

House Bill 3332

Sponsored by Representatives RAYFIELD, GRAYBER; 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 **as introduced**.

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.

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.

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 an article, material or supply, including any preas-**
8 **sembled item, that a contractor brings to a construction project for incorporation into a**
9 **public improvement or public works or an article, material or supply a state contracting**
10 **agency acquires for a public use.**

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

12 (A) **For iron and steel products, that all manufacturing processes, from the initial melt-**
13 **ing stage through the application of coatings, occurred within the United States;**

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

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

16 (ii) **The cost of the components of the product that are mined, produced or manufactured**
17 **in the United States is more than 55 percent of the total cost of all components of the**
18 **product, unless the Oregon Department of Administrative Services or the Department of**
19 **Transportation by rule establishes a different standard for determining the minimum amount**
20 **of the product that must be manufactured within the United States; and**

21 (C) **For construction materials, that all manufacturing processes for the construction**
22 **material occurred within the United States.**

23 (2)(a) **A state contracting agency shall require in each public improvement contract or**
24 **contract for public works that steel, iron, coatings for steel and iron and manufactured**
25 **products that a contractor purchases for or uses in the public improvement or public works,**
26 **and that become part of a permanent structure, must be produced in the United States.**

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

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

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

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

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

17 **(B) Before making a finding under subparagraph (A) of this paragraph, the Director of**
18 **the Oregon Department of Administrative Services or the Director of Transportation, as**
19 **appropriate, shall issue a draft finding that includes a detailed written explanation of the**
20 **basis for the proposed waiver. At the earliest practicable time, the director shall give public**
21 **notice of the proposed waiver in a manner that the director determines will give adequate**
22 **notice to the public and to contractors that intend to submit, or have submitted, bids or**
23 **proposals for the public improvement or public works. The director shall allow seven calen-**
24 **dar days for public comment on the proposed waiver. If after considering public comment the**
25 **director determines to grant the waiver, the director shall provide public notice of the waiver**
26 **using the same method the director used to provide public notice of the proposed waiver.**

27 **(d) The director may make a finding under paragraph (c) of this subsection that applies**
28 **to a single public improvement contract or contract for public works, to a class of public**
29 **improvement contracts or contracts for public works or to a class of iron or steel products,**
30 **coatings or manufactured products. The director shall indicate the duration and applicability**
31 **of the director's finding in the document in which the director grants the waiver.**

32 **(e) The director may review and continue, amend or lift a waiver at any time. If the di-**
33 **rector applies a waiver to a class of public improvement contracts or contracts for public**
34 **works or to a class of iron or steel products, coatings or manufactured products, at least**
35 **every five years the director shall review and, if necessary, amend or lift the waiver. Before**
36 **continuing, amending or lifting a waiver under this paragraph, the director shall provide for**
37 **public notice and comment in accordance with paragraph (c)(B) of this subsection.**

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

42 **(3) The requirements set forth in this section are subject to applicable state and federal**
43 **trade agreements.**

44 **SECTION 3. Section 2 of this 2023 Act applies to procurements that a state contracting**
45 **agency advertises or solicits or, if the state contracting agency does not advertise or solicit**

1 the procurement, to public improvement contracts or contracts for public works into which
2 the state contracting agency enters on or after the operative date specified in section 4 of
3 this 2023 Act.

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

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

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

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