

B-Engrossed House Bill 3332

Ordered by the House June 12
Including House Amendments dated March 29 and June 12

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*] **Oregon Department of Administrative Services and Department of Transportation, in procuring** public improvement contract or contract for public works with estimated contract price of [*\$150,000*] **\$250,000** 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, **iron**, coatings for **steel and iron** [*and steel*] and manufactured products that are [*made*] **produced** in United States.

Requires public improvement contracts and contracts for public works to require use of [*iron,*] steel, **iron**, coatings for **steel and iron** [*and steel*] and manufactured products [*made*] **produced** 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. **Requires each department to reject bid or solicitation that does not affirmatively attest that bidder or proposer read and understood requirement.**

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*] **Oregon Department of Administrative Services** 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

1
2 Relating to Buy America requirements for public construction projects; and prescribing an effective
3 date.

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

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

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

7 (a) **“Manufactured product” means a preassembled item that is made of iron or steel and**
8 **that a contractor brings to a construction project for incorporation into a public improve-**
9 **ment or public works or a preassembled item that is made of iron or steel and that the**
10 **Oregon Department of Administrative Services or the Department of Transportation ac-**
11 **quires for a public use.**

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

13 (A) **For iron and steel products, other than manufactured products, that all manufac-**
14 **turing processes, from the initial melting stage through the application of coatings, occurred**
15 **within the United States; and**

16 (B) **For manufactured products, that:**

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

18 (ii) **The cost of the components of the product that are mined, produced or manufactured**
19 **in the United States is more than 55 percent of the total cost of all components of the**

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 product, unless either department by rule establishes a different standard for determining
2 the minimum amount of the product that must be manufactured within the United States.

3 (2)(a) The Oregon Department of Administrative Services and the Department of Trans-
4 portation shall require in each public improvement contract or contract for public works
5 with an estimated contract price of \$250,000 or more that steel, iron, coatings for steel and
6 iron and manufactured products that a contractor purchases for or uses in the public im-
7 provement or public works, and that become part of a permanent structure, must be
8 produced in the United States.

9 (b) Each department shall, in all solicitation documents for any procurement related to
10 the public improvement contract or contract for public works, note clearly and conspicuously
11 that any public improvement contract or contract for public works that results from the
12 procurement will include the requirement set forth in paragraph (a) of this subsection. Each
13 department shall reject any bid or proposal that does not affirmatively attest that the bidder
14 or proposer read and understood the requirement.

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

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

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

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

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

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

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

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

42 (d) The director may make a finding under paragraph (c) of this subsection that applies
43 to a single public improvement contract or contract for public works, to a class of public
44 improvement contracts or contracts for public works or to a class of iron or steel products,
45 coatings or manufactured products. The director shall indicate the duration and applicability

1 of the director's finding in the document in which the director waives the requirement set
2 forth in paragraph (a) of this subsection.

3 (e) The director may review and continue, amend or rescind the director's finding at any
4 time. If the director waives the requirement set forth in paragraph (a) of this subsection for
5 a class of public improvement contracts or contracts for public works or for a class of iron
6 or steel products, coatings or manufactured products, at least every five years the director
7 shall review and, if necessary, amend or rescind the waiver. Before continuing, amending
8 or rescinding a waiver under this paragraph, the director shall provide for public notice and
9 comment in accordance with paragraph (c)(B) of this subsection.

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

14 (3)(a) The Oregon Department of Administrative Services by rule shall establish a tech-
15 nical assistance and grant program to enable enterprises and businesses certified under ORS
16 200.055 to become familiar with and meet the obligations set forth in this section.

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

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

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

28 **SECTION 3.** (1) Notwithstanding any other law limiting expenditures, the limitation on
29 expenditures established by section 2 (3), chapter __, Oregon Laws 2023 (Enrolled House Bill
30 5040), for the biennium beginning July 1, 2023, as the maximum limit for payment of expenses
31 from fees, moneys or other revenues, including Miscellaneous Receipts and federal funds
32 received as reimbursement from the United States Department of Transportation, but ex-
33 cluding lottery funds and federal funds not described in section 2, chapter __, Oregon Laws
34 2023 (Enrolled House Bill 5040), collected or received by the Department of Transportation,
35 for project delivery and support, is increased by \$215,287.

36 (2) Notwithstanding any other law limiting expenditures, the limitation on expenditures
37 established by section 2 (7), chapter __, Oregon Laws 2023 (Enrolled Senate Bill 5502), for
38 the biennium beginning July 1, 2023, as the maximum limit for payment of expenses from
39 fees, moneys or other revenues, including Miscellaneous Receipts and federal funds received
40 from charges, but excluding lottery funds and federal funds not described in section 2,
41 chapter __, Oregon Laws 2023 (Enrolled Senate Bill 5502), collected or received by the
42 Oregon Department of Administrative Services, for enterprise goods and services, is in-
43 creased by \$215,287.

44 **SECTION 4.** Section 2 of this 2023 Act applies to procurements that the Oregon Depart-
45 ment of Administrative Services or the Department of Transportation advertises or solicits

1 or, if neither department advertises or solicits the procurement, to public improvement
2 contracts or contracts for public works into which either department enters on or after the
3 operative date specified in section 5 of this 2023 Act.

4 **SECTION 5.** (1) Section 2 of this 2023 Act becomes operative on January 1, 2024.

5 (2) The Director of the Oregon Department of Administrative Services and the Director
6 of Transportation may adopt rules and take any other action before the operative date
7 specified in subsection (1) of this section that is necessary to enable the directors to under-
8 take and exercise all of the duties, functions and powers conferred on the directors by sec-
9 tion 2 of this 2023 Act.

10 **SECTION 6.** This 2023 Act takes effect on the 91st day after the date on which the 2023
11 regular session of the Eighty-second Legislative Assembly adjourns sine die.

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