

# Enrolled House Bill 3332

Sponsored by Representatives RAYFIELD, GRAYBER, ELMER; Representative FAHEY, Senators PATTERSON, TAYLOR

CHAPTER .....

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 279C.

**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 the Oregon Department of Administrative Services or the Department of Transportation 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 either department by rule establishes a different standard for determining the minimum amount of the product that must be manufactured within the United States.

(2)(a) The Oregon Department of Administrative Services and the Department of Transportation shall require in each public improvement contract or contract for public works with an estimated contract price of \$250,000 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) Each department 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 results from the procurement will include the requirement set forth in paragraph (a) of this subsection. Each department 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 Transportation, 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 earliest 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 subparagraph (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 duties 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.** (1) Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (3), chapter \_\_, Oregon Laws 2023 (Enrolled House Bill 5040), for the biennium beginning July 1, 2023, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and federal funds received as reimbursement from the United States Department of Transportation, but excluding lottery funds and federal funds not described in section 2, chapter \_\_, Oregon Laws 2023 (Enrolled House Bill 5040), collected or received by the Department of Transportation, for project delivery and support, is increased by \$215,287.

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

**SECTION 4.** Section 2 of this 2023 Act applies to procurements that the Oregon Department of Administrative Services or the Department of Transportation advertises or solicits or, if neither department advertises or solicits the procurement, to public improvement contracts or contracts for public works into which either department enters on or after the operative date specified in section 5 of this 2023 Act.

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

(2) The Director of the Oregon Department of Administrative Services and the Director of Transportation 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 directors to undertake and exercise all of the duties, functions and powers conferred on the directors by section 2 of this 2023 Act.

**SECTION 6.** 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.

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**Passed by House June 14, 2023**

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

**Passed by Senate June 23, 2023**

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Rob Wagner, President of Senate

**Received by Governor:**

.....M,....., 2023

**Approved:**

.....M,....., 2023

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Tina Kotek, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2023

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Secretary of State