

# House Bill 2358

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Business and Labor)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits contracting agency from awarding contract for public improvement or public works unless iron, steel, wood products and manufactured goods, including equipment, used in public improvement or public works are produced within United States. Specifies exceptions.

Becomes operative on January 1, 2012.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1 Relating to preferences in public project construction for products produced within the United  
2 States; creating new provisions; amending ORS 279C.305; and declaring an emergency.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 279C.305 is amended to read:

5 279C.305. (1)(a) [*It is*] The policy of the State of Oregon **is** that contracting agencies shall make  
6 every effort, **subject to the provisions of paragraph (b) of this subsection**, to construct public  
7 improvements at the least cost to the contracting agency.  
8

9 (b)(A) **A contracting agency may not award a contract for a public improvement or public**  
10 **works as defined in ORS 279C.800 unless all of the iron, steel, wood products and manufac-**  
11 **tured goods, including equipment, that will be used in the public improvement or the public**  
12 **works are produced within the United States.**

13 (B) Subparagraph (A) of this paragraph does not apply if the contracting agency finds  
14 that:

15 (i) **Iron, steel, wood products and manufactured goods, including equipment, that are**  
16 **necessary for the public improvement or public works are not produced within the United**  
17 **States in sufficient and reasonably available quantities or with satisfactory quality;**

18 (ii) **Using iron, steel, wood products and manufactured goods, including equipment, that**  
19 **are produced within the United States will increase the cost of the public improvement or**  
20 **public works by 25 percent or more; or**

21 (iii) **Implementing the provisions of subparagraph (A) of this paragraph is inconsistent**  
22 **with the obligations of this state under federal law or under the provisions of an interna-**  
23 **tional treaty or trade agreement to which this state is a party or to which this state has**  
24 **consented to be bound.**

25 (C) **The Director of the Oregon Department of Administrative Services and the Attorney**  
26 **General shall adopt rules under ORS 279A.065 to specify the proportion of content for man-**  
27 **ufactured goods and equipment that must be produced within the United States, what con-**  
28 **stitutes production within the United States and otherwise to implement the policy set forth**  
29 **in subparagraph (A) of this paragraph.**

NOTE: Matter in boldfaced type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in boldfaced type.

1       (2) **A contracting agency**, not less than 30 days [prior to adoption of] **before adopting** the  
2 contracting agency's budget for the subsequent budget period, [each contracting agency] shall prepare  
3 and file with the Commissioner of the Bureau of Labor and Industries a list of every public im-  
4 provement [known to] the contracting agency [that the contracting agency] **knows of and** plans to  
5 fund in the budget period, identifying each improvement by name and estimating the total on-site  
6 construction costs. The list shall also [contain a statement as to] **state** whether the contracting  
7 agency intends to perform the construction through a private contractor. If the contracting agency  
8 intends to perform construction work using the contracting agency's own equipment and personnel  
9 on a project estimated to cost more than \$125,000, the contracting agency shall also show that the  
10 contracting agency's decision conforms to the policy stated in subsection (1) of this section. The list  
11 is a public record and may be revised periodically by the **contracting** agency.

12       (3) Before a contracting agency constructs a public improvement with [its] **the contracting**  
13 **agency's** own equipment or personnel:

14       (a) If the estimated cost exceeds \$125,000, the contracting agency shall prepare adequate plans  
15 and specifications and the estimated unit cost of each classification of work. The estimated cost of  
16 the work must include a reasonable allowance for the cost, including investment cost, of any  
17 equipment used. As used in this paragraph, "adequate" means sufficient to control the performance  
18 of the work and to ensure satisfactory quality of construction by the contracting agency personnel.

19       (b) The contracting agency shall cause to be kept and preserved a full, true and accurate ac-  
20 count of the costs of performing the work, including all engineering and administrative expenses and  
21 the cost, including investment costs, of [any] equipment used. The final account of the costs is a  
22 public record.

23       (4) Subsections (2) and (3) of this section do not apply to a contracting agency [when] **if** the  
24 public improvement is [to be used] for [the distribution or transmission of] **distributing or trans-**  
25 **mitting** electric power.

26       (5) For purposes of this section, resurfacing [of] highways, roads or streets at a depth of two or  
27 more inches and at an estimated cost that exceeds \$125,000 is a public improvement.

28       **SECTION 2.** **The amendments to ORS 279C.305 by section 1 of this 2011 Act apply to a**  
29 **contract that a contracting agency first advertises or otherwise solicits on or after the op-**  
30 **erative date set forth in section 3 of this 2011 Act or, if the contracting agency does not**  
31 **advertise or solicit the contract, to a contract that the contracting agency enters into on**  
32 **or after the operative date set forth in section 3 of this 2011 Act.**

33       **SECTION 3.** **(1) The amendments to ORS 279C.305 by section 1 of this 2011 Act become**  
34 **operative on January 1, 2012.**

35       (2) **The Director of the Oregon Department of Administrative Services, the Attorney**  
36 **General or a contracting agency that adopts rules under ORS 279A.065 may take any action**  
37 **before the operative date set forth in subsection (1) of this section that is necessary to en-**  
38 **able the director, the Attorney General or the contracting agency to exercise, on and after**  
39 **the operative date set forth in subsection (1) of this section, all of the duties, functions and**  
40 **powers conferred on the director, the Attorney General or the contracting agency by the**  
41 **amendments to ORS 279C.305 by section 1 of this 2011 Act.**

42       **SECTION 4.** **This 2011 Act being necessary for the immediate preservation of the public**  
43 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**  
44 **on its passage.**