SB 195-FN - AS AMENDED BY THE HOUSE

03/16/2023 0802s
18May2023... 1727h

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.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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

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

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 RSA 21-I:11, III is repealed and reenacted to read as follows:

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

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

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

(1) Application of the project would be inconsistent with the public interest;

(2) The product is not produced or fabricated in the United States and that it would be in the public interest to provide a waiver; or

(3) The item for which a waiver is being requested is not produced and fabricated in the United States in sufficient and reasonably available quantities and of satisfactory quality.

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

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

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

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

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

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

LBA
23-0933
Amended 3/20/23

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: [X] State [ ] County [ ] Local [ ] None

	Estimated Increase / (Decrease)			
STATE:	**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:	[X] General	[ ] Education	[ ] Highway	[ ] 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