

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

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 279A.**

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 a state**
10 **contracting agency acquires for a public use.**

11 (b) **"Produced in the United States" means:**

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

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

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

17 (ii) **The cost of the components of the product that are mined, produced or manufactured**
18 **in the United States is more than 55 percent of the total cost of all components of the**
19 **product, unless the Oregon Department of Administrative Services or the Department of**
20 **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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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