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ENGROSSED SUBSTITUTE HOUSE BILL 1282

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State of Washington

68th Legislature

2023 Regular Session

**By** House Capital Budget (originally sponsored by Representatives Duerr, Hackney, Berry, Ramel, Doglio, Reed, and Pollet; by request of Department of Commerce)

READ FIRST TIME 02/17/23.

1 AN ACT Relating to environmental and labor reporting for public  
2 building construction and renovation material; amending RCW  
3 43.88.0301; adding a new chapter to Title 39 RCW; creating new  
4 sections; and providing an expiration date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds and declares that:

7 (1) Washington state, through its extensive purchasing power, can  
8 reduce embodied carbon in the built environment, improve human and  
9 environmental health, grow economic competitiveness, and promote high  
10 labor standards in manufacturing by incorporating climate and other  
11 types of pollution impacts and the quality of working conditions into  
12 the procurement process.

13 (2) Washington state is home to multiple world-class  
14 manufacturers that are investing heavily in reducing the carbon  
15 intensity of their products and that provide family-wage jobs that  
16 are the foundation for a fair and robust economy. Washington's  
17 procurement practices should encourage manufacturers and others to  
18 meet high environmental and labor standards and reduce their  
19 environmental footprint.

20 (3) The private sector is increasingly demanding low carbon  
21 building materials that support good jobs in manufacturing. This

1 market demand has rapidly accelerated innovation and led to increased  
2 production of low carbon building materials. As one of the largest  
3 consumers of building materials, Washington state has an opportunity  
4 to leverage its purchasing power to do even more to send a clear  
5 signal to the market of the growing demand for low carbon building  
6 materials.

7 (4) With its low carbon electric grid and highly skilled  
8 workforce, Washington state is well-positioned to capture the growing  
9 demand for low carbon building materials and create and sustain a new  
10 generation of good, high-wage clean manufacturing jobs.

11 (5) Washington has demonstrated a deep commitment to ensuring  
12 that the transition to a low carbon economy is fair and creates  
13 family-wage jobs. Both the clean energy transformation act and the  
14 climate commitment act tie public investments in infrastructure to  
15 reducing greenhouse gas emissions. Integrating manufacturing working  
16 conditions into the procurement process reaffirms and is consistent  
17 with the state's commitment to a fair transition.

18 (6) A robust state and domestic supply of low carbon materials is  
19 critical for building a fair economy and meeting the needs of the low  
20 carbon transition, including securing the clean energy supply chain.

21 (7) Environmental product declarations are the best available  
22 tool for reporting product-specific environmental impacts using a  
23 life-cycle assessment and informing the procurement of low carbon  
24 building materials. Environmental product declarations cannot be used  
25 to compare products across different product categories or different  
26 functional units.

27 (8) The buy clean and buy fair policies established in this act  
28 are critical to reduce embodied carbon in the built environment, a  
29 goal identified by the Washington state 2021 energy strategy to meet  
30 the state's greenhouse gas emission limits, governor Inslee's  
31 Executive Order 20-01 on state efficiency and environmental  
32 performance, and the Pacific coast collaborative's pathbreaking low  
33 carbon construction task force.

34 (9) Reducing embodied carbon in the built environment requires a  
35 holistic, comprehensive approach that includes designing buildings  
36 with a lower-embodied carbon footprint and making lower carbon  
37 products. Policies like the buy clean and buy fair policies  
38 established in this act are an important tool for increasing the  
39 manufacture of lower carbon products.

1 (10) The 2021-2023 biennium budgets made critical progress on the  
2 buy clean and buy fair policies in this act by funding the creation  
3 of a publicly accessible database to facilitate reporting and promote  
4 transparency on building materials purchased for state-funded  
5 infrastructure projects and two large buy clean and buy fair pilot  
6 projects. This ongoing work to create a database to facilitate  
7 reporting of environmental impacts and labor conditions from pilot  
8 projects has provided a strong foundation to inform future work on  
9 buy clean and buy fair policies.

10 (11) Providing financial assistance to small manufacturers to  
11 support the production of environmental product declarations will  
12 help small manufacturers offset costs they might incur when pursuing  
13 state contracting as a result of the requirements of this act.

14 NEW SECTION. **Sec. 2.** The definitions in this section apply  
15 throughout this chapter unless the context clearly requires  
16 otherwise.

17 (1) "Actual production facilities" means the final manufacturing  
18 facility and the facilities at which production processes occur that  
19 contribute to 70 percent or more of the product's cradle-to-gate  
20 global warming potential, as reflected in the environmental product  
21 declaration.

22 (2) "Awarding authority" means:

23 (a) Institutions of higher education as defined in RCW  
24 28B.92.030;

25 (b) The department of enterprise services, the department of  
26 natural resources, the state parks and recreation commission, the  
27 department of fish and wildlife, and the department of  
28 transportation; and

29 (c) Any other state government agency that receives funding from  
30 the omnibus capital appropriations act for a public works project  
31 contracted directly by the state agency.

32 (3) "Covered product" includes:

33 (a) Structural concrete products, including ready mix, shotcrete,  
34 precast, and concrete masonry units;

35 (b) Reinforcing steel products, specifically rebar and  
36 posttensioning tendons;

37 (c) Structural steel products, specifically hot rolled sections,  
38 hollow sections, metal deck, and plate; and

1 (d) (i) Engineered wood products, such as cross-laminated timber  
2 per ANSI form no. PRG 320, glulam beams, laminated veneer lumber,  
3 parallel strand lumber, dowel laminated timber, nail laminated  
4 timber, glulam laminated timber, prefabricated wood joists per ASTM  
5 D5055, wood structural panel per product standard 1 or product  
6 standard 2, solid sawn lumber per product standard 20, structural  
7 composite lumber per ASTM D5456, and structural sawn lumber.

8 (ii) For the purposes of this subsection (3) (d):

9 (A) "ANSI" means the American national standards institute.

10 (B) "ASTM" means the American society for testing and materials.

11 (C) "Product standard" means a voluntary product standard  
12 published by the United States department of commerce national  
13 institute of standards and technology.

14 (4) "Covered project" means:

15 (a) A construction project larger than 50,000 gross square feet  
16 as defined in the Washington state building code, chapter 51-50 WAC;  
17 or

18 (b) A building renovation project where the cost is greater than  
19 50 percent of the assessed value and the project is larger than  
20 50,000 gross square feet of occupied or conditioned space as defined  
21 in the Washington state building code, chapter 51-50 WAC.

22 (5) "Department" means the department of commerce.

23 (6) "Employee" means any individual who is in an employment  
24 relationship with the organization.

25 (7) (a) "Environmental product declaration" means a type III  
26 environmental product declaration, as defined by the international  
27 organization for standardization standard 14025 or similarly robust  
28 life-cycle assessment methods that have uniform standards in data  
29 collection consistent with the international organization for  
30 standardization standard 14025, industry acceptance, and integrity.  
31 To the extent feasible, the environmental product declaration must be  
32 supply chain specific.

33 (b) For the purposes of this subsection, "supply chain specific"  
34 means an environmental product declaration that includes supply chain  
35 specific data for production processes that contribute 70 percent or  
36 more of a product's cradle-to-gate global warming potential, as  
37 defined in international organization for standardization standard  
38 21930, and reports the overall percentage of supply chain specific  
39 data included.

40 (8) "Full time" means an employee in a position that:

1 (a) The employer intends to be filled for at least 52 consecutive  
2 weeks or 12 consecutive months, excluding any leaves of absence; and

3 (b) Requires the employee to work, excluding overtime hours, 35  
4 hours per week for 52 consecutive weeks, 455 hours a quarter, or  
5 1,820 hours during a period of 12 consecutive months.

6 (9) "Health product declaration" means a supply chain specific  
7 health product declaration, as defined by the health product  
8 declaration open standard maintained by the health product  
9 declaration collaborative, that has robust methods for product  
10 manufacturers and their ingredient suppliers to uniformly report and  
11 disclose information about product contents and associated health  
12 information.

13 (10) "Part time" means an employee in a position that:

14 (a) The employer intends to be filled for at least 52 consecutive  
15 weeks or 12 consecutive months, excluding any leaves of absence; and

16 (b) Working hours are less than those required for a full-time  
17 employee, as defined in this section.

18 (11) "Product and facility specific report" means an  
19 environmental product declaration whereby the environmental impacts  
20 can be attributed to a single manufacturer and a specific  
21 manufacturing or production facility.

22 (12)(a) "Scope 2 greenhouse gas emissions" are indirect  
23 greenhouse gas emissions associated with the purchase of electricity,  
24 steam, heat, or cooling.

25 (b) For purposes of this section, "greenhouse gas" has the same  
26 meaning as in RCW 70A.45.010.

27 (13) "Supplier code of conduct" means a policy created by a  
28 manufacturer that outlines steps taken to ensure that its suppliers  
29 adhere to ethical practices, such as compliance with child and forced  
30 labor laws, antidiscrimination practices, freedom of association, and  
31 safe workplace conditions.

32 (14) "Temporary" means an employee in a position that is intended  
33 to be filled for a period of less than 52 consecutive weeks or 12  
34 consecutive months. Positions in seasonal employment are temporary  
35 positions.

36 (15) "Total case incident rate" means the number of work-related  
37 injuries per 100 full-time workers during a one-year period, as  
38 defined by the occupational safety and health administration. Total  
39 case incident rate is calculated by multiplying the number of  
40 occupational safety and health administration recordable injuries and

1 illnesses by 200,000 and dividing by number of hours worked by all  
2 employees.

3 (16) "Working conditions" means the average number of employees  
4 by employment type: Full time, part time, and temporary.

5 NEW SECTION. **Sec. 3.** (1)(a) Beginning July 1, 2024, an awarding  
6 authority must require in all newly executed construction contracts  
7 that the selected firm for a construction contract for a covered  
8 project larger than 100,000 gross square feet submit the following  
9 data for each covered product used before substantial completion:

- 10 (i) Product quantity;
- 11 (ii) A current environmental product declaration;
- 12 (iii) Health product declaration, if any, completed for the  
13 product;
- 14 (iv) Manufacturer name and location, including state or province  
15 and country;
- 16 (v) Supplier code of conduct, if any; and
- 17 (vi) Office of minority and women-owned business enterprises  
18 certification, if any.

19 (b) Beginning July 1, 2026, an awarding authority must require in  
20 all newly executed construction contracts that the selected firm for  
21 a construction contract for a covered project submit the data  
22 required by (a) of this subsection for each covered product used  
23 before substantial completion.

24 (c) The selected firm for a contract for a covered project shall  
25 provide the data required by this subsection for at least 90 percent  
26 of the cost of each of the covered products used in the project.

27 (2) The selected firm for a contract for a covered project is  
28 required to collect and submit from product suppliers the information  
29 required in subsection (1)(a)(ii) through (vi) of this section. The  
30 selected firm is not required to verify the information received from  
31 product suppliers.

32 (3)(a) Beginning July 1, 2024, an awarding authority must require  
33 in all newly executed construction contracts that the selected firm  
34 for a construction contract for a covered project larger than 100,000  
35 gross square feet to ask their suppliers to report for each covered  
36 product used before substantial completion:

- 37 (i) Names and locations, including state or province and country,  
38 of the actual production facilities; and

1 (ii) Working conditions at the actual production facilities for  
2 all employees, full-time employees, part-time employees, and  
3 temporary employees. In cases in which the supplier does not have  
4 this information, the selected firm for a contract for a covered  
5 project must ask suppliers to provide a report on steps taken to  
6 reasonably obtain the data and provide suppliers' self-reports to the  
7 awarding authority.

8 (b) Beginning July 1, 2026, an awarding authority must require in  
9 all newly executed construction contracts that the successful bidder  
10 for a construction contract for a covered project to meet the  
11 requirements of (a) of this subsection for each covered product used  
12 before substantial completion.

13 (c) The selected firm is not required to verify the information  
14 reported by product suppliers pursuant to this subsection.

15 (d) The selected firm for a contract for a covered project shall  
16 meet the requirement in (a) of this subsection for at least 90  
17 percent of the cost of each of the covered products used in the  
18 project.

19 (4) If a supply chain specific environmental product declaration  
20 is not available, a product and facility specific report may be  
21 submitted.

22 (5) This section does not apply to a covered product for a  
23 particular covered project if the awarding authority determines, upon  
24 written justification provided to the department, that the  
25 requirements in this section would cause a significant delay in  
26 completion, significant increase in overall project cost, or result  
27 in only one product supplier being able to provide the covered  
28 product.

29 (6) An awarding authority must include the information and  
30 reporting requirements in this section in a specification for bids  
31 for a covered project.

32 (7) Subject to funds appropriated for this specific purpose, the  
33 department may provide financial assistance to small businesses, as  
34 defined in RCW 19.85.020, to help offset the costs to the small  
35 business of producing an environmental product declaration required  
36 under this section. Such financial assistance supports the production  
37 of environmental product declarations and achievement of reductions  
38 of embodied carbon in the built environment while ensuring that small  
39 manufacturers are not put at a competitive disadvantage in state  
40 contracting as a result of the requirements of this chapter.

1 (8) Compliance with the requirements in this section may not be  
2 used as a basis for a waiver from apprenticeship utilization  
3 requirements in any other statute, rule, regulation, or law.

4 NEW SECTION. **Sec. 4.** By July 1, 2024, and to the extent  
5 practicable, specifications for a bid or proposal for a project  
6 contract by an awarding authority may only include performance-based  
7 specifications for concrete used as a structural material. Awarding  
8 authorities may continue to use prescriptive specifications on  
9 structural elements to support special designs and emerging  
10 technology implementation.

11 NEW SECTION. **Sec. 5.** (1) The department must continue to  
12 develop and maintain the publicly accessible database funded by the  
13 2021-2023 omnibus operating appropriations act and created by the  
14 department in conjunction with the University of Washington college  
15 of built environments for selected firms for contracts for covered  
16 projects to submit the data required in section 3 of this act to the  
17 department and to promote transparency.

18 (2) The database maintained pursuant to subsection (1) of this  
19 section must publish global warming potential as reported in the  
20 environmental product declarations.

21 (3) By July 1, 2024, the department must:

22 (a) Further elaborate covered product definitions using  
23 applicable material industry standards;

24 (b) Develop measurement and reporting standards to ensure that  
25 data is consistent and comparable, including standards for reporting  
26 product quantities;

27 (c) Create model language for specifications, bid documents, and  
28 contracts to support the implementation of section 3 of this act; and

29 (d) Produce an educational brief that:

30 (i) Provides an overview of embodied carbon;

31 (ii) Describes the appropriate use of environmental product  
32 declarations, including the necessary preconditions for environmental  
33 product declarations to be comparable;

34 (iii) Outlines reporting standards, including covered product  
35 definitions, standards for reporting product quantities, and working  
36 conditions;

37 (iv) Describes the data collection and reporting process for all  
38 information required in section 3 (1) (a) and (3) (a) of this act;



- 1 (v) Provides instructions for the use of the database; and
- 2 (vi) Lists applicable product category rules for covered
- 3 products.

4 (4) The department may contract for the use of nationally or  
5 internationally recognized databases of environmental product  
6 declarations for purposes of implementing this section.

7 NEW SECTION. **Sec. 6.** (1) By December 1, 2023, the department  
8 must convene a technical work group that includes the following  
9 representatives:

10 (a) One industry professional in design, one industry  
11 professional in structural design, one industry professional in  
12 specification, and one industry professional in construction who are  
13 recommended by leading associations of Washington business;

14 (b) One representative each from Washington manufacturers of:

15 (i) Steel;

16 (ii) Wood; and

17 (iii) Concrete;

18 (c) A representative from the department of enterprise services;

19 (d) A representative from the department of transportation;

20 (e) A representative from the department of ecology;

21 (f) One representative each from three environmental groups that  
22 focus on embodied carbon and climate change;

23 (g) A representative from a labor union that represents  
24 manufacturing workers;

25 (h) A representative from the minority and women-owned business  
26 community;

27 (i) A representative from the University of Washington college of  
28 built environments; and

29 (j) Representatives of other agencies and independent experts as  
30 necessary to meet the objectives of the work group as described in  
31 this section.

32 (2) The purpose of the technical work group is to identify  
33 opportunities for and barriers to growth of the use and production of  
34 low carbon materials, promote high labor standards in manufacturing,  
35 and preserve and expand low carbon materials manufacturing in  
36 Washington.

37 (3) By September 1, 2024, the technical work group must submit a  
38 report to the legislature and the governor that includes:

1 (a) A low carbon materials manufacturing plan that recommends  
2 policies to preserve and grow the in-state manufacturing of low  
3 carbon materials and accelerate industrial decarbonization. For this  
4 plan, the technical work group must:

5 (i) Examine barriers and opportunities to maintain and grow a  
6 robust in-state supply of low carbon building materials including,  
7 but not limited to, state and domestic supply of raw materials and  
8 other supply chain challenges, regulatory barriers, competitiveness  
9 of local and domestic manufacturers, cost, and data availability from  
10 local, state, national, and foreign product suppliers; and

11 (ii) Identify opportunities to encourage the continued conversion  
12 to lower carbon cements, including the use of performance-based  
13 specifications and allowing Type 1-L cement in specifications for  
14 public projects;

15 (b) Recommendations for consistent treatment in the reporting for  
16 covered products; and

17 (c) Consideration of how product life-cycle assessments conducted  
18 by project designers could be incorporated into future reporting.

19 (4) (a) By September 1, 2025, the technical work group must submit  
20 a report on policy recommendations, including any statutory changes  
21 needed, to the legislature and the governor. The report must consider  
22 policies to expand the use and production of low carbon materials and  
23 to preserve and expand low carbon materials manufacturing in  
24 Washington, including opportunities to encourage continued conversion  
25 to lower carbon blended cements in public projects.

26 (b) For this report, the technical work group must:

27 (i) Summarize data collected pursuant to section 3 of this act,  
28 the case study analysis funded by the 2021-2023 omnibus operating  
29 appropriations act, and the pilot projects funded by the 2021-2023  
30 omnibus capital appropriations act. The summary must include product  
31 quantities, global warming potential, health product declarations,  
32 supplier codes of conduct, and any obstacles to the implementation of  
33 this chapter;

34 (ii) Evaluate options for collecting reported working condition  
35 information from product suppliers, including hourly wages, employee  
36 benefits, and total case incident rates;

37 (iii) Make recommendations for improving environmental production  
38 declaration data quality including, but not limited to, integrating  
39 reporting on variability in facility, product, and upstream data for  
40 key processes;

1 (iv) Make recommendations for consideration of scope 2 greenhouse  
2 gas emissions mitigation through green power purchases, such as  
3 energy attribute certificates and power purchase agreements;

4 (v) Identify barriers and opportunities to the effective use of  
5 the database maintained under section 5 of this act and the data  
6 collected pursuant to this chapter;

7 (vi) Identify emerging and foreseeable trends in local, state,  
8 federal, and private policy on embodied carbon and the procurement  
9 and use of low carbon materials and opportunities to promote  
10 consistency across public and private embodied carbon and low carbon  
11 materials policies, rules, and regulations; and

12 (vii) Recommend approaches to designing lower embodied carbon  
13 state building projects.

14 (5) This section expires January 1, 2027.

15 **Sec. 7.** RCW 43.88.0301 and 2021 c 54 s 4 are each amended to  
16 read as follows:

17 (1) The office of financial management must include in its  
18 capital budget instructions (~~(, beginning with its instructions for~~  
19 ~~the 2003-05 capital budget,~~) a request for "yes" or "no" answers for  
20 the following additional informational questions from capital budget  
21 applicants for all proposed major capital construction projects  
22 valued over (~~(10 million dollars)~~) \$10,000,000 and required to  
23 complete a predesign:

24 (a) For proposed capital projects identified in this subsection  
25 that are located in or serving city or county planning under RCW  
26 36.70A.040:

27 (i) Whether the proposed capital project is identified in the  
28 host city or county comprehensive plan, including the capital  
29 facility plan, and implementing rules adopted under chapter 36.70A  
30 RCW;

31 (ii) Whether the proposed capital project is located within an  
32 adopted urban growth area:

33 (A) If at all located within an adopted urban growth area  
34 boundary, whether a project facilitates, accommodates, or attracts  
35 planned population and employment growth;

36 (B) If at all located outside an urban growth area boundary,  
37 whether the proposed capital project may create pressures for  
38 additional development;

1 (b) For proposed capital projects identified in this subsection  
2 that are requesting state funding:

3 (i) Whether there was regional coordination during project  
4 development;

5 (ii) Whether local and additional funds were leveraged;

6 (iii) Whether environmental outcomes and the reduction of adverse  
7 environmental impacts were examined.

8 (2) For projects subject to subsection (1) of this section, the  
9 office of financial management shall request the required information  
10 be provided during the predesign process of major capital  
11 construction projects to reduce long-term costs and increase process  
12 efficiency.

13 (3) The office of financial management, in fulfilling its duties  
14 under RCW 43.88.030(6) to create a capital budget document, must take  
15 into account information gathered under subsections (1) and (2) of  
16 this section in an effort to promote state capital facility  
17 expenditures that minimize unplanned or uncoordinated infrastructure  
18 and development costs, support economic and quality of life benefits  
19 for existing communities, and support local government planning  
20 efforts.

21 (4) The office of community development must provide staff  
22 support to the office of financial management and affected capital  
23 budget applicants to help collect data required by subsections (1)  
24 and (2) of this section.

25 (5) The office of financial management must include in its  
26 capital budget instructions, beginning with the instructions for the  
27 2025-2027 biennium, information informing awarding authorities, as  
28 defined in section 2 of this act, of the requirements of chapter  
29 39.--- RCW (the new chapter created in section 9 of this act),  
30 including the data and information requirements in section 3 of this  
31 act.

32 NEW SECTION. Sec. 8. This act may be known and cited as the buy  
33 clean and buy fair Washington act.

34 NEW SECTION. Sec. 9. Sections 2 through 6 of this act  
35 constitute a new chapter in Title 39 RCW.

36 NEW SECTION. Sec. 10. If any provision of this act or its  
37 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

--- **END** ---