

By: Creighton, et al.

S.B. No. 1289

A BILL TO BE ENTITLED

AN ACT

relating to the purchase of iron and steel products made in the United States for certain governmental entity projects.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2252, Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. CERTAIN CONSTRUCTION AND INSTALLATION PROJECTS

Sec. 2252.201. DEFINITIONS. In this subchapter:

(1) "Governmental entity" means this state or a board, commission, department, office, or other agency in the executive branch of state government. The term does not include a political subdivision.

(2) "Manufacturing process" means the application of a process to alter the form or function of materials or elements of a product in a manner that adds value and transforms the materials or elements into a new finished product that is functionally different from a finished product produced merely from assembling the materials or elements into a product.

(3) "Political subdivision" includes a county, municipality, municipal utility district, water control and improvement district, special utility district, and other types of water district.

(4) "Produced in the United States" means, with respect to iron and steel products, a product for which all

1 manufacturing processes, from initial melting through application
2 of coatings, occur in the United States, other than metallurgical
3 processes to refine steel additives.

4 (5) "Project" means a contract between a governmental
5 entity and another person, including a political subdivision, to:

6 (A) construct, remodel, or alter a building, a
7 structure, or infrastructure;

8 (B) supply a material for a project described by
9 Paragraph (A); or

10 (C) finance, refinance, or provide money from
11 funds administered by a governmental entity for a project described
12 by Paragraph (A).

13 Sec. 2252.202. UNIFORM PURCHASING CONDITION; RULES.

14 (a) Except as provided by Section 2252.203, the uniform general
15 conditions for a project in which iron or steel products will be
16 used must require that the bid documents provided to all bidders and
17 the contract include a requirement that any iron or steel product
18 used in the project be produced in the United States.

19 (b) A governmental entity subject to the requirements for a
20 project described by Subsection (a) shall adopt rules to promote
21 compliance with this section.

22 (c) For a contract subject to Chapter 15, 16, or 17, Water
23 Code, this section applies only if the contract finances,
24 refinances, or provides money from funds obtained by a political
25 subdivision or another governmental entity through general
26 obligation bonds.

27 Sec. 2252.203. EXEMPTIONS. (a) Section 2252.202 does not

1 apply to a project for which the governing body of the governmental
2 entity responsible for the project determines that:

3 (1) iron or steel products produced in the United
4 States are not:

5 (A) produced in sufficient quantities;

6 (B) reasonably available; or

7 (C) of a satisfactory quality;

8 (2) use of iron or steel products produced in the
9 United States will increase the total cost of the project by more
10 than 20 percent; or

11 (3) complying with that section is inconsistent with
12 the public interest.

13 (b) Electrical components, equipment, systems, and
14 appurtenances, including supports, covers, shielding, and other
15 appurtenances related to an electrical system, necessary for
16 operation or concealment are not considered to be iron or steel
17 products and are exempt from the requirements of Section 2252.202.
18 An electrical system includes all equipment, facilities, and assets
19 owned by an electric utility, as that term is defined in Section
20 [31.002](#), Utilities Code.

21 (c) Section 2252.202 does not apply to a contract subject to
22 Section [223.045](#), Transportation Code, or 23 C.F.R. Section 635.410.

23 Sec. 2252.204. INTERNATIONAL AGREEMENTS. This subchapter
24 shall be applied in a manner consistent with this state's
25 obligations under any international agreement.

26 Sec. 2252.205. CONFLICT OF LAW. To the extent of any
27 conflict or inconsistency, this subchapter prevails over any other

1 state law relating to the use of iron and steel products in projects
2 directly funded by a governmental entity or financed by funds
3 administered by a governmental entity.

4 SECTION 2. Section 223.045, Transportation Code, is amended
5 to read as follows:

6 Sec. 223.045. IRON AND STEEL PREFERENCE PROVISIONS IN
7 IMPROVEMENT CONTRACTS. A contract awarded by the department for
8 the improvement of the state highway system without federal aid
9 must contain the same preference provisions for iron and steel and
10 iron and steel products that are required under federal law for an
11 improvement made with federal aid.

12 SECTION 3. Section 17.183(a), Water Code, is amended to
13 read as follows:

14 (a) The governing body of each political subdivision
15 receiving financial assistance from the board shall require in all
16 contracts for the construction of a project:

17 (1) that each bidder furnish a bid guarantee
18 equivalent to five percent of the bid price;

19 (2) that each contractor awarded a construction
20 contract furnish performance and payment bonds:

21 (A) the performance bond shall include without
22 limitation guarantees that work done under the contract will be
23 completed and performed according to approved plans and
24 specifications and in accordance with sound construction
25 principles and practices; and

26 (B) the performance and payment bonds shall be in
27 a penal sum of not less than 100 percent of the contract price and

1 remain in effect for one year beyond the date of approval by the
2 engineer of the political subdivision;

3 (3) that payment be made in partial payments as the
4 work progresses;

5 (4) that each partial payment shall not exceed 95
6 percent of the amount due at the time of the payment as shown by the
7 engineer of the project, but, if the project is substantially
8 complete, a partial release of the five percent retainage may be
9 made by the political subdivision with approval of the executive
10 administrator;

11 (5) that payment of the retainage remaining due upon
12 completion of the contract shall be made only after:

13 (A) approval by the engineer for the political
14 subdivision as required under the bond proceedings;

15 (B) approval by the governing body of the
16 political subdivision by a resolution or other formal action; and

17 (C) certification by the executive administrator
18 in accordance with the rules of the board that the work to be done
19 under the contract has been completed and performed in a
20 satisfactory manner and in accordance with approved plans and
21 specifications;

22 (6) that no valid approval may be granted unless the
23 work done under the contract has been completed and performed in a
24 satisfactory manner according to approved plans and
25 specifications;

26 (7) that, if a political subdivision receiving
27 financial assistance under Subchapter K of this chapter, labor from

1 inside the political subdivision be used to the extent possible;
2 and

3 (8) that the contract include a requirement that iron
4 and steel products [~~and manufactured goods~~] used in the project be
5 produced in the United States, unless:

6 (A) such products [~~or goods~~] are not:

7 (i) available in sufficient quantities;

8 (ii) readily available; or

9 (iii) of a satisfactory quality; or

10 (B) the use of such products [~~or goods~~] will
11 increase the total cost of the project by more than 20 percent.

12 SECTION 4. Section 17.183(c)(4), Water Code, is amended to
13 read as follows:

14 (4) "Produced in the United States" means[+]

15 [~~(A)~~] in the case of iron and steel products,
16 products for which all manufacturing processes, from initial
17 melting through application of coatings, take place in the United
18 States, except metallurgical processes that involve the refinement
19 of steel additives[, and

20 [~~(B) in the case of a manufactured good, a good
21 for which:~~

22 [~~(i) all of the manufacturing process that
23 produced the manufactured good takes place in the United States,
24 and~~

25 [~~(ii) more than 60 percent of the
26 components of the manufactured good, by cost, originate in the
27 United States].~~

1 SECTION 5. Sections 17.183(c)(1) and (2) and (d), Water
2 Code, are repealed.

3 SECTION 6. (a) Subchapter F, Chapter 2252, Government
4 Code, as added by this Act, applies only to bid documents submitted
5 or contracts entered into on or after the effective date of this
6 Act.

7 (b) Subchapter F, Chapter 2252, Government Code, as added by
8 this Act, does not apply to a project that the Texas Water
9 Development Board has formally approved for financial assistance
10 before the effective date of this Act. In this subsection, the term
11 "formally approved" includes any project that is the subject of a
12 resolution approving an application for financial assistance
13 adopted by the Texas Water Development Board before January 1,
14 2018, for any portion of the financing of the project.

15 SECTION 7. This Act takes effect September 1, 2017.