A-Engrossed

House Bill 3332

Ordered by the House March 29
Including House Amendments dated March 29

Sponsored by Representatives RAYFIELD, GRAYBER, ELMER; Senator TAYLOR

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.

Requires state contracting agency that procures public improvement contract or contract for public works with estimated contract price of $150,000 or more to include in solicitation documents conspicuous notice that resulting public improvement contract or contract for public works will require contractors to use iron, steel, coatings for iron and steel and manufactured products that are made in United States.

Requires public improvement contracts and contracts for public works to require use of iron, steel, coatings for iron and steel and manufactured products made in United States in public improvement or public works unless Director of Oregon Department of Administrative Services or Director of Transportation, as appropriate, waives use under specified circumstances.

Specifies duties of director in making findings and granting waiver. Requires periodic review of waiver. Permits Director of Oregon Department of Administrative Services to delegate duty.

Requires department to establish technical assistance and grant program to enable businesses certified by Certification Office for Business Inclusion and Diversity to become familiar with and meet obligations of Act.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to Buy America requirements for public construction projects; and prescribing an effective date.

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

SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 279A.

SECTION 2. (1) As used in this section:

(a) “Manufactured product” means a preassembled item that is made of iron or steel and that a contractor brings to a construction project for incorporation into a public improvement or public works or a preassembled item that is made of iron or steel and that a state contracting agency acquires for a public use.

(b) “Produced in the United States” means:

(A) For iron and steel products, other than manufactured products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred within the United States; and

(B) For manufactured products, that:

(i) The manufacture of the product occurred within the United States; and

(ii) The cost of the components of the product that are mined, produced or manufactured in the United States is more than 55 percent of the total cost of all components of the product, unless the Oregon Department of Administrative Services or the Department of Transportation by rule establishes a different standard for determining the minimum amount

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.

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of the product that must be manufactured within the United States.

(2)(a) A state contracting agency shall require in each public improvement contract or
contract for public works with an estimated contract price of $150,000 or more that steel,
iron, coatings for steel and iron and manufactured products that a contractor purchases for
or uses in the public improvement or public works, and that become part of a permanent
structure, must be produced in the United States.

(b) The state contracting agency shall in all solicitation documents for any procurement
related to the public improvement contract or contract for public works note clearly and
conspicuously that any public improvement contract or contract for public works that re-
results from the procurement will include the requirement set forth in paragraph (a) of this
subsection. The state contracting agency shall reject any bid or proposal that does not
affirmatively attest that the bidder or proposer read and understood the requirement.

(c)(A) The requirement set forth in paragraph (a) of this subsection does not apply if the
Director of the Oregon Department of Administrative Services or the Director of Transpor-
tation, or either director’s designee, finds in writing that:

(i) The requirement is inconsistent with the public interest;

(ii) Steel, iron, coatings for steel and iron and manufactured products required for the
public improvement or public works are not produced in the United States in sufficient and
reasonably available quantities and with satisfactory quality; or

(iii) Using steel, iron, coatings for steel and iron or manufactured products produced in
the United States for the public improvement or the public works will increase the cost of
the public improvement or public works by more than 25 percent.

(B) Before making a finding under subparagraph (A) of this paragraph, the Director of
the Oregon Department of Administrative Services or the Director of Transportation, as
appropriate, shall issue a draft finding that includes a detailed written explanation of the
basis for waiving the requirement set forth in paragraph (a) of this subsection. At the ear-
liest practicable time, the director shall give public notice of the draft finding in a manner
that the director determines will give adequate notice to the public and to contractors that
intend to submit, or have submitted, bids or proposals for the public improvement or public
works. The director shall allow seven calendar days for public comment on the draft finding.
If after considering public comment the director determines to waive the requirement set
forth in paragraph (a) of this subsection, the director shall provide public notice of the
director’s finding using the same method the director used to provide public notice of the
draft finding.

(C) The director shall respond within 15 days to a request for a finding described in sub-
paragraph (A) of this paragraph by:

(i) Issuing the draft finding described in subparagraph (B) of this paragraph; or

(ii) Asking the person that submitted the request to provide any additional information
the director requires to make the draft finding.

(d) The director may make a finding under paragraph (c) of this subsection that applies
to a single public improvement contract or contract for public works, to a class of public
improvement contracts or contracts for public works or to a class of iron or steel products,
coatings or manufactured products. The director shall indicate the duration and applicability
of the director’s finding in the document in which the director waives the requirement set
forth in paragraph (a) of this subsection.
(e) The director may review and continue, amend or rescind the director's finding at any time. If the director waives the requirement set forth in paragraph (a) of this subsection for a class of public improvement contracts or contracts for public works or for a class of iron or steel products, coatings or manufactured products, at least every five years the director shall review and, if necessary, amend or rescind the waiver. Before continuing, amending or rescinding a waiver under this paragraph, the director shall provide for public notice and comment in accordance with paragraph (c)(B) of this subsection.

(f) The Director of the Oregon Department of Administrative Services may delegate the director's duty under paragraphs (c) and (d) of this subsection to the head of a state contracting agency that enters into a public improvement contract or contract for public works under authority delegated from the Oregon Department of Administrative Services.

(3)(a) The Oregon Department of Administrative Services by rule shall establish a technical assistance and grant program to enable enterprises and businesses certified under ORS 200.055 to become familiar with and meet the obligations set forth in this section.

(b) Before establishing the program described in paragraph (a) of this subsection, the department shall submit to the Legislative Assembly a request for funding in an amount the department estimates would be necessary to administer the program and provide grants. The department shall deposit any moneys the department receives as funding into a designated account within the department's operating account and shall keep a record of the amount and purpose of each disbursement from the account.

(c) A recipient of moneys from the department may not use the moneys to defray expenses the recipient incurs to prepare a bid or proposal in response to a procurement for a public improvement or public works.

(4) The requirements set forth in this section are subject to applicable state and federal trade agreements.

SECTION 3. Section 2 of this 2023 Act applies to procurements that a state contracting agency advertises or solicits or, if the state contracting agency does not advertise or solicit the procurement, to public improvement contracts or contracts for public works into which the state contracting agency enters on or after the operative date specified in section 4 of this 2023 Act.

SECTION 4. (1) Section 2 of this 2023 Act becomes operative on January 1, 2024.

(2) The Attorney General, the Director of the Oregon Department of Administrative Services, the Director of Transportation and a state contracting agency that adopts rules under ORS 279A.065 or 279A.070 may adopt rules and take any other action before the operative date specified in subsection (1) of this section that is necessary to enable the Attorney General, the directors or the state contracting agency to undertake and exercise all of the duties, functions and powers conferred on the Attorney General, the directors or the state contracting agency by section 2 of this 2023 Act.

SECTION 5. This 2023 Act takes effect on the 91st day after the date on which the 2023 regular session of the Eighty-second Legislative Assembly adjourns sine die.