

Chapter 597

S.B. No. 1289

1 AN ACT

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

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

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

7 SUBCHAPTER F. CERTAIN CONSTRUCTION AND INSTALLATION PROJECTS

8 Sec. 2252.201. DEFINITIONS. In this subchapter:

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

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

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

23 (4) "Produced in the United States" means, with
24 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 produced through a manufacturing process and used in the project be
19 produced in the United States.

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

23 Sec. 2252.2025. REPORT. (a) Not later than December 1,
24 2018, the Texas Water Development Board shall electronically submit
25 to the state auditor a report on all contracts for construction of a
26 project that received financial assistance under Chapter 15, 16, or
27 17, Water Code, during the state fiscal year ending August 31, 2017.

1 The report must include:

2 (1) the impacts on a political subdivision that has
3 obtained or applied for financial assistance from the board under
4 Chapter 15, 16, or 17, Water Code; and

5 (2) for each project that has obtained financial
6 assistance as described by this subsection:

7 (A) the country of origin of the iron and steel
8 products used in the project, in accordance with 19 U.S.C. Section
9 1304;

10 (B) the cost and quantity of all iron and steel
11 products received from each country of origin for the project; and

12 (C) any related bond information, including the
13 credit rating of general obligation bonds or revenue bonds issued
14 by the board to finance or refinance projects included in the state
15 water plan and the potential impact to that credit rating as a
16 result of the bond issuance by the board.

17 (b) The state auditor shall prepare a summary on the report
18 submitted under Subsection (a) and electronically submit the
19 summary to the legislature not later than January 1, 2019.

20 (c) This section expires September 1, 2019.

21 Sec. 2252.203. EXEMPTIONS. (a) Section 2252.202 does not
22 apply to a project for which the governing body of the governmental
23 entity responsible for the project determines that:

24 (1) iron or steel products produced in the United
25 States are not:

26 (A) produced in sufficient quantities;

27 (B) reasonably available; or

1 (C) of a satisfactory quality;

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

5 (3) complying with that section is inconsistent with
6 the public interest.

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

15 (c) Section 2252.202 does not apply to a contract subject to
16 Section 223.045, Transportation Code, or 23 C.F.R. Section 635.410.

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

20 Sec. 2252.205. CONFLICT OF LAW. To the extent of any
21 conflict or inconsistency, this subchapter prevails over any other
22 state law relating to the use of iron and steel products in projects
23 directly funded by a governmental entity or financed by funds
24 administered by a governmental entity.

25 SECTION 2. Section 223.045, Transportation Code, is amended
26 to read as follows:

27 Sec. 223.045. IRON AND STEEL PREFERENCE PROVISIONS IN

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1 IMPROVEMENT CONTRACTS. A contract awarded by the department for
2 the improvement of the state highway system without federal aid
3 must contain the same preference provisions for iron and steel and
4 iron and steel products that are required under federal law for an
5 improvement made with federal aid.

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

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

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

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

15 (A) the performance bond shall include without
16 limitation guarantees that work done under the contract will be
17 completed and performed according to approved plans and
18 specifications and in accordance with sound construction
19 principles and practices; and

20 (B) the performance and payment bonds shall be in
21 a penal sum of not less than 100 percent of the contract price and
22 remain in effect for one year beyond the date of approval by the
23 engineer of the political subdivision;

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

26 (4) that each partial payment shall not exceed 95
27 percent of the amount due at the time of the payment as shown by the

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1 engineer of the project, but, if the project is substantially
2 complete, a partial release of the five percent retainage may be
3 made by the political subdivision with approval of the executive
4 administrator;

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

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

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

11 (C) certification by the executive administrator
12 in accordance with the rules of the board that the work to be done
13 under the contract has been completed and performed in a
14 satisfactory manner and in accordance with approved plans and
15 specifications;

16 (6) that no valid approval may be granted unless the
17 work done under the contract has been completed and performed in a
18 satisfactory manner according to approved plans and
19 specifications;

20 (7) that, if a political subdivision receiving
21 financial assistance under Subchapter K of this chapter, labor from
22 inside the political subdivision be used to the extent possible;
23 and

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

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

- 1 (i) available in sufficient quantities;
- 2 (ii) readily available; or
- 3 (iii) of a satisfactory quality; or
- 4 (B) the use of such products [~~or goods~~] will
- 5 increase the total cost of the project by more than 20 percent.

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

8 (4) "Produced in the United States" means, +
9 [~~(A)~~] in the case of iron and steel products,
10 products for which all manufacturing processes, from initial
11 melting through application of coatings, take place in the United
12 States, except metallurgical processes that involve the refinement
13 of steel additives [~~, and~~

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

16 [~~(i) all of the manufacturing process that~~
17 ~~produced the manufactured good takes place in the United States,~~
18 ~~and~~

19 [~~(ii) more than 60 percent of the~~
20 ~~components of the manufactured good, by cost, originate in the~~
21 ~~United States]~~.

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

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

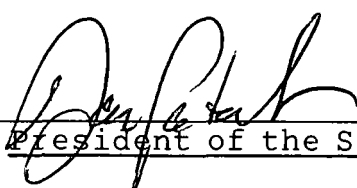
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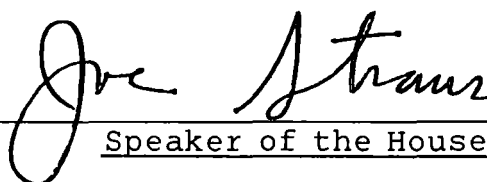
1 (b) Subchapter F, Chapter 2252, Government Code, as added by
2 this Act, does not apply to a project as described by Section 15.432
3 or 15.472, Water Code, that the Texas Water Development Board has
4 formally approved for financial assistance. In this subsection,
5 the term "formally approved" means any project that is the subject
6 of a resolution approving an application for financial assistance
7 adopted by the Texas Water Development Board before May 1, 2019, for
8 any portion of the financing of the project.

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

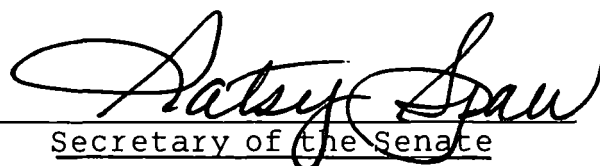
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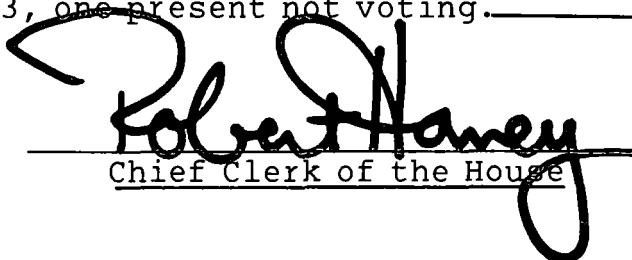

President of the Senate


Speaker of the House

I hereby certify that S.B. No. 1289 passed the Senate on May 3, 2017, by the following vote: Yeas 23, Nays 7, one present not voting; May 17, 2017, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 19, 2017, House granted request of the Senate; May 27, 2017, Senate adopted Conference Committee Report by the following vote: Yeas 23, Nays 7, one present not voting. _____

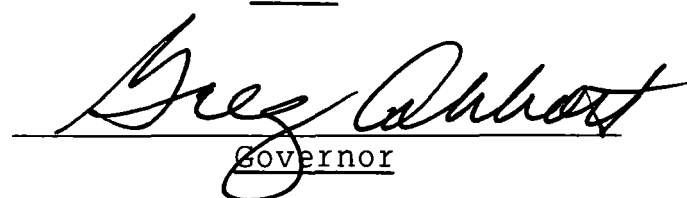

Secretary of the Senate

I hereby certify that S.B. No. 1289 passed the House, with amendments, on May 12, 2017, by the following vote: Yeas 109, Nays 33, one present not voting; May 19, 2017, House granted request of the Senate for appointment of Conference Committee; May 27, 2017, House adopted Conference Committee Report by the following vote: Yeas 102, Nays 33, one present not voting. _____

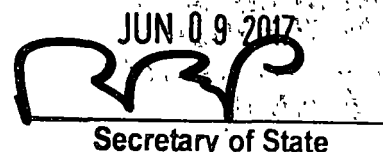

Chief Clerk of the House

Approved:

6-7-2017
Date


Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
7:00 PM O'CLOCK

JUN 09 2017

Secretary of State

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 26, 2017

TO: Honorable Dan Patrick, Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1289 by Creighton (Relating to the purchase of iron and steel products made in the United States for certain governmental entity projects.), **Conference Committee Report**

Depending upon the level of anticipated future building, structure, or infrastructure construction, there could be an indeterminate fiscal impact to the state.

The bill would amend Chapter 2252 of the Government Code, regarding contracts with government entities, to require state entities with projects relating to the construction, remodeling, or altering of a building, a structure, or infrastructure, including a road or highway, or who supply a material for such projects, to source iron or steel products used in such projects from the United States. The bill would permit exceptions to the requirement if these products are not produced in sufficient quantities in the United States; if the use of products produced in the United States will increase the total cost of the project by more than 20 percent; or if complying with the requirement is inconsistent with the public interest.

The bill would include iron preference in the Transportation Code provisions pertaining to steel preference with regards to contracts awarded by the Texas Department of Transportation (TxDOT) for the improvement of the state highway system without federal aid. The bill would make inapplicable the uniform purchasing condition, added by the bill's provisions, to a contract subject to the specified Transportation Code provisions; and/or the Buy America requirements pertaining to the construction and maintenance of highways contained in the Code of Federal Regulations.

With regards to a contract for the construction of a project for which the governing body of a political subdivision receives financial assistance from the Texas Water Development Board (TWDB), the bill would remove the requirement that manufactured goods produced in the United States be given preference. The bill would require TWDB to submit a report to the State Auditor on all contracts that received financial assistance during the state fiscal year ending August 31, 2017.

Multiple state entities report that such a requirement could allow the cost of the entity's projects to increase by up to 20 percent. TxDOT indicates that the bill would have an indeterminate fiscal impact on the agency. The ultimate impact of the potential cost varies by entity depending on the level of anticipated future building, structure, or infrastructure construction. Some entities do not anticipate a financial impact to their construction projects while others could experience an increase in project costs.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 303 Facilities Commission, 305 General Land Office and Veterans' Land Board, 405 Department of Public Safety, 580 Water Development Board, 601 Department of Transportation, 696 Department of Criminal Justice, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration

LBB Staff: UP, CL, DRE, AG, JPU, SD, JSm

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 10, 2017

TO: Honorable Byron Cook, Chair, House Committee on State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1289 by Creighton (Relating to the purchase of iron and steel products made in the United States for certain governmental entity projects.), **Committee Report 2nd House, Substituted**

Depending upon the level of anticipated future building, structure, or infrastructure construction, there could be an indeterminate fiscal impact to the state.

The bill would amend Chapter 2252 of the Government Code, regarding contracts with government entities, to require state entities with projects relating to the construction, remodeling, or altering of a building, a structure, or infrastructure, including a road or highway, or who supply a material for such projects, to source iron or steel products used in such projects from the United States. The bill would permit exceptions to the requirement if these products are not produced in sufficient quantities in the United States; if the use of products produced in the United States will increase the total cost of the project by more than 20 percent; or if complying with the requirement is inconsistent with the public interest.

The bill would include iron preference in the Transportation Code provisions pertaining to steel preference with regards to contracts awarded by the Texas Department of Transportation (TxDOT) for the improvement of the state highway system without federal aid. The bill would make inapplicable the uniform purchasing condition, added by the bill's provisions, to a contract subject to the specified Transportation Code provisions; and/or the Buy America requirements pertaining to the construction and maintenance of highways contained in the Code of Federal Regulations.

With regards to a contract for the construction of a project for which the governing body of a political subdivision receives financial assistance from the Texas Water Development Board, the bill would remove the requirement that manufactured goods produced in the United States be given preference.

Multiple state entities report that such a requirement could allow the cost of the entity's projects to increase by up to 20 percent. TxDOT indicates that the bill would have an indeterminate fiscal impact on the agency. The ultimate impact of the potential cost varies by entity depending on the level of anticipated future building, structure, or infrastructure construction. Some entities do not anticipate a financial impact to their construction projects while others could experience an increase in project costs.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 303 Facilities Commission, 305 General Land Office and Veterans' Land Board, 405 Department of Public Safety, 580 Water Development Board, 601 Department of Transportation, 696 Department of Criminal Justice, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration

LBB Staff: UP, CL, DRE, AG, JPU, SD, JSm

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 10, 2017

TO: Honorable Byron Cook, Chair, House Committee on State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **SB1289** by Creighton (Relating to the purchase of iron and steel products made in the United States for certain governmental entity projects.), **As Engrossed**

Depending upon the level of anticipated future building, structure, or infrastructure construction, there could be an indeterminate fiscal impact to the state.

The bill would amend Chapter 2252 of the Government Code, regarding contracts with government entities, to require state entities with projects relating to the construction, remodeling, or altering of a building, a structure, or infrastructure, including a road or highway, or who supply a material for such projects, to source iron or steel products used in such projects from the United States. The bill would make the requirement inapplicable to a contract subject to Texas Water Code provisions relating to the Texas Water Assistance Program, water development generally, or public funding for water development unless the contract finances, refinances, or provides money funds obtained by a political subdivision or another governmental entity through general obligation bonds. The bill would permit exceptions to the requirement if these products are not produced in sufficient quantities in the United States; if the use of products produced in the United States will increase the total cost of the project by more than 20 percent; or if complying with the requirement is inconsistent with the public interest.

The bill would include iron preference in the Transportation Code provisions pertaining to steel preference with regards to contracts awarded by the Texas Department of Transportation (TxDOT) for the improvement of the state highway system without federal aid. The bill would make inapplicable the uniform purchasing condition, added by the bill's provisions, to a contract subject to the specified Transportation Code provisions; and/or the Buy America requirements pertaining to the construction and maintenance of highways contained in the Code of Federal Regulations.

With regards to a contract for the construction of a project for which the governing body of a political subdivision receives financial assistance from the Texas Water Development Board, the bill would remove the requirement that manufactured goods produced in the United States be given preference.

Multiple state entities report that such a requirement could allow the cost of the entity's projects to increase by up to 20 percent. TxDOT indicates that the bill would have an indeterminate fiscal impact on the agency. The ultimate impact of the potential cost varies by entity depending on the level of anticipated future building, structure, or infrastructure construction. Some entities do not anticipate a financial impact to their construction projects while others could experience an increase in project costs.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 303 Facilities Commission, 305 General Land Office and Veterans' Land Board, 405 Department of Public Safety, 580 Water Development Board, 601 Department of Transportation, 696 Department of Criminal Justice, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration

LBB Staff: UP, CL, DRE, AG, JPU, SD, JSm

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 25, 2017

TO: Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1289 by Creighton (Relating to the purchase of iron and steel products made in the United States for certain governmental entity projects.), **Committee Report 1st House, Substituted**

Depending upon the level of anticipated future building, structure, or infrastructure construction, there could be an indeterminate fiscal impact to the state.

The bill would amend Chapter 2252 of the Government Code, regarding contracts with government entities, to require state entities with projects relating to the construction, remodeling, or altering of a building, a structure, or infrastructure, including a road or highway, or who supply a material for such projects, to source iron or steel products used in such projects from the United States. The bill would permit exceptions if these products are not produced in sufficient quantities in the United States; if the use of products produced in the United States will increase the total cost of the project by more than 20 percent; or if complying with the requirement is inconsistent with the public interest.

The bill would include iron preference in the Transportation Code provisions pertaining to steel preference with regards to contracts awarded by the Texas Department of Transportation (TxDOT) for the improvement of the state highway system without federal aid. The bill would make inapplicable the uniform purchasing condition, added by the bill's provisions, to a contract subject to the specified Transportation Code provisions; and/or the Buy America requirements pertaining to the construction and maintenance of highways contained in the Code of Federal Regulations.

With regards to a contract for the construction of a project for which the governing body of a political subdivision receives financial assistance from the Texas Water Development Board, the bill would remove the requirement that manufactured goods produced in the United States be given preference.

Multiple state entities report that such a requirement could allow the cost of the entity's projects to increase by up to 20 percent. TxDOT indicates that the bill would have an indeterminate fiscal impact on the agency. The ultimate impact of the potential cost varies by entity depending on the level of anticipated future building, structure, or infrastructure construction. Some entities do not anticipate a financial impact to their construction projects while others could experience an increase in project costs.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 303 Facilities Commission, 305 General Land Office and Veterans' Land Board, 405 Department of Public Safety, 696 Department of Criminal Justice, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration, 601 Department of Transportation

LBB Staff: UP, CL, DRE, AG, JPU, SD, JSm

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 17, 2017

TO: Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1289 by Creighton (Relating to the purchase of iron and steel products made in the United States for certain governmental entity projects.), **As Introduced**

Depending upon the level of anticipated future building, structure, or infrastructure construction, there could be an indeterminate fiscal impact to the state.

The bill would amend Chapter 2252 of the Government Code, regarding contracts with government entities, to require state entities with projects relating to the construction, remodeling, or altering of a building, a structure, or infrastructure, including a road or highway, or who supply a material for such projects, to source iron or steel products used in such projects from the United States. The bill would permit exceptions if these products are not produced in sufficient quantities in the United States or if the use of products produced in the United States will increase the total cost of the project by more than 20 percent.

Multiple state entities report that such a requirement could allow the cost of the entity's projects to increase by up to 20 percent. The ultimate impact of this potential cost varies by entity depending on the level of anticipated future building, structure, or infrastructure construction. Some entities do not anticipate a financial impact to their construction projects while others could experience an increase in project costs.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 303 Facilities Commission, 305 General Land Office and Veterans' Land Board, 405 Department of Public Safety, 601 Department of Transportation, 696 Department of Criminal Justice, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration

LBB Staff: UP, CL, JPU, DRE, AG, SD, JSm