

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 794 Session of 2013

INTRODUCED BY WHITE, BISHOP, O'BRIEN, LUCAS, D. COSTA, CLAY, BROWNLEE, STURLA, W. KELLER, RAVENSTAHL, HAGGERTY, NEILSON, SCHLOSSBERG, TRUITT, HALUSKA, KORTZ, HARHAI, CUTLER, SANTARSIERO, BIZZARRO, COHEN, READSHAW, CALTAGIRONE, THOMAS, MATZIE, GIBBONS, MULLERY, MURT, MAHONEY, P. DALEY, KINSEY, YOUNGBLOOD, DeLUCA, DEASY, FREEMAN, GOODMAN AND MCCARTER, FEBRUARY 25, 2013

REFERRED TO COMMITTEE ON STATE GOVERNMENT, FEBRUARY 25, 2013

AN ACT

1 Amending the act of March 3, 1978 (P.L.6, No.3), entitled "An  
2 act to promote the general welfare and stimulate the economy  
3 of the Commonwealth by requiring that all public bodies,  
4 including the Commonwealth, its political subdivisions, and  
5 all authorities, include in all contracts for construction,  
6 reconstruction, alteration, repair, improvement or  
7 maintenance of improvements of a permanent or temporary  
8 nature, a provision that if any steel products are to be used  
9 in the performance of the contract only steel products  
10 produced in the United States shall be used, and imposing  
11 liability for violation of this act," expanding the scope of  
12 the act to include iron and manufactured goods.

13 The General Assembly of the Commonwealth of Pennsylvania  
14 hereby enacts as follows:

15 Section 1. The title and sections 1 and 3 of the act of  
16 March 3, 1978 (P.L.6, No.3), known as the Steel Products  
17 Procurement Act, are amended to read:

AN ACT

19 Amending the act of March 3, 1978 (P.L.6, No.3), entitled "An  
20 act to promote the general welfare and stimulate the economy

1 of the Commonwealth by requiring that all public bodies,  
2 including the Commonwealth, its political subdivisions, and  
3 all authorities, include in all contracts for construction,  
4 reconstruction, alteration, repair, improvement or  
5 maintenance of improvements of a permanent or temporary  
6 nature, a provision that if any iron or steel products or  
7 manufactured goods are to be used in the performance of the  
8 contract only iron or steel products or manufactured goods  
9 produced in the United States shall be used, and imposing  
10 liability for violation of this act.

11 Section 1. This act shall be known and may be cited as the  
12 ["Steel Products Procurement] "Buy American Act."

13 Section 3. It is hereby determined by the General Assembly  
14 of Pennsylvania and declared as a matter of legislative findings  
15 that:

16 (1) The Commonwealth of Pennsylvania is one of the  
17 leading states in the United States in the production of  
18 steel.

19 (2) [The production of steel products constitutes a  
20 major industry of the Commonwealth and, as such, provides the  
21 jobs and family incomes of hundreds of thousands of the  
22 people of this Commonwealth and, in turn, millions of persons  
23 in the United States] The production of iron, steel and  
24 manufactured goods provides jobs and family income to many  
25 individuals in this Commonwealth and, in turn, the jobs and  
26 family incomes of millions of persons in the United States.

27 (3) The taxes paid to the Commonwealth and its political  
28 subdivisions by employers and employees engaged in the  
29 production and sale of iron and steel products and  
30 manufactured goods are [one of the largest single sources] a

1     large source of public revenues in this Commonwealth.

2           (4) It has, for many years, been the policy of the  
3 Commonwealth to aid and support the development and expansion  
4 of industry in this Commonwealth in order to foster the  
5 economic well-being of the Commonwealth and its people.

6           (5) The economy and general welfare of the Commonwealth  
7 and its people, as well as the economy, general welfare and  
8 national security of the United States, are inseparably  
9 related to the preservation and development of [the steel  
10 industry] manufacturing industries in the Commonwealth and in  
11 the other states of the United States.

12           (6) Recognizing this link, it should be the policy of  
13 the Commonwealth that its taxpayer dollars be reinvested with  
14 its individual and employer taxpayers in order to foster job  
15 retention and growth, particularly within the manufacturing  
16 sector, and to ensure a broad and healthy tax base for future  
17 investments vital to this Commonwealth's infrastructure.

18           (7) The Commonwealth's procurement policies should  
19 reflect this Commonwealth's, and indeed, the nation's,  
20 principles, ensuring that the products of those companies and  
21 workers who abide by workplace safety and environmental laws  
22 and regulations should be rewarded with a common sense  
23 preference in government contracting.

24     The Pennsylvania General Assembly therefore declares it to be  
25 the policy of the Commonwealth of Pennsylvania that all public  
26 officers and agencies should, at all times, aid and promote the  
27 development of the [steel industry] manufacturing industries of  
28 the United States in order to stimulate and improve the economic  
29 well-being of the Commonwealth and its people.

30     Section 2. Section 4 of the act, amended October 24, 2012

(P.L.1284, No.159), is amended to read:

Section 4. (a) Every public agency shall require that every contract document for the construction, reconstruction, alteration, repair, improvement or maintenance of public works contain a provision that, if any iron or steel products or manufactured goods are to be used or supplied in the performance of the contract, only iron and steel products and manufactured goods as herein defined shall be used or supplied in the performance of the contract or any subcontracts thereunder.

(b) This section shall not apply in any case[:

(1)] where the head of the public agency, in writing, determines that [steel products as herein defined are not produced in the United States in sufficient quantities to meet the requirements of the contract; or

(2) to items on a list of exempt machinery and equipment steel products, which have been identified by the Department of General Services as not produced in the United States in sufficient quantities in the previous calendar year, and published on the department's publicly accessible Internet website, which contractors, subcontractors, suppliers, bidders, offerors and public agencies can rely upon in preparing bids and contracts. The list of exempt machinery and equipment steel products shall be updated annually on a date selected by the Department of General Services. The Department of General Services may not make changes to the list during the year following publication. Prior to publication on the Internet website, and in each subsequent year, the Department of General Services shall publish the list of exempt machinery and equipment steel products in the Pennsylvania Bulletin and provide for a 30-day public comment period. The Department of

1 General Services shall, through a statement of policy, establish  
2 a process for creating the list of exempt machinery and  
3 equipment steel products and resolving disputes with respect to  
4 items on the list raised during the public comment period prior  
5 to the publication of the Internet website. The provisions of 2  
6 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of  
7 Commonwealth agencies) shall not apply to this section.];

8 (1) their application would be inconsistent with the  
9 public interest;

10 (2) such materials and products are not produced in the  
11 United States in sufficient and reasonably available  
12 quantities and of a satisfactory quality; or

13 (3) inclusion of domestic material will increase the  
14 cost of the overall project contract by more than 25%.

15 (c) If the head of a public agency determines that it is  
16 necessary to waive the application of subsection (a) based on a  
17 finding under subsection (b), the head of the public agency  
18 shall, before the date on which the finding takes effect:

19 (1) publish in the Pennsylvania Bulletin a detailed  
20 written justification as to why the waiver is needed;

21 (2) consider all comments received during the comment  
22 period in evaluating the waiver request; and

23 (3) provide notice of the finding and an opportunity for  
24 public comment on the finding for a reasonable period of time  
25 not to exceed 15 days.

26 (d) The provisions of subsection (b) shall not apply to  
27 products produced in a foreign country where the head of a  
28 public agency, in consultation with the United States Trade  
29 Representative, determines that:

30 (1) the foreign country is a party to an agreement with

1 the United States and pursuant to that agreement the head of  
2 an agency of the United States has waived the requirements of  
3 this section; and

4 (2) the foreign country has violated the terms of the  
5 agreement by discriminating against products covered by this  
6 section that are produced in the United States and are  
7 covered by the agreement.

8 Section 3. Section 5(a) of the act, amended July 9, 1984  
9 (P.L.674, No.144), is amended to read:

10 Section 5. (a) No public agency shall authorize, provide  
11 for or make any payments to any person under any contract  
12 containing the provision required by section 4 unless, when  
13 unidentified iron or steel products or manufactured goods are  
14 supplied under a contract, such person has provided  
15 documentation including, but not limited to, invoices, bills of  
16 lading, and mill certification that the iron or steel was melted  
17 and the iron, steel and goods were manufactured in the United  
18 States, which establish that such person has fully complied with  
19 such provision. If a [steel] product is identifiable from its  
20 face, such person must submit certification which satisfies the  
21 public agency that such person has fully complied with the  
22 provision required by section 4. Any such payments made to any  
23 person by any public agency which should not have been made as a  
24 result of this section shall be recoverable directly from the  
25 contractor, subcontractor, manufacturer or supplier who did not  
26 comply with section 4 by either such public agency or the  
27 Attorney General of Pennsylvania.

28 \* \* \*

29 Section 4. Section 6 of the act is amended by adding a  
30 definition to read:

1       Section 6. The following words and phrases when used in this  
2 act shall have, unless the context clearly indicates otherwise,  
3 the meanings given to them in this section:

4       "Manufactured."

5       (1) In the case of an iron or steel product, all  
6 manufacturing must take place in the United States, except  
7 metallurgical processes involving the refinement of steel  
8 additives.

9       (2) In the case of a manufactured good, a good will be  
10 considered manufactured in the United States if:

11       (i) all the manufacturing process for the product  
12 take place in the United States; and

13       (ii) all of the components of the product must be of  
14 United States origin. A component will be considered a  
15 product of United States origin if all the manufacturing  
16 processes take place in the United States, regardless of  
17 the origin of its subcomponents.

18       \* \* \*

19       Section 5. This act shall apply to contracts awarded  
20 pursuant to an invitation for bids issued on or after the  
21 effective date of this act.

22       Section 6. This act shall take effect in 60 days.