13 S3/13/13

A Bill

SENATE BILL 54

By: Senator Teague

For An Act To Be Entitled

AN ACT TO CREATE THE ARKANSAS BUY AMERICAN ACT; TO REQUIRE THE USE OF AMERICAN-MANUFACTURED *IRON AND STEEL* IN THE CONSTRUCTION, RECONSTRUCTION, ALTERATION, AND IMPROVEMENT OF PUBLIC BUILDINGS AND PUBLIC WORKS; AND FOR OTHER PURPOSES.

Subtitle

TO REQUIRE THE USE OF AMERICAN-MANUFACTURED IRON AND STEEL IN THE CONSTRUCTION, RECONSTRUCTION, ALTERATION, AND IMPROVEMENT OF PUBLIC BUILDINGS AND PUBLIC WORKS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 22, Chapter 9, is amended to add an additional subchapter to read as follows:

Subchapter 8 – Arkansas Buy American Act

22-9-801. Title.

This subchapter shall be known and may be cited as the “Arkansas Buy American Act”.

22-9-802. Legislative findings – Policy.

(a) The General Assembly finds that:

(1) There are over one hundred (100) steel mills in the United States owned by different companies that engage in extremely stiff price



competition to provide steel for the domestic construction industry;

(2) These United States steel mills operate in compliance with rigorous environmental laws and extensive government regulation and pay wages that are well in excess of steel mills operating outside the United States;

(3) Many steel mills operating outside the United States are heavily subsidized by foreign governments, receive the unfair benefit of currency manipulation, and use price manipulation to dump steel products into United States markets at artificially low prices to undercut fair competition;

(4) The production of iron, steel, and construction material consisting wholly or predominantly of iron or steel provides jobs and family income to many individuals in the state and to millions of persons in the United States;

(5) The taxes paid to the state and its political subdivisions by employers and employees engaged in the production and sale of iron, steel, and construction material consisting wholly or predominantly of iron or steel are a large source of public revenues for the state;

(6) The economy and general welfare of the state and its people and the economy and general welfare of the United States are inseparably linked to the preservation and development of manufacturing industries in this state as well as all the other states of this nation; and

(7) The state's procurement policies should reflect this state's and the nation's principles, ensuring that the products of these companies and the workers who abide by the state's workplace safety and environmental laws and regulations are rewarded with a preferential consideration in government contracting.

(b) It is therefore declared to be the policy of the state that all public officers and public entities should aid and promote the economy of the state and the United States by requiring a preference for the procurement of iron, steel, and construction material consisting wholly or predominantly of iron or steel produced in the United States in all contracts for the construction, reconstruction, alteration, or improvement of public buildings and public works.

22-9-803. Definitions.

As used in this subchapter:

(1)(A) "Emergency, life safety, and property safety goods" means goods provided for installation in, as part of, or for addition to a system designed to prevent, respond to, alert regarding, suppress, control, or extinguish an emergency or the cause of an emergency or to assist in evacuation in the event of an emergency that could threaten life or property.

(B) "Emergency, life safety, and property safety goods" includes without limitation the following:

(i) A fire alarm, fire sprinkler, and fire extinguisher; and

(ii) Equipment, devices, and other items relating to fire suppression, security, gas detection, intrusion detection, access control, video surveillance and recording, mass notification, public address, emergency lighting, patient wandering, infant tagging, and nurse call;

(2) "Executive head" means the senior elected or appointed management official of a public entity;

(3) "Manufactured in the United States" means that:

(A) The construction material is assembled or processed into its final form in the United States; and

(B) Substantially all of the iron and steel included in the construction material is produced in the United States regardless of the origin of the elements of the iron or steel or where any metallurgical processes involving the refinement of steel additives occur;

(4) "Predominantly" means more than fifty percent (50%) of the materials subject to this subchapter based on cost;

(5) "Produced in the United States" means that:

(A) The iron and steel is melted and poured in the United States; and

(B) All subsequent processing of the iron and steel takes place in the United States, including without limitation casting, rolling, pickling, oiling, annealing, and coating with value-added materials;

(6)(A) "Public building or public works" means a structure, building, highway, waterway, street, bridge, transit system, municipal utility system, airport, or other betterment, work, or improvement regardless of whether it is of a permanent or temporary nature and whether it is for governmental or proprietary use.

(B) "Public building or public works" includes without

limitation a railway, street railway, subway, elevated and monorail passenger rolling stock, passenger and rail rolling stock, self-propelled car, gallery car, locomotive, passenger bus, rail, track, roadbed, guide way, elevated structure, building, school, hospital, station, terminal, dock, shelter, and wire, pole, and other equipment for the electrification of a transit system, carried out directly by a public entity or carried out with funding provided by a public entity to serve the interest of the general public;

(7) "Public entity" means the state, a department, agency, board, and commission of the state, and a political subdivision of the state, including without limitation a city, county, institution of higher education, and school district;

(8) "Substantially all" means at least eighty percent (80%) of the materials subject to this subchapter based on cost; and

(9) "United States" means the United States of America and all territory, continental or insular, subject to the jurisdiction of the United States of America.

22-9-804. Requirement that products used in public buildings or public works be manufactured in the United States – Exceptions – Notice.

(a) Each contract for the construction, reconstruction, alteration, or improvement of a public building or public works made by a public entity shall require that construction materials comprised wholly or predominantly of iron or steel, or both, that are used or supplied in the performance of the contract or a subcontract of the contract be manufactured in the United States.

(b) The requirement stated in subsection (a) of this section may be waived if the executive head finds that:

(1) The application of subsection (a) of this section would not be in the best interests of the state because it would not serve the policy of the state under § 22-9-802;

(2) The construction materials comprised wholly or predominantly of iron or steel, or both, are not produced in the United States in sufficient and reasonably available quantities of a satisfactory quality; or

(3) Inclusion of construction materials comprised wholly or predominantly of iron or steel, or both, that are manufactured in the United States will increase the cost of the construction materials comprised wholly

or predominantly of iron or steel, or both, by more than twenty-five percent (25%).

(c) If an executive head issues a waiver under subsection (b) of this section, the executive head shall publish a detailed justification for the waiver that:

(1) Summarizes the information available to the executive head concerning the request, including without limitation whether the request is being made under subdivision (b)(1), subdivision (b)(2), or subdivision (b)(3) of this section;

(2) Is published prominently on the official public website of the public entity; and

(3) Is provided by electronic means to each person or legal entity that has submitted a written or electronic request to the public entity for notice of waiver actions by the executive head within five (5) years before the date of notice.

(d) This section does not apply to the following:

(1) A construction material or manufactured product that does not consist wholly or predominantly of iron or steel, or both;

(2) A contract for the construction, reconstruction, alteration, or improvement of a public building or public works made by a public entity in an amount less than twenty thousand dollars (\$20,000); or

(3) A contract for the procurement of one (1) or more emergency, life safety, and property safety goods.

(e) This section:

(1) Does not apply to the extent it is in conflict with any applicable treaty, law, agreement, or regulation of the United States; and

(2) Shall be applied in a manner consistent with the state's obligations under any existing international agreement pertaining to government procurement.

22-9-805. Violations – Penalties.

(a) It is a violation of this subchapter if a contractor who is awarded a contract that is subject to the requirements of this subchapter intentionally:

(1) Affixes a label bearing a “Made in America” inscription, or any inscription with the same meaning, to iron, steel, or construction

material consisting wholly or predominantly of iron or steel that was:

(A) Used in a project to which this subchapter applies;

and

(B) Not manufactured in the United States; or

(2) Misrepresents that the iron, steel, or construction material consisting wholly or predominantly of iron or steel, or both, used in a project to which this subchapter applies was manufactured in the United States.

(b) A contractor does not violate this subchapter if the contractor in good faith:

(1) Relies on a written bid submitted by a subcontractor or supplier certifying that materials included the bid comply with this subchapter; or

(2) Uses the materials specified in the bid in performing the contract.

(c) If a public entity determines that a contractor violated this subchapter under subsection (a) of this section, the public entity may invoke one (1) or more of the following remedies after reasonable notice to the contractor and opportunity for the contractor to have a hearing in accordance with the hearing procedures under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., or any other hearing procedures that apply to administrative adjudications by the public entity:

(1) Require the removal and replacement of the unauthorized foreign iron or steel;

(2) Reduce the amount paid on the contract by the cost of the unauthorized foreign iron or steel;

(3) Suspend the contractor for a period not exceeding one (1) year;

(4) Void the contract; and

(5) Pursue any other remedy provided by law.

22-9-806. Promulgation of rules – Authorization – Scope.

(a) The following may each promulgate rules necessary to implement this subchapter with respect to contracts for the construction, reconstruction, alteration, or improvement of public buildings or public works that are subject to their respective jurisdictions:

(1) Arkansas State Highway and Transportation Department;

(2) Arkansas State Game and Fish Commission;

(3) Arkansas Teacher Retirement System;

(4) Arkansas Building Authority; and

(5) Division of Public Schools Academic Facilities and Transportation.

(b) The Office of State Procurement may promulgate rules necessary to implement this subchapter with respect to contracts for commodity purchases that are subject to its jurisdiction.

(c) The following may adopt policies and procedures to implement this subchapter with respect to contracts for the construction, reconstruction, alteration, or improvement of public buildings or public works, to the extent practicable, providing substantial uniformity between similar public entities:

(1) Governing boards of public institutions of higher education;

and

(2) Other public entities subject to this subchapter.

/s/Teague