§§1-6
C.52:33-4.1 to
52:33-4.6
§7
Note

P.L. 2021, CHAPTER 119, ***approved June 24, 2021***
Senate, No. 853 ***(Second Reprint)***

AN ACT concerning certain highway and bridge contracts and supplementing Title 52 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. This act shall be known and may be cited as the "New Jersey Buy American Act."

2. As used in P.L. , c. (C.) (pending before the Legislature as this bill):

"Permanently incorporated" means an iron or steel product that is required to remain in place at the completion of the surface highway or bridge contract, in a fixed location, affixed to the surface highway or bridge to which it was incorporated. Iron and steel products that are capable of being moved from one location to another shall not be considered permanently incorporated into a surface highway or bridge.

"State contracting agency" or "agency" means any of the principal departments in the Executive Branch of State Government, any division, board, bureau, office, commission, or other instrumentality created by a principal department, and any independent State authority.

"Surface highway or bridge contract" [1]<u>means</u>[1] a contract entered into by a State contracting agency involving the construction, reconstruction, alteration, repair, maintenance, or improvement of any surface highway or bridge under the jurisdiction or control of that agency.

3. Notwithstanding the provisions of any law, rule, regulation, or order to the contrary, any surface highway or bridge contract [2]**[**over $1 million in value and**]**[2] made and awarded by a State contracting agency, shall contain a provision requiring that any iron or steel product used or supplied in the performance of the surface highway or bridge contract, or any subcontract thereto, and permanently incorporated into the surface highway or bridge, [2]<u>including miscellaneous components, as determined pursuant to</u>

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined <u>thus</u> is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1]Senate SSG committee amendments adopted March 5, 2020.
[2]Senate amendments adopted in accordance with Governor's recommendations June 3, 2021.

regulations adopted by the State contracting agency, such as nuts and bolts and iron and steel that is a component of other items such as reinforced steel within precast concrete items,[2] shall be produced or made, in whole, or in substantial part as determined by the State contracting agency, in the United States [2][, its territories, or possessions][2] . In the case of a structural iron or structural steel product, all manufacturing shall take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving the refinement of steel additives.

4. The provisions of P.L. , c. (C.) (pending before the Legislature as this bill) shall not apply to a surface highway or bridge contract if the head of a State contracting agency constructing a surface highway or bridge, in the head of the agency's sole discretion, determines that:

a. complying with the provisions of P.L. , c. (C.) (pending before the Legislature as this bill):

(1) would not be in the public interest; or

(2) would result in the loss or reduction of federal funding for the surface highway or bridge contract, or the ability to obtain that federal funding would be limited or jeopardized by the agency's compliance with P.L. , c. (C.) (pending before the Legislature as this bill);

b. there is an immediate or emergency need existing for the structural iron or structural steel;

c. the structural iron or structural steel is not manufactured in the United States in sufficient and reasonably available quantities or of satisfactory quality or design to meet the State contracting agency's requirements;

d. obtaining the iron or steel product in the United States would increase the cost of the [2]overall construction project[2] contract by [2][an unreasonable amount] more than 25 percent[2];

e. the iron or steel is necessary for the operation of or repairs of critical infrastructure that is necessary to avoid a delay in the delivery of critical services that could compromise the public welfare;

f. a reciprocal trade agreement or treaty has been negotiated by the State or by the United States government on behalf of or including this State with a foreign nation or government providing for nondiscriminatory governmental procurement practices or policies with that foreign nation or government; or

g. the design and environmental studies for the surface highway or bridge project have commenced prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill).

5. Nothing in P.L. , c. (C.) (pending before the Legislature as this bill) is intended to contravene any existing treaties, laws, trade agreements, or regulations of the United States or subsequent trade agreements entered into between any foreign countries and this State or the United States. [2]**[**Nothing in P.L. , c. (C.) (pending before the Legislature as this bill) shall be interpreted to require a contractor performing a surface highway or bridge contract to certify that the iron or steel product used in a surface road or bridge pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) is made in whole, or in substantial part, in the United States.**]**[2]

6. [2]**[**Any**]** Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, any[2] State contracting agency subject to the provisions of P.L. , c. (C.) (pending before the Legislature as this bill) may [2]**[**establish**]** adopt, immediately upon filing with the Office of Administrative Law,[2] rules and regulations [2]**[**, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),**]**[2] as necessary to implement the provisions of P.L. , c. (C.) (pending before the Legislature as this bill) [2], which regulations shall be effective for a period not to exceed 365 days from the date of filing. The rules and regulations shall thereafter be amended, adopted, or readopted in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.)[2].

7. This act shall take effect immediately but shall not apply to any surface highway or bridge contract that has been previously awarded, or has pending bids or pending requests for proposals issued, as of the effective date of this act.

"New Jersey Buy American Act"; requires certain State agency highway and bridge construction contracts to include iron and steel products made in U.S.