

FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: HB 3332 - A

82nd Oregon Legislative Assembly – 2023 Regular Session

Legislative Fiscal Office

Only Impacts on Original or Engrossed Versions are Considered Official

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Measure Description:

Requires state contracting agency that procures public improvement contract or contract for public works 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.

Government Unit(s) Affected:

Department of Administrative Services, Department of Justice, Department of Transportation, Statewide, Oregon Youth Authority, Parks and Recreation Department, Department of Fish and Wildlife, Oregon Military Department

Summary of Fiscal Impact:

Costs related to the measure may require budgetary action - See analysis.

Analysis:

HB 3322 - A defines “manufactured product” as a preassembled item that is made of iron or steel, and that a contractor brings for use in a public improvement or public works construction project; or that a state contracting agency acquires for public use. State contracting agencies must require in public improvement contracts or contracts 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, must be produced in the United States, as defined by this measure. This requirement does not apply if the director of the Department of Administrative Services (DAS) or the Director of Transportation, finds that the requirement is inconsistent with the public interest; or the products above are not produced in the United States in sufficient and reasonably available quantities and with satisfactory quality; or if using products produced in the United States for the public improvement or the public works will increase the cost of the project by more than 25 percent. DAS or the Director of Transportation must first issue a draft finding that includes a detailed written explanation of the basis for waiving the requirement, and allow time for comments, before providing public notice of the final finding. Findings related to a class of projects or products are to be revisited every five years.

DAS may delegate the director’s duty to the head of a state contracting agency that enters into a public improvement contract or contract for public works. DAS is to establish by rule a technical assistance and grant program to enable enterprises and businesses certified as a disadvantaged business enterprise, minority-owned business, woman-owned business, business that service-disabled veteran owns or emerging small business, to become familiar with and meet the obligations of this measure. DAS is to submit a request for funding to the Legislative Assembly in an amount the department estimates would be necessary to administer the program and provide grants before establishing this program. Funds received for this program are to be deposited into a designated account within the department’s operating account. Recipients of funds from DAS may not use the funds to pay for the costs to prepare a bid or proposal for a public improvement or public works.

This measure is applicable to procurements that a state contracting agency advertises, solicits, or enters on, after January 1, 2024. The measure takes effect on the 91st day after the Legislature adjourns sine die.

While most state agencies report no or minimal impact as a result of this measure, several state agencies with significant amounts of public improvement contracts or contracts for public works are likely to have a fiscal impact from this measure. This is primarily related to a likely increase in costs for projects that include steel, iron, coatings for steel and iron, and manufactured products; though the total increase in costs is indeterminate at this time. Individual agency impacts are outlined in more detail below.

This measure warrants a subsequent referral to the Joint Committee on Ways and Means for consideration of its impact on the State's General Fund and Highway Fund.

Department of Administrative Services

The agency anticipates needing one Operations and Policy Analyst 4 position (0.75 FTE in 2023-25 and 1.00 FTE in 2025-27) to establish the waiver process, manage review of waiver requests, update procurement documentation and training statewide, and develop the technical assistance and grant program. Known costs related to this measure are \$215,287 Other Funds in the 2023-25 biennium; and \$299,310 Other Funds in the 2025-27 biennium, including personal services and position-related services and supplies. Other Funds revenue comes from the assessment that DAS charges to state agencies.

There is also an indeterminate cost related to the procurement and grant program that DAS is directed to return and ask for funding for.

Oregon Department of Transportation

ODOT notes a significant but indeterminate fiscal impact from this measure. The agency notes that this measure is likely to increase the cost of a majority of ODOT projects which could have an impact of millions of dollars; and that ODOT projects through the Infrastructure Investment and Jobs Act are subject to expanded Buy America Provisions which has increased administrative workload related to bid and waiver review.

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Other agencies

The Oregon Military Department, Oregon Parks and Recreation Department, Oregon Department of Fish and Wildlife, and other state agencies may see an impact from increased costs of materials and changes to procurement practices due to this measure, though the total fiscal impact and number of agencies impacted is uncertain at this time. Depending on the amount of implementation work centralized at DAS, agencies may need additional procurement staffing or other support. If the costs to implement this measure exceed available funding, agencies may need to request a supplemental appropriation from the Legislative Emergency Board or request additional funding during the regular budget process.

The Department of Justice reports a minimal fiscal impact associated with the measure.