

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

1 State of Arkansas *As Engrossed: S3/4/13 S3/13/13*

2 89th General Assembly

A Bill

3 Regular Session, 2013

SENATE BILL 54

4

5 By: Senator Teague

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7

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.

13

14

15

Subtitle

16

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

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22

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

24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17
18 22-9-804. Requirement that products used in public buildings or public
19 works be manufactured in the United States – Exceptions – Notice.

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

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

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

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

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

1 or predominantly of iron or steel, or both, by more than twenty-five percent
2 (25%).

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

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

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

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

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

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

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

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

24 (e) This section:

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

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

30
31 22-9-805. Violations – Penalties.

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

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

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

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

3 and

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

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

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

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

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

16 (c) If a public entity determines that a contractor violated this
17 subchapter under subsection (a) of this section, the public entity may invoke
18 one (1) or more of the following remedies after reasonable notice to the
19 contractor and opportunity for the contractor to have a hearing in accordance
20 with the hearing procedures under the Arkansas Administrative Procedure Act,
21 § 25-15-201 et seq., or any other hearing procedures that apply to
22 administrative adjudications by the public entity:

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

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

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

29 (4) Void the contract; and

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

31
32 22-9-806. Promulgation of rules – Authorization – Scope.

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

1 (1) Arkansas State Highway and Transportation Department;

2 (2) Arkansas State Game and Fish Commission;

3 (3) Arkansas Teacher Retirement System;

4 (4) Arkansas Building Authority; and

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

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

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

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

16 and

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

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19 /s/Teague
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