

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4

As Engrossed: S3/4/13

# A Bill

SENATE BILL 54

5 By: Senator Teague  
6

## For An Act To Be Entitled

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

15 *TO REQUIRE THE USE OF AMERICAN-*  
16 *MANUFACTURED IRON AND STEEL IN THE*  
17 *CONSTRUCTION, RECONSTRUCTION, ALTERATION,*  
18 *AND IMPROVEMENT OF PUBLIC BUILDINGS AND*  
19 *PUBLIC WORKS.*  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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25 *SECTION 1. Arkansas Code Title 22, Chapter 9, is amended to add an*  
26 *additional subchapter to read as follows:*

27 *Subchapter 8 – Arkansas Buy American Act*

28  
29 *22-9-801. Title.*

30 *This subchapter shall be known and may be cited as the “Arkansas Buy*  
31 *American Act”.*  
32

33 *22-9-802. Legislative findings – Policy.*

34 *(a) The General Assembly finds that:*

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



1 competition to provide steel for the domestic construction industry;

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

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

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

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

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

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

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

34  
35 22-9-803. Definitions.

36 As used in this subchapter:

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

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

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

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

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

12 (4) "Produced in the United States" means that:

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

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

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

23 (B) "Public building or public works" includes without  
24 limitation a railway, street railway, subway, elevated and monorail passenger  
25 rolling stock, passenger and rail rolling stock, self-propelled car, gallery  
26 car, locomotive, passenger bus, rail, track, roadbed, guide way, elevated  
27 structure, building, school, hospital, station, terminal, dock, shelter, and  
28 wire, pole, and other equipment for the electrification of a transit system,  
29 carried out directly by a public entity or carried out with funding provided  
30 by a public entity to serve the interest of the general public;

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

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

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

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5           22-9-804. Requirement that products used in public buildings or public  
6 works be manufactured in the United States – Exceptions – Notice.

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

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

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

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

21           (3) Inclusion of construction materials comprised wholly or  
22 predominantly of iron or steel, or both, that are manufactured in the United  
23 States will increase the cost of the construction materials comprised wholly  
24 or predominantly of iron or steel, or both, by more than twenty-five percent  
25 (25%).

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

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

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

35           (3) Is provided by electronic means to each person or legal  
36 entity that has submitted a written or electronic request to the public

1 entity for notice of waiver actions by the executive head within five (5)  
2 years before the date of notice.

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

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

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

9 (e) This section:

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

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

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16 22-9-805. Violations – Penalties.

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

20 (1) Affixes a label bearing a "Made in America" inscription, or  
21 any inscription with the same meaning, to iron, steel, or construction  
22 material consisting wholly or predominantly of iron or steel that was:

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

25 (B) Not manufactured in the United States; or

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

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

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

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

1 (c) If a public entity determines that a contractor violated this  
2 subchapter under subsection (a) of this section, the public entity may invoke  
3 one (1) or more of the following remedies after reasonable notice to the  
4 contractor and opportunity for the contractor to have a hearing in accordance  
5 with the hearing procedures under the Arkansas Administrative Procedure Act,  
6 § 25-15-201 et seq., or any other hearing procedures that apply to  
7 administrative adjudications by the public entity:

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

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

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

14 (4) Void the contract; and

15 (5) Pursue any other remedy provided by law.

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17 22-9-806. Promulgation of rules – Authorization – Scope.

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

22 (1) Arkansas State Highway and Transportation Department;

23 (2) Arkansas State Game and Fish Commission;

24 (3) Arkansas Teacher Retirement System;

25 (4) Arkansas Building Authority; and

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

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

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

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

1 and

2 (2) Other public entities subject to this subchapter.

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4 /s/Teague

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