

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

# 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, STEEL,  
10 AND OTHER MANUFACTURED PRODUCTS IN THE CONSTRUCTION,  
11 RECONSTRUCTION, ALTERATION, AND IMPROVEMENT OF PUBLIC  
12 BUILDINGS AND PUBLIC WORKS; AND FOR OTHER PURPOSES.  
13

## Subtitle

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

28 Subchapter 8 – Arkansas Buy American Act  
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30 22-9-801. Title.

31 This subchapter shall be known and may be cited as the “Arkansas Buy  
32 American Act”.  
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34 22-9-802. Legislative findings – Policy.

35 (a) The General Assembly finds that:

36 (1) The production of iron, steel, and manufactured products



1 provides jobs and family income to many individuals in the state and to  
2 millions of persons in the United States;

3 (2) The taxes paid to the state and its political subdivisions  
4 by employers and employees engaged in the production and sale of iron, steel,  
5 and manufactured products are a large source of public revenues for the  
6 state;

7 (3) The economy and general welfare of the state and its people  
8 and the economy and general welfare of the United States are inseparably  
9 linked to the preservation and development of manufacturing industries in  
10 this state as well as all the other states of this nation. Therefore, it  
11 should be the policy of the state that its taxpayer dollars be reinvested  
12 with its taxpayers in order to foster job retention and growth, particularly  
13 within the manufacturing sector, and to ensure a broad and healthy tax base  
14 for future investments vital to the state's infrastructure; and

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

20 (b) It is therefore declared to be the policy of the state that all  
21 public officers and public entities should aid and promote the economy of the  
22 state and the United States by requiring a preference for the procurement of  
23 iron, steel, and manufactured products produced in the United States in all  
24 contracts for the construction, reconstruction, alteration, or improvement of  
25 public buildings and public works.

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27 22-9-803. Definitions.

28 As used in this subchapter:

29 (1) "Executive head" means the executive head of a public  
30 entity;

31 (2) "Manufactured in the United States" means:

32 (A) In the case of an iron or steel product comprised  
33 primarily of iron, steel, or both, a product that:

34 (i) Is assembled or processed entirely in the United  
35 States; and

36 (ii) Contains iron or steel components that contain

1 only iron or steel that is manufactured, processed, and refined entirely in  
2 the United States, with the exception of any metallurgical processes  
3 involving the refinement of steel additives; and

4 (B) In the case of a manufactured product, including  
5 without limitation a product that is not comprised primarily of iron, steel,  
6 or both, a product that:

7 (i) Is assembled or processed entirely in the United  
8 States; and

9 (ii) Is composed entirely of components that are of  
10 United States origin;

11 (3) "Of United States origin" means that the manufacturing of a  
12 product takes place in the United States, regardless of the origin of any  
13 subcomponents of the product;

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

19 (B) "Public building or public works" includes without  
20 limitation a railway, street railway, subway, elevated and monorail passenger  
21 rolling stock, passenger and rail rolling stock, self-propelled car, gallery  
22 car, locomotive, passenger bus, rail, track, roadbed, guide way, elevated  
23 structure, building, school, hospital, station, terminal, dock, shelter, and  
24 wire, pole, and other equipment for the electrification of a transit system;

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

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

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33 22-9-804. Requirement that products used in public buildings or public  
34 works be manufactured in the United States – Exceptions – Notice.

35 (a) Each contract for the construction, reconstruction, alteration, or  
36 improvement of a public building or public works made by a public entity

1 shall require that the iron, steel, and manufactured products used or  
2 supplied in the performance of the contract or any subcontract thereto and  
3 permanently incorporated into the public building or public works be  
4 manufactured in the United States.

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

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

10 (2) The iron, steel, or manufactured products are not produced  
11 in the United States in sufficient and reasonably available quantities of a  
12 satisfactory quality; or

13 (3) Inclusion of iron, steel, or manufactured products  
14 manufactured in the United States will increase the cost of the overall  
15 project contract by more than twenty-five percent (25%).

16 (c)(1) If the executive head receives a request for a waiver under  
17 subsection (b) of this section, the executive head shall provide notice of  
18 the request and an opportunity for public comment on the request at least  
19 thirty (30) days before making a finding based on the request.

20 (2) Notice provided under subdivision (c)(1) of this section  
21 shall:

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

26 (B) Be published prominently on the official public  
27 website of the public entity;

28 (C) State that the request is subject to a thirty-day  
29 comment period; and

30 (D) Be provided by electronic means to any person, firm,  
31 or corporation that has made a written or electronic request to the public  
32 entity for notice of waiver actions by the executive head within five (5)  
33 years before the date of notice.

34 (d) If the executive head issues a waiver under subsection (b) of this  
35 section, the executive head shall publish in the same manner as the original  
36 notice a detailed justification for the waiver that:

1           (1) Addresses the public comments received under subsection (c)  
2 of this section; and

3           (2) Is published at least five (5) business days before the  
4 waiver takes effect.

5           (e) This section does not apply to an existing treaty, law, agreement,  
6 or regulation of the United States that conflicts with this section to the  
7 extent of the conflict.

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9           22-9-805. Violations – Penalties.

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

13           (1) Affixes a label bearing a “Made in America” inscription, or  
14 any inscription with the same meaning, to an iron, steel, or manufactured  
15 product that was:

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

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

19           (2) Misrepresents that an iron, steel, or manufactured product  
20 used in a project to which this subchapter applies was manufactured in the  
21 United States.

22          (b) If a public entity determines that a contractor violated this  
23 subchapter:

24           (1)(A) The contractor is subject to debarment or suspension  
25 after reasonable notice to the contractor and opportunity for the contractor  
26 to have a hearing in accordance with the hearing procedures under the  
27 Arkansas Administrative Procedure Act, § 25-15-201 et seq., or other hearing  
28 procedures as apply to administrative adjudications by the public entity.

29                   (B) The debarment shall not be for a period of more than  
30 three (3) years, and the suspension shall not be for a period exceeding three  
31 (3) months; and

32           (2) The public entity that entered into the contract with the  
33 contractor may void the contract.