

Report of Workgroup Efforts – LC 705 “Buy America”

Prepared for Oregon State Senator Joanne Verger
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Submitted On Behalf of the Workgroup by:
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At your request, Associated Oregon Industries and the League of Oregon Cities agreed to assemble and facilitate an informal workgroup to attempt to produce an acceptable alternative to the “Buy American” proposal that has been the subject of several meetings over the spring and summer. This letter is to report the results of that workgroup.

First, every member of the workgroup greatly appreciates your leadership on this matter and your willingness to consider stakeholder views. Your longstanding and dedicated efforts to create and retain Oregon manufacturing jobs is widely acknowledged and appreciated. Your approach has been inclusive and gracious.

This has been a difficult issue from the beginning. As background, it is worth reiterating some of the obstacles identified by both private and governmental entities with the original proposal and subsequent variants leading to LC 705. Because each of these obstacles negatively impacts job creation and costs, each would have to be overcome, or at least greatly ameliorated and offset, for a proposal to be successful.

They include:

Public Contracting Code: Inserting local bid preferences in ORS Chapter 279A, applying to the procurement of goods, services and public improvement, runs counter to the long-standing policy directive that public purchases foster competition for goods and services and capture the best taxpayer value. Application of the proposal to all goods, services and public improvements also is a significant expansion of the original concept considered during the February 2010 legislative session.

Bid Preferences: There are concerns about reciprocal/retaliatory bid preferences against Oregon bidders. In fact, ORS 279A.120 specifically authorizes a reciprocal preference requirement. Reciprocal bid preferences will place Oregon businesses at a disadvantage when competing for public improvement projects in other states. Furthermore, we remain concerned that the provisions contained in LC 705 will result in potential conflict with international trade agreements.

Project Delay: Proposed preference will invite bid protests. It is not uncommon for a bid protest to delay projects for several months increasing legal and project costs. Implementation of the federal Buy America legislation has demonstrated the complexity of administering a domestic bid preference.

Multiple Local Preferences: While we understand that a “one size fits all” solution may be problematic, we fear legislation will produce a patchwork of varying preferences. This will create a heavy burden on all contractors and especially smaller contracting agencies that have few if any full-time public contracting professionals. It also will create confusion among bidders and manufacturers.

Reduction in Labor Funding: While a Made in USA mandate has definite attractions, if it results in an increase in material costs (likely accruing to out-of-state entities), there may well be a resultant reduction in project size and, accordingly, use of Oregon labor. This is especially true with respect to projects funded by voter-approved bond measures, which are limited to specific levels of investment.”

Legal and Constitutional Problems: In 1969, the California Court of Appeals struck down a “Buy American” statute on the grounds that international trade and foreign relations are within the purview of the federal government. This ruling, while not binding on an Oregon court, relied heavily on case law from the U.S. Supreme Court in making their decision. This legal history indicates that any Oregon statute of a similar nature would be subject to legal action which would leave essential public improvement projects in legal limbo.

In short, it was widely feared that LC 705 proposals would produce negative unintended consequences affecting Oregon jobs including increased costs, competitive disadvantages, project delays, uncertainty and administrative difficulties.

Moving to the workgroup as charged by you, it was understood that all parties, business and government, would make a good faith effort to develop workable, alternative language if possible. Accordingly, there were numerous informal discussions within and between the private and governmental members of the workgroup culminating in a well-attended October 4, 2010 meeting. Ultimately; however, there was a unanimous and firm consensus that the workgroup could not produce a product that did not run afoul of the same difficulties encountered by the drafters of LC 705. In the end, despite much discussion and debate, the workgroup was no more successful than the drafters of LC 705 in avoiding the myriad problems associated with what turned out to be a very well intentioned, but very difficult to implement, policy.

Not surprisingly, many members discussed different “Build America” approaches to creating and retaining Oregon manufacturing jobs. However, since this was not the charge of the workgroup, and there was no uniform endorsement or agreement on these, we will mention a few of them only in passing:

- Regulatory and Land Use Permit Streamlining
- Economic Impact Assessments for agency rules
- Renewal and protection of the Enterprise Zone Program
- Job training programs that meet the needs of employers
- Capital gains tax incentives for investment in Oregon projects
- Increased funding for infrastructure projects
- Job training programs driven by employer needs

Last, all the members of the workgroup thank you for your leadership and your consideration. Frankly, no other legislator could have done more or kept such a diverse group working so hard on such a complicated and challenging problem. You have an ability to create an atmosphere of cooperation and respect and we hope this exercise, albeit unsuccessful, will not discourage you from taking on similar tasks in the future. Your efforts have resulted in a much better understanding of these issues by all parties, a worthwhile and important outcome given the difficulties we will be facing over the next few years.