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H.B. 284
136th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Passed by the House

Primary Sponsors: Reps. Hiner and E. White

Local Impact Statement Procedure Required: Yes

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Highlights

- Project costs may increase, perhaps significantly, for some state agencies, state institutions of higher education, school districts, and other local governments as a result of the bill's mandate to use U.S.-produced iron and steel in projects that receive state funds.

Detailed Analysis

Overview

Beginning in 1977, Ohio law prohibited the use of steel products made outside of the United States in the construction, repair, or improvement of any building or structure, including highway improvements, that is fully or partially funded by the state. In 2001, this law was changed to apply the foreign steel ban only to projects using state capital funds, and only for steel used for load-bearing structural purposes. Since then, the law has prescribed a fine equal to one and one-half times the price of the steel products purchased or provided in violation of the law. Any fine revenue collected is equally divided between the school district and the joint vocational school district (if one exists) in which the project is located.

The bill makes several changes to the existing law, a few of which bring it closer to its pre-2001 form. It expands the number of projects covered by the law by (1) extending the requirement to also include U.S.-produced iron products, (2) subjecting the mandate to use U.S.-produced iron and steel to all projects supported, in whole or in part, by any type of state funding instead of only those supported by state capital funding, and (3) covering any product permanently incorporated in a project made primarily of iron or steel, instead of only

load-bearing structural steel.[1] The bill also expands the types of projects covered under the iron and steel mandate to include any maintenance or infrastructure project, including utility infrastructure improvement projects involving water works or sewage disposal. It also expressly applies the U.S.-produced iron and steel mandate to projects for state institutions of higher education. Finally, the bill requires the Department of Administrative Services (DAS) to adopt rules establishing criteria for use by all state agencies in giving preference to U.S.-produced iron and steel.

The bill also provides some exceptions to the requirements to use only U.S.-produced iron and steel products in public projects. First, it permits the state agency that supports the project to waive the requirements (other than those for a public bridge project) if (1) the requirements would be inconsistent with the public interest, (2) U.S.-produced iron or steel products are not reasonably available in sufficient quantities or of satisfactory quality, or (3) inclusion of U.S.-produced iron or steel products will increase the cost of the overall project by more than 25%. The bill requires the Ohio Facilities Construction Commission (OFCC) to create and make available a standardized form for use by state agencies issuing waivers. Second, the bill allows the purchase or provision of foreign-produced iron or steel if (1) such products are not separately identified in the project specifications, and the cost of such products does not exceed 0.1% of the project's total iron and steel material costs or $2,500, whichever is greater, or (2) the foreign-produced iron or steel comprises 5% or less of the total materials cost of an iron or steel product that is otherwise produced in the U.S.

Fiscal effects

Generally, project costs may increase, perhaps significantly, for some state agencies and state institutions of higher education,[2] the extent of which is uncertain. Any fiscal effects will mostly depend on a complex interaction of multiple factors including market conditions, existing federal regulations on foreign iron and steel (see the "**Buy America**" section below), tariffs, and whether certain state-funded projects are exempted from the bill's requirements. Additionally, the bill will increase both the number of projects and types of products subject to the U.S.-produced iron and steel mandate. Although it is unclear to what extent projects that are not currently subject to the foreign steel ban are using foreign steel and iron, any projects that are using foreign iron and steel may be subject to the bill's mandate to switch to U.S.-produced iron and steel and may incur any costs in doing so.

Most construction projects that receive state support, including cultural, school facilities, and state agency projects, likely include products made primarily of iron and nonstructural steel. The increase in costs for these products will depend on the price differential for domestic products and to what extent limiting the permissible materials for construction projects will increase the demand for them. According to the County Engineers Association of Ohio (CEAO), foreign-made iron and steel products generally are cheaper than U.S.-produced ones, but it ultimately depends on the product. For example, domestic foundries typically provide certain

[1] The bill defines "made primarily of iron or steel" as those materials "composed primarily of greater than 50% iron or steel measured by component cost, volume, or weight."

[2] According to OFCC, higher education projects are already subject to the foreign steel ban and would experience the same impacts as other state projects.

specialty steel products and some cast iron products at a lower price than foreign-produced ones. Furthermore, according to OFCC, nonstructural steel and iron can account for as much as 5% to 6% of a school district's project costs. Although OFCC does not track the country of origin of these products, if those materials are currently sourced from a foreign supplier, as much as 5% to 6% of the project could be subject to an increase in cost to switch to a domestic supplier. As a point of reference, school facilities projects under OFCC often range from tens of millions of dollars into the hundreds of millions of dollars. According to OFCC, given the limited availability of products made of U.S. steel (and possibly iron), not only would costs increase, but projects could also be delayed. For example, OFCC states that electrical steel is primarily produced in Asia and there are current lead times of approximately a year or longer for electrical panels. If that steel must be made in the U.S., OFCC believes the lead times for that specialized steel could be extended significantly, perhaps making some projects impractical to complete in a timely manner.

Similarly, some local governments and political subdivisions, such as school districts, may experience an increase in construction costs as a result of the bill. For example, under OFCC's Classroom Facilities Assistance Program (CFAP), the main source of state support for school construction and renovation costs, total project costs are divided between the state and a participating school district generally based on a formula that determines the relative property wealth per pupil of each district. Currently, the state share of these projects is approximately 51%, with the school districts' share at approximately 49%. Using the same example from above, a school district's portion of the total project cost will also increase if, for example, 5% to 6% of the nonstructural steel used in the project needs to be replaced with, perhaps, more expensive U.S.-produced nonstructural steel.

School districts will continue to receive any fine revenue for violations. These violations appear to be rare. According to OFCC, a violation of the current ban on foreign steel is referred to the Attorney General's Office (AGO) about once every five years. The most recent occurred in 2021 when the Cleveland Metropolitan School District received approximately $81,000 from a fine related to a violation of the steel ban.

Buy America

Some state agencies generally will not incur additional costs because the iron and steel materials specifications the bill requires largely match the Federal Buy America Program requirements that currently apply to projects that use products made of those materials.[3] For example, since ODOT applies Buy America standards to all construction projects, it appears the provisions of the bill largely codify ODOT's existing construction materials management practices. However, it may be that ODOT's Division of Construction Management, which oversees compliance with federal and state regulations dealing with construction materials standards, incurs some new administrative costs if the bill leads to additional materials falling under the Division's oversight.

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[3] See the Federal Highway Administration's Construction Program Guide on Buy America at fhwa.dot.gov/construction/cqit and the United States Environmental Protection Agency's overview on Build America, Buy America at epa.gov/baba.