



Am. Sub. S.B. 11
124th General Assembly
(As Passed by the General Assembly)

Sens. Hagan, Nein, Ryan, Shoemaker, Furney, Herington, DiDonato, McLin, Brady, Prentiss, Mallory, Fingerhut, Armbruster, Oelslager, Spada, Austria, R.L. Gardner, Hottinger, Mumper, Amstutz, Carnes, Espy, Jacobson, Harris

Reps. Distel, Ogg, Sulzer, Redfern, Krupinski, Boccieri, Strahorn, Sferra, Allen, Otterman, S. Smith, Beatty, R. Miller, Key, Fedor, Britton, Carano, Driehaus, Flannery, D. Miller, Womer Benjamin, Metzger, Rhine, Oakar, Blasdel, Metelsky, Hartnett, Callender, Grendell, Latell, Hagan, Sullivan, Schaffer, Calvert, Aslanides, Kilbane, Hughes, Carey, Reidelbach, Barrett, DePiero, Jerse, Sykes, Stapleton, Hoops, Coates, Collier, Perry, Manning, Seaver, Ford, Trakas, Salerno, Olman, Barnes, Cirelli, Jones

Effective date: *

ACT SUMMARY

- Shifts the focus of the existing general ban against the "use" of foreign steel in public improvement projects to a ban against "purchasing or providing" such steel.
- Requires the Director of Administrative Services to investigate possible violations of the general ban against purchasing or providing foreign steel in public improvement projects.
- Requires all bid specifications and notifications between all parties to a public improvement contract to contain a notice provision.
- Authorizes the Attorney General to commence a civil action against violators of the ban.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

- Creates a defense for persons who purchase steel products in violation of the ban.
- Creates a civil penalty for violators of the ban and requires that the penalty money be deposited in the general fund of the school district and the joint vocational school district where the violation occurred.
- Authorizes the Director of Administrative Services to waive the steel usage and supply requirement entirely for public bridge projects under specified conditions.
- Limits the definition of steel products to include only steel used for load-bearing structural purposes.
- Modifies the manner in which the ban applies to public improvements.
- Declares an emergency.

CONTENT AND OPERATION

Background on existing law

Under former law, when steel products were used for the construction or improvement of a state-supported building, structure, or highway improvement not yet bid, only steel products made in the United States could be used or supplied for that construction or improvement, except that under specified conditions, the Director of Transportation could authorize the use of a minimal amount of foreign steel products in contracts for public bridge improvements. (Sec. 153.011(A) and (D).)

Other than remedies provided under rules of the Director of Administrative Services and a provision requiring the assessment of a \$1,000 fine against an "officer" (not defined under R.C. Chapter 153.) who violated the above requirement, former law provided no other *specific* remedies or sanctions applicable for violations of the U.S. steel usage and supply requirement.

The act

Investigation of potential violation

Under the act, whenever the Director of Administrative Services has reasonable cause to believe that a person has purchased or provided steel products in violation of the U.S. steel supply requirement, the Director must conduct an

investigation to determine whether the person has purchased or provided or is purchasing or providing steel products in violation of the law. (Sec. 153.011(C).)

Civil action

Upon conducting the investigation, if the Director finds that the person has purchased or provided or is purchasing or providing steel products in violation of the law, the Director must request the Attorney General to commence an action against the person for the violation. The act specifies that any such action is a civil action. The remedy provided in the act is concurrent with any other remedy provided under the Public Improvements Law. Additionally, the act specifies that the existence or exercise of one remedy does not prevent the exercise of any other. (Sec. 153.011(C).)

Civil penalty created

The act requires a person who purchases or provides steel products in violation of the U.S. steel supply requirement to pay a civil penalty equal to one and one-half times the purchase price of the steel products purchased or provided in violation of the law. (Sec. 153.99(B).)

Upon collection of the civil penalty pursuant to a civil action, the Attorney General must pay the money collected to the Treasurer of the Board of Education of the city, local, exempted village school district, or joint vocational school district, if one exists, in which the construction, repair, or improvement project for which the steel products used in violation is located. The Treasurer must deposit the civil penalty in equal amounts into the school district's general fund or into the joint vocational school district's general fund, if a joint vocational school district exists. If a joint vocational school district does not exist where the violation occurred, then the entire sum of the civil penalty is to be deposited into the school district's general fund. (Sec. 153.011(C).)

Notice requirements

The act requires the following notice to be included in boldface type and capital letters in all bid notifications and specifications between all parties to any contract authorized under the Public Improvements Law (R.C. Chapter 153.) or subject to the requirements for purchasing and providing domestic steel products:

"Domestic steel use requirements as specified in section 153.011 of the Revised Code apply to this project. Copies of section 153.011 of the Revised Code can be obtained from any of the offices of the department of administrative services." (Sec. 153.011(E).)

Defense against civil penalty

The act creates a defense for a person who purchases steel products in violation of the general prohibition against purchasing or providing steel products in violation of the law. If a person complies with the notice requirements under the act, then the person cannot be held liable or be required to pay a civil penalty for violating the prohibition against purchasing or providing non-complying steel products. (Sec. 153.011(B); see **Notice requirements**, above.)

Waivers

Under continuing law, the Director of Transportation may authorize minimal amounts of foreign steel in public bridge projects, if either of the following is true: (1) the cost for each contract item used does not exceed the greater of 1/10 of 1% of the total contract cost, or \$2,500, (2) the Director determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements (sec. 5525.21 (not in the act)). The act allows the Director of Transportation to authorize the "purchase or provision or both" of a minimal amount of foreign steel for public bridge products. It also gives the Director of Administrative Services the authority to completely *wave* the steel purchasing and provision requirement when the Director determines that at least one of the above two conditions are met. The act requires the Director of Administrative Services to issue this determination in writing. (Sec. 153.011(D).)

Application of general steel usage requirements

The act modifies the U.S. steel purchase and supply requirement by applying it to improvement projects that are in whole or in part supported by state capital funds, including moneys from the Education Facilities Trust Fund, instead of only stating, as former law did, that the requirement applies to improvement projects that are in whole or in part supported by the state. The act changes the focus of the ban against foreign steel from "use and supply" to "purchase and provide." The act also eliminates applicability of the ban to situations where only heating, cooling, or ventilating plants or other equipment is to be installed or material supplied therefor. Additionally, the act eliminates the condition specifying that the U.S. steel purchase and supply requirement applies to public improvements not yet bid. (Sec. 153.011(A).)

The act specifies that its provisions apply only to any project for which bidding commences on or after the act's effective date. (Section 3.)

Definitions

Continuing law modified by the act defines "steel product" as "products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more of such operations, from steel made in the United States by the open hearth, basic oxygen, electric furnace, bessemer or other steel making process." "United States" is defined by continuing law to include "all territory, continental or insular, subject to the jurisdiction of the United States." The act modifies this definition by limiting it to these steel products "*used for load-bearing structural purposes.*" (Sec. 153.011(F).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced Reported, S. Insurance, Commerce, & Labor	01-30-01	p. 91
Passed Senate (32-1)	02-07-01	p. 124
Reported, H. Commerce and Labor	02-07-01	p. 125
Passed House (88-6)	02-27-01	p. 187
	03-06-01	p. 206

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