

SB 195-FN - AS AMENDED BY THE SENATE

03/16/2023 0802s

2023 SESSION

23-0933

05/04

SENATE BILL

195-FN

AN ACT

relative to the purchase of steel products with the Buy America certification.

SPONSORS:

Sen. Carson, Dist 14; Sen. Ricciardi, Dist 9; Sen. Fenton, Dist 10; Sen. Lang, Dist 2; Sen. Abbas, Dist 22

COMMITTEE:

Commerce

ANALYSIS

This bill revises made in America contract requirements for certain state steel contracts.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears ~~[in brackets and struckthrough.]~~

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to the purchase of steel products with the Buy America certification.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Department of Administrative Services; Division of Procurement and Support Services;
2 Domestic and Fabricated Structural Steel. Amend RSA 21-I:11, II(h) to read as follows:

3 (h) "Domestic fabricated structural steel" shall mean an iron or steel product where all
4 manufacturing must take place in the United States, from the initial melting stage, through
5 fabrication, and application of coatings, except metallurgical processes involving the refinement of
6 steel additives. ***The miscellaneous steel or iron components, subcomponents, and hardware***
7 ***necessary to encase, assemble, and construct such components, including, but not limited***
8 ***to, cabinets, covers, shelves, clamps, fittings, sleeves, washers, bolts, nuts, screws, tie wire,***
9 ***spacers, chairs, lifting hooks, faucets, and door hinges, shall not be subject to the United***
10 ***States manufacturing requirement of this definition.***

11 2 Administrative Services; Procurement and Support Services; Preference for American Made.
12 RSA 21-I:11, III is repealed and reenacted to read as follows:

13 III.(a) Notwithstanding any law to the contrary relating to procurement and to the extent
14 permitted by federal law, any contract for construction, reconstruction, alteration, repair,
15 improvement, or maintenance of a public building or public works with the state as a party shall
16 contain a provision that iron or steel fabricated in the United States shall be used for the
17 permanently incorporated iron, structural steel, and fabricated structural steel used or supplied in
18 the performance of the contract or any subcontract. The provision shall only be required if \$1,000,000
19 or more of state funds are used in the contract.

20 (b) Departments and agencies of this state affected by subparagraph (a) shall identify
21 what steel products need Buy America certification in the contract documents.

22 (c) Departments and agencies of this state affected by subparagraph (a) may request a
23 waiver from the department of administrative services, which shall provide an opportunity for public
24 hearing and comment at least 30 days before finalizing a waiver, in the same manner as described in
25 RSA 541-A:11. The department of administrative services may grant a waiver upon finding that:

- 26 (1) Application of the project would be inconsistent with the public interest;
27 (2) The product is not produced or fabricated in the United States and that it would
28 be in the public interest to provide a waiver;
29 (3) The item for which a waiver is being requested is not produced and fabricated in
30 the United States in sufficient and reasonably available quantities and of satisfactory quality; or
31 (4) Alternate bidding procedures were used and the lowest overall total bid based on

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1 using domestic fabricated structural steel.

2 (d) A request for waiver under subparagraph (c) shall include facts and justification to
3 support the granting of the waiver. The response to a request shall be in writing and made available
4 to the public upon request. In granting a waiver, the department of administrative services shall
5 consider all appropriate factors including, but not limited to, any cost, administrative burden, and
6 delay that would be imposed if the provision were not-waived.

7 (e) If a court or federal or state agency has determined that any person intentionally
8 affixed a "Made in America" label to structural steel under this paragraph that was not made in the
9 United States or otherwise falsely represented that structural steel under this paragraph was
10 produced in the United States, the department of administrative services shall withhold contract
11 payment until the structural steel can be replaced, or the noncompliance of this paragraph is
12 otherwise remedied. Failure to comply with and/or produce a satisfactory remedy to the state may
13 result in debarment proceedings under RSA 21-I:11-c, III.

14 (f) If any provision of this paragraph or application thereof is held to be invalid or in
15 conflict with any applicable laws, this invalidity or conflict shall not affect the other provisions or
16 application which shall be given effect without the invalid provisions or applications, and to this end,
17 the provisions and applications of this paragraph are severable.

18 3 Definition of Structural Steel. Amend RSA 21-I:11, II(g) to read as follows:

19 (g) "Structural steel" shall mean a product consisting of the elements of the structural
20 frame that are shown and sized in the structural design documents, essential to support the design
21 loads as defined in the [2016] ***latest edition of the*** American Institute of Steel Construction (AISC)
22 code of standard practice for steel buildings and bridges 303-16.

23 4 Effective Date. This act shall take effect upon passage.

SB 195-FN- FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENT #2023-0802s)

AN ACT relative to the purchase of steel products with the Buy America certification.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

This bill modifies RSA 21-I:11, which went into effect January 1, 2023, requiring the use of American made steel products in all public works projects where the state administers the contract. This bill adds provisions to the RSA making it only applicable to State funded contracts of at least \$1,000,000. It includes a requirement for affected state agencies to specify in the contract documents which steel products "need Buy America certification." It also includes a process by which affected state agencies may request a waiver of the requirements of the bill in certain circumstances. Lastly, this bill includes a severability clause if the provisions of this bill are held to be invalid or in conflict with any applicable laws.

The Department of Administrative Services (DAS) states the entirety of this bill is indeterminable as current law, to require the use of American made steel products, went into effect January 1, 2023 and the DAS has had no opportunity to witness or evaluate its operational or fiscal impact. However, the additional requirements to identify and specify in each agreement which steel products "need Buy America certification" would result in increased staff time needed to prepare, review, hold public hearings, and grant or deny waivers.

AGENCIES CONTACTED:

Department of Administrative Services