

BILL ANALYSIS

C.S.S.B. 1289
By: Creighton
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.S.B. 1289 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.S.B. 1289 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, to supply a material for such a project in which iron or steel products will be used, or to finance, refinance, or provide money from funds administered for such a project 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.S.B. 1289 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 described under statutory provisions relating to the state water implementation fund for Texas or relating to 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 and the bill establishes that, for the purposes of such inapplicability, a formally approved project includes any project that is the subject of a resolution approving an application for financial assistance adopted by the TWDB before January 1, 2018, for any portion of the financing of the project.

C.S.S.B. 1289 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.S.B. 1289 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.S.B. 1289 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 SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1289 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

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.

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

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.

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.

(c) For a contract subject to Chapter 15, 16, or 17, Water Code, this section applies only if the contract finances, refinances, or provides money from funds obtained by a political subdivision or another governmental entity through general obligation bonds.

Sec. 2252.203. EXEMPTIONS.

Sec. 2252.204. INTERNATIONAL AGREEMENTS.

Sec. 2252.205. CONFLICT OF LAW.

SECTION 2. Section 223.045, Transportation Code, is amended.

SECTION 3. Section 17.183(a), Water Code, is amended.

SECTION 4. Section 17.183(c)(4), Water Code, is amended.

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 Sections 17.183(c)(1) and (2) and (d), Water Code, are repealed.

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 that the Texas Water Development Board has formally approved for financial assistance before the effective date of this Act. In this subsection, the term "formally approved" includes any project that is the subject of a resolution approving an application for financial assistance adopted by the Texas Water Development Board before January 1, 2018, for any portion of the financing of the project.

SECTION 7. This Act takes effect September 1, 2017.

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.

Sec. 2252.204. INTERNATIONAL AGREEMENTS.

Sec. 2252.205. CONFLICT OF LAW.

SECTION 2. Same as engrossed version.

SECTION 3. Same as engrossed version.

SECTION 4. Same as engrossed version.

SECTION 5. Same as engrossed version.

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. In this subsection, the term "formally approved" includes any project that is the subject of a resolution approving an application for financial assistance adopted by the Texas Water Development Board before January 1, 2018, for any portion of the financing of the project.

SECTION 7. Same as engrossed version.