

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2854 Session of 2022

INTRODUCED BY BURNS, SCHLOSSBERG, A. DAVIS, DELLOSO, MILLARD AND NEILSON, SEPTEMBER 26, 2022

REFERRED TO COMMITTEE ON STATE GOVERNMENT, SEPTEMBER 26, 2022

AN ACT

1 Amending the act of March 3, 1978 (P.L.6, No.3), entitled "An
 2 act to promote the general welfare and stimulate the economy
 3 of the Commonwealth by requiring that all public bodies,
 4 including the Commonwealth, its political subdivisions, and
 5 all authorities, include in all contracts for construction,
 6 reconstruction, alteration, repair, improvement or
 7 maintenance of improvements of a permanent or temporary
 8 nature, a provision that if any steel products are to be used
 9 in the performance of the contract only steel products
 10 produced in the United States shall be used, and imposing
 11 liability for violation of this act," further providing for
 12 contracts for public works to use or supply steel products
 13 and for restrictions on payments by public agencies under
 14 certain circumstances.

15 The General Assembly of the Commonwealth of Pennsylvania
 16 hereby enacts as follows:

17 Section 1. Sections 4 and 5 of the act of March 3, 1978
 18 (P.L.6, No.3), known as the Steel Products Procurement Act, are
 19 amended to read:

20 Section 4. (a) Every public agency shall require that every
 21 contract document for the construction, reconstruction,
 22 alteration, repair, improvement or maintenance of public works
 23 contain a provision that, if any steel products are to be used
 24 or supplied in the performance of the contract, only steel

1 products as herein defined shall be used or supplied in the
2 performance of the contract or any subcontracts thereunder.

3 (a.1) Any person initiating a project involving
4 construction, reconstruction, alteration, repair, improvement or
5 maintenance for which the person has received or will receive
6 public funding or tax incentives from a public agency, shall use
7 steel products as herein defined if any steel products are to be
8 used or supplied in the completion of the project. This
9 subsection shall apply to any subcontracts thereunder.

10 (b) This section shall not apply in any case:

11 (1) where the head of the public agency, in writing,
12 determines that steel products as herein defined are not
13 produced in the United States in sufficient quantities to meet
14 the requirements of the contract; or

15 (2) to items on a list of exempt machinery and equipment
16 steel products, which have been identified by the Department of
17 General Services as not produced in the United States in
18 sufficient quantities in the previous calendar year, and
19 published on the department's publicly accessible Internet
20 website, which contractors, subcontractors, suppliers, bidders,
21 offerors and public agencies can rely upon in preparing bids and
22 contracts. The list of exempt machinery and equipment steel
23 products shall be updated annually on a date selected by the
24 Department of General Services. The Department of General
25 Services may not make changes to the list during the year
26 following publication. Prior to publication on the Internet
27 website, and in each subsequent year, the Department of General
28 Services shall publish the list of exempt machinery and
29 equipment steel products in the Pennsylvania Bulletin and
30 provide for a 30-day public comment period. The Department of

1 General Services shall, through a statement of policy, establish
2 a process for creating the list of exempt machinery and
3 equipment steel products and resolving disputes with respect to
4 items on the list raised during the public comment period prior
5 to the publication of the Internet website. The provisions of 2
6 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of
7 Commonwealth agencies) shall not apply to this section.

8 Section 5. (a) No public agency shall authorize, provide
9 for or make any payments to any person under any contract
10 containing the provision required by section 4 unless, when
11 unidentified steel products are supplied under a contract, such
12 person has provided documentation including, but not limited to,
13 invoices, bills of lading, and mill certification that the steel
14 was melted and manufactured in the United States, which
15 establish that such person has fully complied with such
16 provision. If a steel product is identifiable from its face,
17 such person must submit certification which satisfies the public
18 agency that such person has fully complied with the provision
19 required by section 4. Any such payments made to any person by
20 any public agency which should not have been made as a result of
21 this section shall be recoverable directly from the contractor,
22 subcontractor, manufacturer or supplier who did not comply with
23 section 4 by either such public agency or the Attorney General
24 of Pennsylvania.

25 (a.1) No public agency shall authorize, provide for or make
26 any payments to any person of public funds, grants, tax credits
27 or other tax incentives from a public agency unless, when
28 unidentified steel products are supplied, such person has
29 provided documentation including, but not limited to, invoices,
30 bills of lading and mill certification that the steel was melted

1 and manufactured in the United States, which establishes that
2 such person has fully complied with such provision. If a steel
3 product is identifiable from its face, such person must submit
4 certification which satisfies the public agency that such person
5 has fully complied with the provision required under section 4.
6 Any such payments made to any person by any public agency which
7 should not have been made as a result of this section shall be
8 recoverable directly from the contractor, subcontractor,
9 manufacturer or supplier who did not comply with section 4 by
10 either such public agency or the Attorney General of
11 Pennsylvania.

12 (b) In addition to the withholding of payments, any person
13 who willfully violates any of the provisions of this act shall
14 be prohibited from submitting any bids to any public agency for
15 any contract for a period of five years from the date of the
16 determination that a violation has occurred. In the event the
17 person who violates the provisions of section 4(a) is a
18 subcontractor, manufacturer or supplier, such person shall be
19 prohibited from performing any work or supplying any materials
20 to a public agency for a period of five years from the date of
21 the determination that a violation has occurred.

22 (c) Title 2 of the Pennsylvania Consolidated Statutes
23 (relating to administrative law and procedure) applies to
24 decisions by public agencies that a person has violated section
25 4(a).

26 Section 2. This act shall take effect in 60 days.