

SENATE, No. 853

STATE OF NEW JERSEY
219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator JAMES BEACH

District 6 (Burlington and Camden)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/10/2020)

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

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

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7 1. This act shall be known and may be cited as the “New Jersey
8 Buy American Act.”

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

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

19 “State contracting agency” or “agency” means any of the
20 principal departments in the Executive Branch of State
21 Government, any division, board, bureau, office, commission, or
22 other instrumentality created by a principal department, and any
23 independent State authority.

24 “Surface highway or bridge contract” a contract entered into by a
25 State contracting agency involving the construction, reconstruction,
26 alteration, repair, maintenance, or improvement of any surface
27 highway or bridge under the jurisdiction or control of that agency.

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29 3. Notwithstanding the provisions of any law, rule, regulation,
30 or order to the contrary, any surface highway or bridge contract
31 over \$1 million in value and made and awarded by a State
32 contracting agency, shall contain a provision requiring that any iron
33 or steel product used or supplied in the performance of the surface
34 highway or bridge contract, or any subcontract thereto, and
35 permanently incorporated into the surface highway or bridge, shall
36 be produced or made, in whole, or in substantial part as determined
37 by the State contracting agency, in the United States, its territories,
38 or possessions. In the case of a structural iron or structural steel
39 product, all manufacturing shall take place in the United States,
40 from the initial melting stage through the application of coatings,
41 except metallurgical processes involving the refinement of steel
42 additives.

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

- 1 a. complying with the provisions of P.L. , c. (C.)
2 (pending before the Legislature as this bill):
3 (1) would not be in the public interest; or
4 (2) would result in the loss or reduction of federal funding for
5 the surface highway or bridge contract, or the ability to obtain that
6 federal funding would be limited or jeopardized by the agency's
7 compliance with P.L. , c. (C.) (pending before the
8 Legislature as this bill);
9 b. there is an immediate or emergency need existing for the
10 structural iron or structural steel;
11 c. the structural iron or structural steel is not manufactured in
12 the United States in sufficient and reasonably available quantities or
13 of satisfactory quality or design to meet the State contracting
14 agency's requirements;
15 d. obtaining the iron or steel product in the United States would
16 increase the cost of the contract by an unreasonable amount;
17 e. the iron or steel is necessary for the operation of or repairs
18 of critical infrastructure that is necessary to avoid a delay in the
19 delivery of critical services that could compromise the public
20 welfare;
21 f. a reciprocal trade agreement or treaty has been negotiated by
22 the State or by the United States government on behalf of or
23 including this State with a foreign nation or government providing
24 for nondiscriminatory governmental procurement practices or
25 policies with that foreign nation or government; or
26 g. the design and environmental studies for the surface
27 highway or bridge project have commenced prior to the effective
28 date of P.L. , c. (C.) (pending before the Legislature as this
29 bill).
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31 5. Nothing in P.L. , c. (C.) (pending before the
32 Legislature as this bill) is intended to contravene any existing
33 treaties, laws, trade agreements, or regulations of the United States
34 or subsequent trade agreements entered into between any foreign
35 countries and this State or the United States. Nothing in P.L. , c.
36 (C.) (pending before the Legislature as this bill) shall be
37 interpreted to require a contractor performing a surface highway or
38 bridge contract to certify that the iron or steel product used in a
39 surface road or bridge pursuant to P.L. , c. (C.) (pending
40 before the Legislature as this bill) is made in whole, or in
41 substantial part, in the United States.
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43 6. Any State contracting agency subject to the provisions of
44 P.L. , c. (C.) (pending before the Legislature as this bill)
45 may establish rules and regulations, pursuant to the "Administrative
46 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as necessary
47 to implement the provisions of P.L. , c. (C.) (pending
48 before the Legislature as this bill).

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.

STATEMENT

This bill, designated as the “New Jersey Buy American Act,” requires all contracts over \$1 million in value and made and awarded by a “State contracting agency,” as that term is defined in the bill, for the construction, reconstruction, alteration, repair, maintenance, or improvement of any surface highway or bridge, to contain a provision that any iron or steel product used or supplied in the performance of the contract, or any subcontract thereto, and permanently incorporated into a surface highway or bridge, is to be produced or made in whole or substantial part in the United States, its territories, or possessions.

The bill's provisions are not apply to a surface highway or bridge contract if the head of the State contracting agency, in the head of the agency's sole discretion, determines that:

(1) complying with the provisions of the bill would not be in the public interest, or 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 the bill;

(2) there is an immediate or emergency need existing for the structural iron or structural steel;

(3) 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;

(4) obtaining the iron or steel product in the United States would increase the cost of the contract by an unreasonable amount;

(5) 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;

(6) 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

(7) the design and environmental studies for the surface highway or bridge project have commenced prior to the effective date of the bill.

The bill’s provisions are not intended to contravene any existing treaties, laws, trade agreements, or regulations of the United States

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1 or subsequent trade agreements entered into between any foreign
2 countries and this State or the United States. Further, nothing in the
3 bill is to be interpreted to require a contractor performing a surface
4 highway or bridge contract to certify that the iron or steel product
5 used in a surface road or bridge is made in whole, or in substantial
6 part, in the United States.