

Local Government Mandate Statement
Kentucky Legislative Research Commission
2023 Regular Session

Part I: Measure Information

Bill Request #: 1263

Bill #: HB 451

Document ID #: 3696

Bill Subject/Title: AN ACT relating to public contracts.

Sponsor: Representative John C. Blanton

Unit of Government: X City X County X Urban-County
Unified Local
X Charter County X Consolidated Local X Government

Office(s) Impacted: Purchasing/procurement

Requirement: X Mandatory ___ Optional

Effect on

Powers & Duties: X Modifies Existing X Adds New ___ Eliminates Existing

Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local Government

HB 451 **Section 1** would require that each contract for construction or maintenance of a public building or public works by a governmental body after July 1, 2023, provide that the iron, steel, aluminum, and manufactured goods used or supplied as a primary component in performance of the contract or subcontract be manufactured in America, unless the head of the governmental body in charge of the project issues a waiver.

A request for waiver must be filed with the governmental body at least 30 days prior to bid or proposal opening. The governmental body shall provide notice and an opportunity for public comment on the waiver request at least 20 days before bids or proposals are open; notice may be electronically on the website of the governmental body. A waiver may be issued for the following reasons:

1. If compliance is deemed to be inconsistent with the public interest;

2. If the iron, steel, aluminum, and manufactured goods needed are not produced in America in sufficient and reasonably available quantities, or of a satisfactory quality; or
3. If supplying iron, steel, aluminum, and manufactured goods produced in America would increase the cost of the overall contract by more than 15%.

The governmental body must issue a decision on a waiver request no more than seven days before the date of the bid or proposal opening. Notice of the decision must be sent immediately to the person requesting the waiver, all persons who submitted comments, and all those who indicated interest in bidding or submitting requests for proposals on the contract. The governmental body must immediately publish the decision on its website and, if issued, include a detailed justification for the waiver addressing public comments received.

Sections 3 and 4 of the Act would require specifically that all local governments and local public agencies comply with the requirements of Section 1.

Sections 5 and 6 would make conforming changes to relevant statutes.

Section 7 would apply the buy American requirements to construction and maintenance of school buildings.

Sections 8 through 11 would make conforming changes to relevant statutes.

Section 12 would name Sections 1 to 3 of HB 451 the Kentucky Buy American Act.

HB 451 would have a moderate to significant negative fiscal impact on local governments. Such impact could be moderated since increasing the overall cost of a project by more than 15% is a factor a local governmental unit must consider in deciding whether to grant a waiver of the buy American requirement. Regardless whether local governments seek a waiver, if lower-cost supplies, materials, and components are available from outside America, increased costs due to the buy American requirement may be borne by local governments due to factors including:

1. Firms based in America, already supplying materials, may charge higher prices due to the preference policy; and
2. Contractors may increase fees for ensuring compliance with the Kentucky Buy American Act; and
3. Construction bid or proposal openings may be delayed due to accommodating a request for a waiver.

In addition, the strict notice of waiver decision requirements, response to comments, and justification for decision could increase the administrative costs to local governments of the procurement process. For all these reasons the fiscal impact of HB 451 on local governments is anticipated to be moderate to significant, with a greater impact on larger counties and cities capable of initiating significant capital projects.

It is possible that the Kentucky Buy American Act's procurement requirements would generate additional local tax revenue to partially offset the increased costs. However, localities in which the suppliers are based may differ from the localities executing the project, therefore, the additional tax revenues would not necessarily accrue to the locality bearing the cost of the project.

Part III: Differences to Local Government Mandate Statement from Prior Versions

Part II applies to HB 451 as introduced. There is no prior version for comparison.

Data Source(s): Kentucky League of Cities; LRC staff

Preparer: Mary Stephens (WB) **Reviewer:** KHC **Date:** 3/8/23