



# Oregon

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## Department of Transportation

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**DATE:** April 10, 2013  
**TO:** House Committee on Business and Labor  
**FROM:** Paul Mather  
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**SUBJECT:** HB 3473

MEASURE: HB 3473  
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### INTRODUCTION

House Bill 3473 prohibits public bodies from awarding public improvements or public works projects with a contract price of more than \$50,000 unless the iron, steel, and manufactured goods that will be used in the project are produced within the United States.

### BACKGROUND

The Oregon Department of Transportation (ODOT) is subject to Federal Buy America regulations because the agency receives federal funds for highway projects. The federal requirements are that steel, iron and manufactured products containing steel and iron incorporated into the final product must be produced in the United States.

The Federal Buy America regulations allow for exemptions under three conditions: using products made in the United States would not be in the public's best interest, the materials and products are not available in the quality or quantity needed for the projects, and using domestic products would increase the cost of the project by more than 25 percent.

More than 80 percent of ODOT's projects include federal funds and are subject to Federal Buy America provisions. HB 3473 would expand the situations under which Buy America requirements would apply to Oregon transportation projects that receive only state or local government funding. For example, a number of projects funded under the Jobs and Transportation Act and *ConnectOregon* would be subject to Buy America requirements.

### CONCERNS

ODOT supports the intent of creating a state Buy America requirement that mirrors federal requirements and is interested in working with the Committee and the bill's supporters to clarify the legislation and ensure that it can be effectively administered. As written, ODOT has several concerns related to the implementation of HB 3473.

### Emergency Work

HB 3473 applies to all public improvement and public works projects. A public works project as defined by Oregon law would include emergency work. Ensuring domestic products are used in a final emergency project would be challenging given the nature of emergency work. Emergency work would include immediately repairing damage caused by landslides and repairing highways

damaged or washed out by flooding. Making these immediate repairs would not afford ODOT the time needed to ensure the products used were domestic. ODOT recommends HB 3473 be limited to public improvement projects.

### **Federal Requirements**

The provisions in the bill should be tied or linked to the federal Buy America rules and regulations. A provision stating that any project subject to the federal requirements would be considered to satisfy state requirements if it complies with federal Buy America requirements would reduce confusion and the potential conflicts that could arise if state and federal requirements diverge.

### **Exemptions**

Should there be a circumstance that a non-domestic product (or one that could not be confirmed to be domestic) is inadvertently installed into a project and should ODOT learn about it after the installation, it would most often be in the public's best interest to leave the product in place. If we were not able to do so, the project would halt, putting the contractor and its employees out of work and inconveniencing the public by delaying the project until a solution was determined. ODOT may be faced with a choice to allow a product without a Certificate of Materials Origin to be installed or delay opening a highway to traffic. ODOT recommends HB 3473 include a provision for a public interest finding, allowing the non-domestic product to remain in place. ODOT would document the use of the non-domestic product in a public interest finding and the reasons for leaving the product in place.

The Federal Buy America provision allows 0.1% or \$2500 whichever is greater of foreign steel to be included in a project without an exception. Allowing for a small amount of non-domestic steel keeps small items, such as bolts, from needing a certification that they are domestic products. ODOT recommends HB 3473 contain a similar provision allowing a small amount of non-domestic products to be used.

### **Permanently Incorporated Items**

HB 3473 indicates the domestic products must be "intended for use in" the project. ODOT interprets this to mean those materials, products and goods incorporated into the final project, but not those used in constructing the project. This would align with the Federal Buy America provisions. ODOT recommends clarifying HB 3473 to indicate domestic products need only be used in the final project and the requirements do not apply to temporary construction materials and products.

### **SUMMARY**

Federal law already subjects many transportation projects to Buy America requirements. Modifications to HB 3473 that reduce potential conflicts with federal law and clarify the application of Buy America requirements would ensure that this legislation could be effectively implemented.