



COUNTY ADVISORY BULLETIN

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Phone: 614-221-5627 • Fax: 614-221-6986 • www.ccao.org

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Senate Bill 11 of 124th General Assembly Revises Ban on Foreign Steel Products in State-Funded Public Improvement Projects; Authorizes Attorney General to Impose Penalties for Violations; Requires New Notice Language on Bid Documents

Effective Date: March 29th, 2001.

Revised Code Sections Affected: 153.011 and 153.99 (amended).

Lead Sponsor: Hagan (D-Youngstown).

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SUMMARY

Senate Bill 11 of the 124th General Assembly (SB 11), which became effective on March 29th, 2001, changes state law with regard to the use of foreign steel in public improvement projects. The bill, sponsored by Senator Robert Hagan (D-Youngstown), was passed in response to the escalating problems confronting Ohio's steel industry in the face of alleged illegal dumping of foreign steel products on the U.S. market.

The purpose of this bulletin is to explain the provisions of SB 11 and how they may affect boards of county commissioners and county government. The four most important aspects of the bill to remember are the following:

1. The bill **does not create** a ban on the use of foreign steel products in public improvement projects fully or partially funded by the state. That ban has been in effect in Ohio since 1977. SB 11 refines the statutory language related to the ban and imposes new penalties and enforcement procedures.
2. The bill's provisions apply only to public improvement projects supported in whole or in part by state capital funds for which bidding commences after March 29th, 2001, the effective date of the bill.
3. County commissioners and others who purchase foreign steel for use in a public improvement project **cannot** be held liable for a violation of the bill's provisions if they include a prescribed notice in their bid notifications and specifications.
4. County commissioners need to be aware that SB 11 directly addresses only projects supported in whole or in part by state capital funds. Counties should thus comply with the law if any state capital funds are used for any construction projects, including highway improvements. The law applies to the erection and construction of any improvement, and also to any additions, alterations, or structural or other improvements.

SB 11 does not directly address the issue of prohibiting the use of foreign steel in projects fully funded with county monies. Some counties have adopted resolutions containing provisions similar or identical to SB 11 that apply to county-funded projects. Before adopting such provisions for projects that do not involve state capital funds, counties should consult with their county prosecutors. Some counties believe that authority to prohibit the use of foreign steel exists under the general

authority to include such provisions, including penalty and enforcement provisions, as a part of bid specifications for county-funded projects.

The questions and answers below explain the provisions of SB 11. If you have questions about the bill, please contact Doug Putnam, CCAO Research and Information Manager, at 614-221-5627 or dputnam@ccao.org

Q: What Does SB 11 Prohibit?

SB 11 prohibits any person from “purchasing or providing” steel products not made in the United States for use in any public improvement project supported “in whole or in part” by state capital funds. Before the passage of SB 11, Ohio law barred the “use” of steel products not made in the United States on any public improvement project supported in whole or in part by “the state.” The changes in the law’s language now specifically focus on **providing and purchasing** foreign steel and ties the prohibition specifically to the use of **state capital funds**, instead of merely to the support of “the state.” ORC 153.011 (A).

Q: To What Kind Of Projects Does the Prohibition Created By SB 11 Apply?

The prohibition applies only to steel products that are used for “load-bearing structural purposes.” ORC 153.11 (F) (1). Steel products not manufactured in the United States cannot be used for load-bearing structural purposes in any building or structure that is to be erected or constructed in whole or in part with state capital funds. This includes any additions, alterations, structural improvements or other improvements. The prohibition also applies to highway improvements. ORC 153.011 (A).

The Ohio Public Works Commission has informed all chairs, liaisons and project managers that the domestic steel use requirements of SB 11 are in effect for all projects receiving funds from the State Capital Improvements Program and the Local Transportation Improvements Program.

Q: Are There Any Exceptions?

There is one exception. The prohibition against the use of foreign steel does not apply to public bridge projects authorized by the director of the Department of Transportation under ORC 5525.21. That section authorizes the director to use a minimal amount of foreign steel under specified conditions. This authority existed before the enactment of SB 11 and was not altered in the bill. ORC 153.011 (D).

Q: When Does The Prohibition Created By SB 11 Apply?

It applies to any public improvement project funded in whole or in part by state capital funds for which bidding commences after March 29th, 2001, the effective date of the bill. Section 3.

Q: How Is The Prohibition Enforced And By Whom?

The director of the Department of Administrative Services is authorized, when he or she has reasonable cause to believe that a violation of ORC 153.011 (A) has occurred, to conduct an investigation. If the director finds after an investigation that a violation has indeed occurred, the director must ask the attorney general to commence a civil action against the person who provided or purchased foreign steel. The attorney general is authorized, but not required, to commence this civil action. ORC 153.011(C).

Q: What Are The Penalties For A Violation?

Any person who provides or purchases foreign steel in violation of ORC section 153.011 (A) must pay a civil penalty of 150% of the purchase price of the steel products provided or purchased. After collecting the penalty, the attorney general must pay the money in equal amounts to 1) the treasurer of the board of education of the city, local or exempted village school district and 2) the treasurer of the board of education of the joint vocational school district in which the public improvement project is located. ORC 153.011 (D). This penalty may be imposed by the attorney general in addition to any other penalty that may be imposed under the state's Public Improvements Law, Chapter 153 of the ORC.

Q: Is There Anything Counties Can Do To Avoid A Violation?

The bill provides a simple way for counties to absolve themselves of liability for any violation of the prohibition against the purchase of foreign steel for projects funded in whole or in part with state capital funds. ORC section 153.011 (E) requires the following notice to appear in boldface type and capital letters on all bid notifications and specifications between parties to any public improvement project authorized under ORC Chapter 153.
DOMESTIC STEEL USE REQUIREMENTS AS SPECIFIED IN SECTION 153.011 OF THE REVISED CODE APPLY TO THIS PROJECT. COPIES OF SECTION 153.011 OF THE REVISED CODE CAN BE OBTAINED FROM ANY OF THE OFFICES OF THE DEPARTMENT OF ADMINISTRATIVE SERVICES.

If a county can demonstrate that it has included this notice in its bid notification and specifications, then it cannot be held liable or be required to pay a penalty in any civil action brought by the attorney general. ORC 153.011 (B) (2).

Q: Can Counties Adopt Their Own Resolutions Barring The Providing Or Purchasing Of Foreign Steel For County-Funded Public Improvement Projects?

County commissioners need to be aware that SB 11 directly addresses only projects supported in whole or in part by state capital funds. Counties should comply with the law if any state capital funds are used for any construction projects, including highway

improvements. The law applies to the erection and construction of any improvement, and also to any additions, alterations, or structural or other improvements.

SB 11 does not directly address the issue of projects fully funded with county monies. Some counties have adopted resolutions containing provisions similar or identical to SB 11 that apply to county-funded projects. Before adopting such provisions for projects that do not involve state capital funds, counties should consult with their county prosecutors. Some counties believe that the authority to prohibit the use of foreign steel exists under the general authority to include such provisions, including penalty and enforcement provisions, as a part of bid specifications for county-funded projects.