

House Bill 3382

Sponsored by COMMITTEE ON BUSINESS AND LABOR (at the request of Global Exchange)

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**.

Requires that state procurement practices support contractors that do not maintain sweatshop labor working conditions.

Requires contractors to comply with certain human rights and labor laws and to pay minimum wage rates set by Director of Oregon Department of Administrative Services. Prohibits contractors from subjecting workers to abusive or illegal treatment. Requires contractors to maintain payroll records and submit payroll records and other information to director. Requires contractors to cooperate with investigation by director.

Requires director to take actions to implement, administer and enforce law. Provides sanctions and damages for breach of contract or violation of law. Requires director to establish Sweatfree Procurement Advisory Group.

Provides exceptions.

A BILL FOR AN ACT

1
2 Relating to state procurement from sources that do not engage in sweatshop labor practices.

3 Whereas this state spends millions of dollars annually in public funds on goods and nonprofes-
4 sional services; and

5 Whereas this state recognizes its ability as a market participant to support goods and services
6 that do not use, or do not depend on, sweatshop labor working conditions that deprive humans of
7 basic rights and dignity; and

8 Whereas the prudent expenditure of public funds requires that the state select responsible con-
9 tractors; and

10 Whereas the state seeks to ensure that the integrity of the procurement process is not under-
11 mined by contractors or subcontractors who engage in sweatshop labor practices; and

12 Whereas contractors who use sweatshop labor are able to underbid responsible contractors that
13 pay fair wages and maintain humane work environments and conditions; and

14 Whereas such practices place responsible contractors at a competitive disadvantage, which may
15 dissuade responsible contractors from participating in the state's procurement processes; and

16 Whereas by enacting this 2007 Act, the Legislative Assembly does not intend to preclude the
17 state or its contractors or subcontractors from doing business with any foreign country; now,
18 therefore,

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

20 **SECTION 1. Definitions. As used in sections 1 to 8 of this 2007 Act:**

21 **(1) "Abusive forms of child labor" includes:**

22 **(a) Work performed by an individual under the age of 18 when the individual does not**
23 **voluntarily seek the work or the individual is threatened by the individual's employer with**
24 **physical, mental or emotional harm for nonperformance;**

25 **(b) Work performed by an individual under the age of 18 in violation of any applicable law**
26 **of the country governing the minimum age of employment, compulsory education or occu-**

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 **pational health and safety; and**

2 **(c) The use of an individual under the age of 18 for illegal activities, including, but not**
3 **limited to, the production or trafficking of illicit drugs or for prostitution.**

4 **(2) "Contract" means:**

5 **(a) An agreement for goods or service, including the supply of goods, for an amount**
6 **greater than \$5,000 and having a term in excess of three months to be purchased or provided**
7 **at the expense of this state or to be paid out of moneys deposited in the State Treasury or**
8 **out of trust moneys under the control of or collected by this state; and**

9 **(b) Any amendment to a contract that causes the term of the contract to exceed three**
10 **months.**

11 **(3) "Contractor" means a person with whom this state executes a contract.**

12 **(4) "Foreign convict or forced labor" includes any form of labor used to produce or**
13 **manufacture goods prohibited from importation into the United States under 19 U.S.C 1307,**
14 **abusive forms of child labor and slave labor.**

15 **(5) "Good" includes any good, material, supply or equipment.**

16 **(6) "Slave labor" means any form of slavery, sale or trafficking of individuals, debt**
17 **bondage, indentured servitude, serfdom or forced or compulsory labor.**

18 **(7) "Sweatshop labor" means:**

19 **(a) Work performed by any worker under terms and conditions that seriously or repeat-**
20 **edly violate laws of the jurisdiction within which the work is performed governing:**

21 **(A) Wages;**

22 **(B) Employee benefits;**

23 **(C) Health and safety, including, but not limited to, exposure to hazardous toxic sub-**
24 **stances;**

25 **(D) Labor, including, but not limited to, collective bargaining rights;**

26 **(E) Environmental conditions;**

27 **(F) Nondiscrimination, harassment, intimidation or retaliation, including, but not limited**
28 **to, all laws prohibiting workplace and employment discrimination;**

29 **(G) Freedom of association; or**

30 **(H) Building or fire codes.**

31 **(b) Any work performed by any individual contributing to the provision of goods to this**
32 **state under a contract or subcontract that constitutes foreign convict or forced labor, abu-**
33 **sive forms of child labor or slave labor.**

34 **(8) "Worker" means any employee of a contractor or subcontractor who contributes to**
35 **the provision of goods to this state under a contract or subcontract, including, but not lim-**
36 **ited to, any manufacturing or assembling of goods.**

37 **SECTION 2. Policy. The procurement practices of the State of Oregon shall support**
38 **contractors that do not maintain sweatshop labor working conditions, as further described**
39 **in sections 1 to 8 of this 2007 Act.**

40 **SECTION 3. Contractor requirements; prohibition of sweatshop conditions. Each con-**
41 **tractor and subcontractor shall comply with the following requirements:**

42 **(1) Each contractor and subcontractor, regarding any worker, shall comply with all hu-**
43 **man and labor rights and labor standards imposed by treaty or law on the country in which**
44 **the goods are made or assembled and may not engage in sweatshop labor.**

45 **(2) Each contractor and subcontractor shall pay at least the following minimum wages:**

1 (a) To workers working in the United States, a base hourly wage, to be set and adjusted
 2 annually by the Director of the Oregon Department of Administrative Services, to produce
 3 for 2,080 hours worked an annual income equal to or greater than the most recent poverty
 4 guidelines of the United States Department of Health and Human Services for a family of
 5 three, plus an additional 20 percent of the wage level paid including, but not limited to,
 6 amounts paid as hourly wages or health benefits; and

7 (b) For workers working in countries other than the United States, a wage, to be set and
 8 adjusted annually by the director, that is comparable to the wage for domestic manufactur-
 9 ers established in paragraph (a) of this subsection, adjusted to reflect the country's level of
 10 economic development by using the World Bank's most recent gross national income per
 11 capita Purchasing Power Parity index.

12 (3) All contractors and subcontractors shall comply with the overtime laws and regu-
 13 lations applicable to their workers. All overtime hours shall be worked voluntarily.

14 (4) A contractor or subcontractor may not subject any worker to any physical, sexual
 15 or other illegal harassment or abuse, including corporal punishment, illegal discrimination
 16 or retaliation for exercising the worker's right to free speech and assembly or other rights
 17 protected under applicable labor or employment laws.

18 (5) A contractor or subcontractor may not require or compel any worker to use
 19 contraceptives or take pregnancy tests.

20 (6) Contractors and subcontractors shall respect workers' rights to freedom of associ-
 21 ation and collective bargaining. A contractor or subcontractor may not subject a worker to
 22 harassment, discrimination, intimidation or retaliation as a result of the worker's efforts to
 23 freely associate or bargain collectively. This subsection does not apply to contractors or
 24 subcontractors subject to the National Labor Relations Act (29 U.S.C. 151 et seq.).

25 **SECTION 4. Contractor requirements; reporting and verification.** (1) Each contractor and
 26 subcontractor shall maintain weekly certified payroll records for submission to the Director
 27 of the Oregon Department of Administrative Services upon demand. The contractor is re-
 28 sponsible for submitting the payroll records of its subcontractors, although subcontractors
 29 shall submit such records directly to the director upon request. All certified payroll records
 30 shall be accompanied by a statement signed by the contractor, or subcontractor if requested
 31 by the director to submit the records, stating that the records are complete and correct. The
 32 records shall include the following for each worker:

33 (a) Name and job classification;

34 (b) A general description of the work the worker performed each day and the rate of pay,
 35 including rates of contributions for or costs assumed to provide fringe benefits;

36 (c) The daily and weekly number of hours worked;

37 (d) Deductions made; and

38 (e) Actual wages paid.

39 (2) Each contractor and subcontractor shall keep or cause to be kept for a period of not
 40 less than three years from the date of the expiration or termination of the term of the
 41 contract basic payroll and time records for each worker and copies of any tax records filed
 42 with a governmental entity during the term of the contract.

43 (3) Before commencing any work under the contract, the contractor shall provide the
 44 director a list of names and addresses of each subcontractor to be used in the performance
 45 of the contract, the amount to be paid to each subcontractor, the contractor's and each

1 subcontractor's applicable state tax identification number and the address of each manufac-
 2 turing facility or other facility or operation of the contractor and its subcontractors for the
 3 performance of the contract.

4 (4) Each contractor and subcontractor shall cooperate fully with any investigation of the
 5 director, including, but not limited to, any investigation by an independent nonprofit monitor
 6 or personnel of the Oregon Department of Administrative Services authorized to assist in
 7 the implementation, administration or enforcement of sections 1 to 8 of this 2007 Act. In the
 8 performance of investigative duties, the director has the right to make random inspections
 9 of any worksite where the contract or any subcontract is performed and to access to any
 10 worker or any record required to be maintained by this section.

11 (5) Each contractor and subcontractor shall be responsible for ensuring the subcontrac-
 12 tor's compliance with sections 1 to 8 of this 2007 Act.

13 (6) During each year of the term of a contract, the department may request written as-
 14 surance from the contractor and each of its subcontractors that the contractor or subcon-
 15 tractor is in compliance with sections 1 to 8 of this 2007 Act. The request may seek
 16 confirmation of compliance with some or all of the requirements of sections 1 to 8 of this
 17 2007 Act and may require the response to be submitted under penalty of perjury. The con-
 18 tractor or subcontractor shall provide the written assurance within the time period specified
 19 by the department, which may not be less than 14 calendar days from receipt of the request.

20 SECTION 5. Administration and enforcement by the state. (1) Each contract shall include
 21 an agreement by the contractor to comply with the requirements of sections 1 to 8 of this
 22 2007 Act and shall incorporate sections 1 to 8 of this 2007 Act by reference. Contracts shall
 23 provide that:

24 (a) In the event the Oregon Department of Administrative Services determines that any
 25 contractor or subcontractor has failed to comply with any provision of sections 1 to 8 of this
 26 2007 Act or any rule implementing sections 1 to 8 of this 2007 Act, the contractor is liable
 27 for liquidated damages equal to the greater of \$1,000 or 20 percent of the amount of the goods
 28 provided in violation of sections 1 to 8 of this 2007 Act, as determined by the department;
 29 and

30 (b) The department may deduct any liquidated damages owed by a contractor from any
 31 moneys owed the contractor under the contract or any other agreement that the contractor
 32 has with the state.

33 (2) The department shall post the names, addresses and facility address information
 34 submitted from contractors and subcontractors as described in section 4 (3) of this 2007 Act
 35 on its website before a contractor or any of its subcontractors may commence work under
 36 the contract.

37 (3) Unless the department is able to adequately monitor compliance with sections 1 to 8
 38 of this 2007 Act using department personnel and regulatory procedures, the department
 39 shall, subject to available funding and procurement laws and rules, enter into an agreement
 40 with an independent nonprofit organization with expertise in monitoring and reporting on
 41 sweatshop labor for assistance in monitoring the compliance of contractors.

42 (4) Any failure of a contractor or subcontractor to perform in accordance with sections
 43 1 to 8 of this 2007 Act shall be a material breach of contract. In that event, the department
 44 may take any or all of the following actions:

45 (a) Assess liquidated damages as provided for in the contract.

1 (b) Terminate the contract with 30 days' notice.

2 (c) Withhold payments under the contract until the contractor or its subcontractor is in
3 full compliance with sections 1 to 8 of this 2007 Act.

4 (d) Require the contractor or subcontractor, at its expense, to provide training and best
5 practices guidelines to managers and workers at the facility or operation where the violation
6 occurred to ensure future compliance.

7 (e) Require the contractor or subcontractor to provide department personnel authorized
8 to assist in the administration and enforcement of sections 1 to 8 of this 2007 Act immediate
9 access to the facility or operation where the violation has occurred for an inspection of the
10 facility or operation and records and for interviews of workers.

11 (f) During the term of the contract, but not more than once every 30 days, require the
12 contractor or subcontractor to provide a written summary of the steps taken to remedy the
13 noncompliance and any difficulties encountered in resolving the noncompliance. The request
14 may require the responses to be submitted under penalty of perjury. The contractor or sub-
15 contractor shall provide the written summary within the time period specified by the de-
16 partment, which may not be less than 14 calendar days from receipt of a request.

17 (g) Pursue any other remedies available to the department at law or in equity.

18 (5) The department should endeavor to establish working relationships with other public
19 bodies working on nonsweatshop labor procurements. This may include collaboration to the
20 extent of entering into an agreement to share the cost burden of hiring independent
21 nonprofit monitors to ensure compliance of contractors, subject to rules regarding inter-
22 governmental agreements.

23 **SECTION 6. Advisory group.** (1) The Director of the Oregon Department of Administra-
24 tive Services shall establish a Sweatfree Procurement Advisory Group composed of three
25 members appointed by the director as follows:

26 (a) One member who is an advocate for workers' rights, is knowledgeable and experi-
27 enced with sweatshop labor working conditions and participates in national or international
28 efforts regarding the elimination of sweatshop labor practices.

29 (b) One department staff member who is familiar with public procurement rules, the de-
30 partment's procurement activities and state statutes and policies in general that affect the
31 department's procurement procedures.

32 (c) One member who has significant experience in finance, financial auditing or ac-
33 counting for public agencies.

34 (2) The advisory group shall:

35 (a) Evaluate the industries engaged in the manufacture and sale of goods to determine
36 whether contracts for any goods, in addition to apparel and garments, should be targeted for
37 enforcement.

38 (b) Evaluate the implementation, administration and enforcement of sections 1 to 8 of
39 this 2007 Act.

40 (c) Provide periodic reports to the director and the Governor on the implementation,
41 administration and enforcement of sections 1 to 8 of this 2007 Act. Reports should be sub-
42 mitted no less frequently than once every two years.

43 (3) To determine whether a particular good should be targeted for enforcement under
44 sections 1 to 8 of this 2007 Act, the advisory group shall consider factors including, but not
45 limited to:

1 (a) The amount the department has spent, and anticipates spending, for the good;

2 (b) Evidence of sweatshop labor or other conditions prohibited by sections 1 to 8 of this
3 2007 Act in the manufacturing, assembly or distribution of the good; and

4 (c) Any financial impact that targeting the good for enforcement will have on this state.

5 (4) The advisory group shall submit its recommendation concerning other commodities
6 for enforcement to the director, who may then submit the recommendation to the Governor
7 for approval.

8 **SECTION 7. Exceptions.** Sections 1 to 8 of this 2007 Act do not apply when:

9 (1) A contract involves the expenditure of state funds, and the application of sections 1
10 to 8 of this 2007 Act would violate or be inconsistent with the terms or conditions of the
11 applicable grant agreement, subvention or agreement, or the instructions of an authorized
12 representative of an agency with respect to the grant agreement, subvention or agreement.

13 (2) The Director of the Oregon Department of Administrative Services determines that
14 there is only one responsible contractor available to provide the goods and that contractor
15 is unable to comply with this policy, or the state agency seeking to enter into the contract
16 certifies in writing to the director, and the director finds, that there are no qualified re-
17 sponsive bidders or proposers or prospective contractors that would comply with the re-
18 quirements of sections 1 to 8 of this 2007 Act and the contract is for goods that are essential
19 to this state or the public.

20 (3) The contract is with a public body.

21 (4) The acquisition of goods is only incidental to other purchases under the contract. The
22 acquisition of goods is incidental if the amount paid by the department or state agency for
23 the goods is 10 percent or less of the total amount of the contract.

24 (5) The contract is an emergency procurement as defined in ORS 279B.080 and the de-
25 partment or state agency recommending the contract certifies in writing to the director that
26 no entity that complies with the requirements of sections 1 to 8 of this 2007 Act and is ca-
27 pable of responding to the emergency is immediately available.

28 **SECTION 8. Preemption.** (1) Sections 1 to 8 of this 2007 Act specify a minimum level of
29 compensation to be paid to workers and may not be construed to preempt or otherwise limit
30 any other applicable law, rule or requirement that requires a higher level of compensation.

31 (2) Nothing in sections 1 to 8 of this 2007 Act may be interpreted or applied so as to
32 create any power or duty in conflict with any federal law. Nothing in sections 1 to 8 of this
33 2007 Act may be interpreted to preempt any law of a local government, as defined in ORS
34 174.116, or a special government body, as defined in ORS 174.117.

35 **SECTION 9. Policy phase-in.** During the first two full fiscal years after the effective date
36 of this 2007 Act, the Oregon Department of Administrative Services may target for enforce-
37 ment only contracts for apparel, garments and corresponding accessories. Agreements for
38 other goods shall be reviewed for enforcement in accordance with the procedure set forth in
39 section 6 of this 2007 Act.

40 **SECTION 10.** Sections 1 to 8 of this 2007 Act are added to and made a part of ORS
41 chapter 279A.

42 **SECTION 11.** Sections 1 to 9 of this 2007 Act apply only to public contracts entered into
43 on or after the effective date of this 2007 Act.

44 **SECTION 12.** The section captions used in this 2007 Act are provided only for the con-
45 venience of the reader and do not become part of the statutory law of this state or express

1 **any legislative intent in the enactment of this 2007 Act.**

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