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"BUY AMERICAN" LAW CHANGES HOW TEXANS BUY IRON AND STEEL

by J.P. Vogel, Jeff Leach, Tim Fandrey
Gray Reed & McGraw LLP
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As a result of newly enacted Texas Senate Bill 1289, buying American iron and steel is now a requirement on certain public infrastructure projects in Texas. Promoted by President Trump, passed by the Texas Legislature in May and signed in to law this summer by Governor Greg Abbott, the new law, effective Sept. 1, 2017, requires that iron and steel be purchased from an American supplier unless the American supplier price is more than 20 percent higher than the price of the cheaper foreign importer. Foreign iron and steel may also be used if American suppliers are not prepared to supply a project, or if there is a compelling state interest that warrants the use of a foreign manufacturer's steel.

Designed to encourage and support investment in America's workers and critical industries, the law has far-reaching application in Texas as it applies to all infrastructure projects constructed by Texas state agencies. It does not, however, apply to county and municipal projects. Further, it is the intent of the legislation that it apply only to iron and steel that is permanently incorporated into the constructed improvements. Iron and steel in manufactured goods, electrical components, equipment, systems and appurtenances necessary for the operation of the completed public infrastructure are exempted from the law's effect.

Supporters of the law believe that its passage will encourage reinvestment in the United States and Texas manufacturing industries, and that will in turn lead to more high-paying, high-skill jobs in Texas. They further maintain that by buying American iron and steel, more Texas tax dollars will remain in America and will not be paid to foreign countries that do not share American values in areas such as the environment, human rights and labor conditions. An excerpt from the bill's statement of intent authored by Senator Brandon Creighton succinctly describes the supporters' view of the problem and the law's purported solution:

Iron and steel manufacturing facilities have closed in Texas, and we will continue to lose iron and steel manufacturing jobs. The reason is because foreign countries, like China and Turkey, subsidize their iron and steel manufacturing, circumvent our trade laws, and flood the United States (U.S.) with cheap iron and steel. Texas-based iron and steel manufacturers cannot compete with foreign countries who have a proven track record of environmental and human rights violations. Until the U.S. aggressively enforces our federal trade laws, Texas must act to level the playing field or risk losing more iron and steel manufacturing jobs.

The law is not without its detractors. Some believe that the up to 20 percent price increase on expensive and large building material will drive up the total cost of the projects, costing taxpayers more money, and reducing the overall

DALLAS

1601 Elm Street, Suite 4600
Dallas, TX 75201
T: 214.954.4135 F: 214.953.1332

HOUSTON

1300 Post Oak Blvd., Suite 2000
Houston, TX 77056
T: 713.986.7000 F: 713.986.7100



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funds available for Texas public infrastructure projects. Some Senators worry that the law will harm U.S. – Canada trade relations. They attempted to exempt Canadian iron and steel from the law's effect. Still other Senators think the law does not go far enough to support the Texas economy. They believed the law should have been "buy Texan" instead of "buy American".

While the true effect of the law has yet to fully be seen, all construction industry stakeholders will need to take the law into consideration for upcoming projects. One thing is certain, however: the new law will have far-reaching impacts on project budgeting, bid pricing and scheduling, and contractors should accordingly take note.

About the Authors



J.P. Vogel, Partner

J.P. is a trusted advisor and litigator for businesses and individuals involved in the construction industry throughout Texas and the United States. His clientele includes owners, general contractors, specialty sub-contractors, suppliers, and manufacturers. For many of his clients, J.P. routinely provides counsel regarding their daily business operations including litigation, collection services, labor and employment issues, defect and insurance issues, drafting and negotiating agreements, and corporate governance. (jpvogel@grayreed.com)



Jeff Leach, Counsel

Jeff's practice focuses primarily complex commercial and civil litigation, construction law and real estate. Jeff is also serving his second term in the Texas House of Representatives, representing House District 67, consisting of portions of Plano, Allen, Richardson and Dallas in Collin County. Since taking office in 2013, Jeff has served on the House Committee on Criminal Jurisprudence, the House Committee on Government Transparency and Operation, the House Committee on Urban Affairs and the House Committee on Rules & Resolutions. Jeff also was elected by his colleagues to serve on the House Republican Caucus Policy Committee. (jleach@grayreed.com)



Tim Fandrey, Associate

Tim understands construction and the business of construction. He represents contractors and subcontractors on a wide variety of construction matters including construction claims and litigation, lien and bond claims, giving of real time project advice and contract negotiation. Prior to law school, Tim worked as a civil engineer for over four years, gaining experience in both the private and public sector. Tim designed dozens of bridges and roadways for the Missouri Department of Transportation. While working in the private sector, Tim developed project management skills by managing bridge and roadway design projects. (tfandrey@grayreed.com)

DALLAS

1601 Elm Street, Suite 4600
Dallas, TX 75201
T: 214.954.4135 F: 214.953.1332

HOUSTON

1300 Post Oak Blvd., Suite 2000
Houston, TX 77056
T: 713.986.7000 F: 713.986.7100