

BILL ANALYSIS

C.S.H.B. 2780
By: Paddie
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that expanding provisions in state law that encourage the purchase of products made in the United States would provide an economic boost to American workers. C.S.H.B. 2780 seeks to provide such an economic boost by requiring any iron or steel product used in certain projects for which an executive branch agency is contracting to be produced in the United States, under certain conditions.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to an agency in the executive branch of state government in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 2780 amends the Government Code to require the uniform general conditions for a contract between the state or an agency within the executive branch of state government and another person, including a political subdivision as specified by the bill, to construct, remodel, or alter a building, a structure, or infrastructure or to supply a material for such a project in which iron or steel products will be used to require that the bid documents provided to all bidders and the contract itself include a requirement that any iron or steel product used in the project be produced in the United States. The bill requires a governmental entity subject to that requirement to adopt rules to promote compliance with the requirement and exempts from that requirement a contract subject to Transportation Code provisions relating to steel preference provisions in improvement contracts or to specified federal Buy America requirements and a project for which the governing body of the governmental entity responsible for the project determines that such iron or steel products are not produced in sufficient quantities, reasonably available, or of a satisfactory quality, the use of such iron or steel products will increase the total cost of the project by more than 20 percent, or complying with the requirement is inconsistent with the public interest.

C.S.H.B. 2780 establishes that electrical components, equipment, systems, and appurtenances, including supports, covers, shielding, and other appurtenances related to an electrical system, necessary for operation or concealment are not considered to be iron or steel products and are exempt from the bill's requirement. The bill establishes that an electrical system includes all equipment, facilities, and assets owned by an electric utility, as that term is defined in the Public Utility Regulatory Act. The bill requires its provisions regarding certain construction and installation contracts to be applied in a manner consistent with the state's obligations under any international agreement and establishes that those provisions prevail over any other state law

relating to the use of iron and steel products in projects directly funded by a governmental entity or financed by funds administered by a governmental entity to the extent of any conflict or inconsistency. The bill provides for the inapplicability of its provisions regarding certain construction and installation contracts to a project funded under the state water implementation fund for Texas or the state water implementation revenue fund for Texas that the Texas Water Development Board (TWDB) has formally approved for financial assistance before the bill's effective date.

C.S.H.B. 2780 amends the Transportation Code, for purposes of the requirement that a contract awarded by the Texas Department of Transportation for the improvement of the state highway system without federal aid contain the same preference provisions for steel and steel products that are required under federal law for an improvement made with federal aid, to include iron and iron products in that requirement.

C.S.H.B. 2780 amends the Water Code to remove the requirement for the governing body of each political subdivision receiving financial assistance from the TWDB to require that all contracts for the construction of a project include a requirement that manufactured goods used in the project be produced and a certain percentage of components of such goods originate in the United States.

C.S.H.B. 2780 repeals the following provisions of the Water Code:

- Section 17.183(c)(1) and (2)
- Section 17.183(d)

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2780 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Chapter 2252, Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. CERTAIN CONSTRUCTION AND INSTALLATION PROJECTS

Sec. 2252.201. DEFINITIONS. In this subchapter:

(1) "Governmental entity" means:

(A) this state; or

(B) a board, commission, department, office, or other agency in the executive branch of state government.

(2) "Manufacturing process" means the application of a process to alter the form or function of materials or elements of a product in a manner that adds value and transforms the materials or elements into a

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 2252, Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. CERTAIN CONSTRUCTION AND INSTALLATION PROJECTS

Sec. 2252.201. DEFINITIONS. In this subchapter:

(1) "Governmental entity" means this state or a board, commission, department, office, or other agency in the executive branch of state government. The term does not include a political subdivision.

(2) "Manufacturing process" means the application of a process to alter the form or function of materials or elements of a product in a manner that adds value and transforms the materials or elements into a

new finished product that is functionally different from a finished product produced merely from assembling the materials or elements into a product.

(3) "Produced in the United States" means, with respect to iron and steel products, a product for which all manufacturing processes, from initial melting through application of coatings, occur in the United States, other than metallurgical processes to refine steel additives.

(4) "Project" means a contract between a governmental entity and another person to:

(A) construct, remodel, or alter a building, a structure, or infrastructure, including a road or highway; or

(B) supply a material for a project described by Paragraph (A).

Sec. 2252.202. UNIFORM PURCHASING CONDITION. Except as provided by Section 2252.203, the uniform general conditions for a project in which iron or steel products will be used must require that the bid documents provided to all bidders and the contract include a requirement that any iron or steel product used in the project be produced in the United States.

Sec. 2252.203. EXEMPTIONS. (a) Section 2252.202 does not apply to a project for which the governing body of the governmental entity responsible for the project determines that:

(1) iron or steel products produced in the United States are not:

(A) produced in sufficient quantities;

(B) reasonably available; or

(C) of a satisfactory quality; or

(2) use of iron or steel products produced in the United States will increase the total cost of the project by more than 20 percent.

new finished product that is functionally different from a finished product produced merely from assembling the materials or elements into a product.

(3) "Political subdivision" includes a county, municipality, municipal utility district, water control and improvement district, special utility district, and other types of water district.

(4) "Produced in the United States" means, with respect to iron and steel products, a product for which all manufacturing processes, from initial melting through application of coatings, occur in the United States, other than metallurgical processes to refine steel additives.

(5) "Project" means a contract between a governmental entity and another person, including a political subdivision, to:

(A) construct, remodel, or alter a building, a structure, or infrastructure;

(B) supply a material for a project described by Paragraph (A); or

(C) finance, refinance, or provide money from funds administered by a governmental entity for a project described by Paragraph (A).

Sec. 2252.202. UNIFORM PURCHASING CONDITION; RULES. (a) Except as provided by Section 2252.203, the uniform general conditions for a project in which iron or steel products will be used must require that the bid documents provided to all bidders and the contract include a requirement that any iron or steel product used in the project be produced in the United States.

(b) A governmental entity subject to the requirements for a project described by Subsection (a) shall adopt rules to promote compliance with this section.

Sec. 2252.203. EXEMPTIONS. (a) Section 2252.202 does not apply to a project for which the governing body of the governmental entity responsible for the project determines that:

(1) iron or steel products produced in the United States are not:

(A) produced in sufficient quantities;

(B) reasonably available; or

(C) of a satisfactory quality;

(2) use of iron or steel products produced in the United States will increase the total cost of the project by more than 20 percent; or

(b) Electrical components, equipment, systems, and appurtenances necessary for operation are not considered to be iron or steel products and are exempt from the requirements of Section 2252.202.

Sec. 2252.204. INTERNATIONAL AGREEMENTS.

No equivalent provision.

No equivalent provision.

No equivalent provision.

(3) complying with that section is inconsistent with the public interest.

(b) Electrical components, equipment, systems, and appurtenances, including supports, covers, shielding, and other appurtenances related to an electrical system, necessary for operation or concealment are not considered to be iron or steel products and are exempt from the requirements of Section 2252.202. An electrical system includes all equipment, facilities, and assets owned by an electric utility, as that term is defined in Section 31.002, Utilities Code.

(c) Section 2252.202 does not apply to a contract subject to Section 223.045, Transportation Code, or 23 C.F.R. Section 635.410.

Sec. 2252.204. INTERNATIONAL AGREEMENTS.

Sec. 2252.205. CONFLICT OF LAW. To the extent of any conflict or inconsistency, this subchapter prevails over any other state law relating to the use of iron and steel products in projects directly funded by a governmental entity or financed by funds administered by a governmental entity.

SECTION 2. Section 223.045, Transportation Code, is amended to read as follows:

Sec. 223.045. IRON AND STEEL PREFERENCE PROVISIONS IN IMPROVEMENT CONTRACTS. A contract awarded by the department for the improvement of the state highway system without federal aid must contain the same preference provisions for iron and steel and iron and steel products that are required under federal law for an improvement made with federal aid.

SECTION 3. Section 17.183(a), Water Code, is amended to read as follows:

(a) The governing body of each political subdivision receiving financial assistance from the board shall require in all contracts for the construction of a project:

- (1) that each bidder furnish a bid guarantee equivalent to five percent of the bid price;
- (2) that each contractor awarded a construction contract furnish performance and payment bonds:

(A) the performance bond shall include without limitation guarantees that work done under the contract will be completed and performed according to approved plans and specifications and in accordance with sound construction principles and practices; and

(B) the performance and payment bonds shall be in a penal sum of not less than 100 percent of the contract price and remain in effect for one year beyond the date of approval by the engineer of the political subdivision;

(3) that payment be made in partial payments as the work progresses;

(4) that each partial payment shall not exceed 95 percent of the amount due at the time of the payment as shown by the engineer of the project, but, if the project is substantially complete, a partial release of the five percent retainage may be made by the political subdivision with approval of the executive administrator;

(5) that payment of the retainage remaining due upon completion of the contract shall be made only after:

(A) approval by the engineer for the political subdivision as required under the bond proceedings;

(B) approval by the governing body of the political subdivision by a resolution or other formal action; and

(C) certification by the executive administrator in accordance with the rules of the board that the work to be done under the contract has been completed and performed in a satisfactory manner and in accordance with approved plans and specifications;

(6) that no valid approval may be granted unless the work done under the contract has been completed and performed in a satisfactory manner according to approved plans and specifications;

(7) that, if a political subdivision receiving financial assistance under Subchapter K of this chapter, labor from inside the political subdivision be used to the extent possible; and

(8) that the contract include a requirement that iron and steel products [~~and manufactured goods~~] used in the project be produced in the United States, unless:

(A) such products [~~or goods~~] are not:

(i) available in sufficient quantities;

(ii) readily available; or

(iii) of a satisfactory quality; or
(B) the use of such products [~~or goods~~] will increase the total cost of the project by more than 20 percent.

No equivalent provision.

SECTION 4. Section 17.183(c)(4), Water Code, is amended to read as follows:

(4) "Produced in the United States" means[:
~~[(A)]~~ in the case of iron and steel products, products for which all manufacturing processes, from initial melting through application of coatings, take place in the United States, except metallurgical processes that involve the refinement of steel additives[:~~and~~
~~[(B) in the case of a manufactured good, a good for which:~~
~~[(i) all of the manufacturing process that produced the manufactured good takes place in the United States; and~~
~~[(ii) more than 60 percent of the components of the manufactured good, by cost, originate in the United States].~~

No equivalent provision.

SECTION 5. Sections 17.183(c)(1) and (2) and (d), Water Code, are repealed.

SECTION 2. Subchapter F, Chapter 2252, Government Code, as added by this Act, applies only to bid documents submitted or contracts entered into on or after the effective date of this Act.

SECTION 6. (a) Subchapter F, Chapter 2252, Government Code, as added by this Act, applies only to bid documents submitted or contracts entered into on or after the effective date of this Act.

(b) Subchapter F, Chapter 2252, Government Code, as added by this Act, does not apply to a project as described by Section 15.432 or 15.472, Water Code, that the Texas Water Development Board has formally approved for financial assistance before the effective date of this Act.

SECTION 3. This Act takes effect September 1, 2017.

SECTION 7. Same as introduced version.