
SENATE BILL 5322

State of Washington

68th Legislature

2023 Regular Session

By Senator Wellman; by request of Department of Commerce

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 current procurement practices put these manufacturers and others that
18 meet high environmental and labor standards at a competitive
19 disadvantage because the state treats them the same as manufacturers
20 that are not investing in reducing their environmental footprint or
21 that have poor labor practices.

1 (3) The private sector is increasingly demanding low carbon
2 building materials that support good jobs in manufacturing. This
3 market demand has rapidly accelerated innovation and led to increased
4 production of low carbon building materials. As one of the largest
5 consumers of building materials, Washington has an opportunity to
6 leverage its purchasing power to do even more to send a clear signal
7 to the market of the growing demand for low carbon building
8 materials.

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

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

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

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

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

37 (9) The 2021-2023 biennium budgets made critical progress on the
38 buy clean and buy fair policies in this act by funding the creation
39 of a publicly accessible database to facilitate reporting and promote
40 transparency on building materials purchased for state-funded

1 infrastructure projects and two large buy clean and buy fair pilot
2 projects. This ongoing work to create a database to facilitate
3 reporting of environmental impacts and labor conditions from pilot
4 projects has provided a strong foundation to inform future work on
5 buy clean and buy fair policies.

6 (10) Providing financial assistance to small manufacturers to
7 support the production of environmental product declarations will
8 ensure that small manufacturers are not put at a competitive
9 disadvantage in state contracting as a result of the requirements of
10 this act.

11 NEW SECTION. **Sec. 2.** The definitions in this section apply
12 throughout this chapter unless the context clearly requires
13 otherwise.

14 (1) "Actual production facilities" means the final manufacturing
15 facility and the facilities at which production processes occur that
16 contribute to 80 percent or more of the product's cradle-to-gate
17 global warming potential, as reflected in the environmental product
18 declaration.

19 (2) "Awarding authority" means:

20 (a) Institutions of higher education as defined in RCW
21 28B.92.030;

22 (b) The department of enterprise services, the department of
23 natural resources, the state parks and recreation commission, the
24 department of fish and wildlife, and the department of
25 transportation; and

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

29 (3) "Covered product" means:

30 (a) Structural concrete products, specifically ready mix,
31 shotcrete, precast, and concrete masonry units;

32 (b) Reinforcing steel products, specifically rebar and
33 posttensioning tendons;

34 (c) Structural steel products, specifically hot rolled sections,
35 hollow sections, and plate; and

36 (d) Engineered wood products, specifically cross-laminated
37 timber, glulam beams, laminated veneer lumber, and parallel strand
38 lumber.

39 (4) "Covered project" means:

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

4 (b) A building renovation project where the cost is greater than
5 50 percent of the assessed value and the project is larger than
6 50,000 gross square feet of occupied or conditioned space as defined
7 in the Washington state building code, chapter 51-50 WAC.

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

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

11 (7)(a) "Environmental product declaration" means a supply chain
12 specific type III environmental product declaration, as defined by
13 the international organization for standardization standard 14025 or
14 similarly robust life-cycle assessment methods that have uniform
15 standards in data collection consistent with the international
16 organization for standardization standard 14025, industry acceptance,
17 and integrity.

18 (b) For the purposes of this subsection, "supply chain specific"
19 means an environmental product declaration that includes supply chain
20 specific data for production processes that contribute 80 percent or
21 more of a product's cradle-to-gate global warming potential, as
22 defined in international organization for standardization standard
23 21930, and reports the overall percentage of supply chain specific
24 data included. For engineered wood products, "supply chain specific"
25 also means an environmental product declaration that reports:

26 (i) Any chain of custody certification;

27 (ii) Percent volume contribution to wood sourcing with forest
28 management certification;

29 (iii) Percent volume contribution to wood sourcing by state or
30 province and country; and

31 (iv) Percent volume contribution to wood sourcing by owner type,
32 e.g., federal, state, private, or other.

33 (8) "Health product declaration" means a supply chain specific
34 health product declaration, as defined by the health product
35 declaration open standard maintained by the health product
36 declaration collaborative, that has robust methods for product
37 manufacturers and their ingredient suppliers to uniformly report and
38 disclose information about product contents and associated health
39 information.

1 (9) (a) "Scope 2 greenhouse gas emissions" are indirect greenhouse
2 gas emissions associated with the purchase of electricity, steam,
3 heat, or cooling.

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

6 (10) "Supplier code of conduct" means a policy created by a
7 manufacturer that outlines steps taken to ensure that its suppliers
8 adhere to ethical practices, such as compliance with child and forced
9 labor laws, antidiscrimination practices, freedom of association, and
10 safe work place conditions.

11 (11) (a) "Working conditions" means the:

12 (i) Average number of employees by employment type: Full time,
13 part time, and temporary;

14 (ii) Average hourly wage, including all nondiscretionary wages
15 and bonuses, by quartiles;

16 (iii) Hours worked by weekly hour bands, 1-19 hours, 20-29 hours,
17 30-39 hours, 40-49 hours, 50-59 hours, and 60 or more hours;

18 (iv) Maximum number of hours that an employee can be required to
19 work per week; and

20 (v) Percent of employees covered by a collective bargaining
21 agreement.

22 (b) For the purpose of this subsection:

23 (i) "Average" means the mean value:

24 (A) For the two previous years; or

25 (B) If the business has been operational for less than two years,
26 since the business has been operational.

27 (ii) "Full time" means an employee with an employment contract
28 that is for at least 12 consecutive months and whose working hours
29 per week, month, or year are defined as full time according to
30 national law or practice regarding working time.

31 (iii) "Part time" means an employee with an employment contract
32 that is for at least 12 consecutive months and whose working hours
33 are less than those required for a full-time employee, as defined in
34 this section.

35 (iv) "Temporary" means an employee who has an employment contract
36 that is for fewer than 12 months or who is terminated by a specific
37 event including, but not limited to, the end of a project or the
38 return of replaced employees.

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

6 (i) Product quantity;

7 (ii) A current environmental product declaration;

8 (iii) Health product declaration, if any, completed for the
9 product;

10 (iv) Manufacturer name and location, including state or province
11 and country;

12 (v) Supplier code of conduct, if any; and

13 (vi) Office of minority and women-owned business enterprises
14 certification, if any.

15 (b) Beginning July 1, 2026, an awarding authority shall require
16 in all newly executed construction contracts that the selected firm
17 for a construction contract for a covered project to submit the data
18 required by (a) of this subsection for each covered product used
19 before substantial completion.

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

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

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

33 (i) Names and locations, including state or province and country,
34 of the actual production facilities; and

35 (ii) Working conditions at the actual production facilities for
36 all employees. In cases in which the supplier does not have this
37 information, the selected firm for a contract for a covered project
38 must ask suppliers to provide a report on steps taken to reasonably
39 obtain the data and provide suppliers' self-reports to the awarding
40 authority.

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

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

8 (d) The selected firm for a contract for a covered project shall
9 meet the requirement in (a) of this subsection for at least 90
10 percent of the cost of each of the covered products used in the
11 project.

12 (4) This section does not apply to a covered product for a
13 particular covered project if the awarding authority determines, upon
14 written justification provided to the department, that the
15 requirements in this section would cause a significant delay in
16 completion, significant increase in overall project cost, or result
17 in only one product supplier being able to provide the covered
18 product.

19 (5) An awarding authority must include the information and
20 reporting requirements in this section in a specification for bids
21 for a covered project.

22 (6) Subject to funds appropriated for this specific purpose, the
23 department may provide financial assistance to small businesses, as
24 defined in RCW 19.85.020, to help offset the costs to the small
25 business of producing an environmental product declaration required
26 under this section. Such financial assistance supports the production
27 of environmental product declarations and achievement of reductions
28 of embodied carbon in the built environment while ensuring that small
29 manufacturers are not put at a competitive disadvantage in state
30 contracting as a result of the requirements of this chapter.

31 (7) Compliance with the requirements in this section may not be
32 used as a basis for a waiver from apprenticeship utilization
33 requirements in any other statute, rule, regulation, or law.

34 NEW SECTION. **Sec. 4.** By July 1, 2024, and to the extent
35 practicable, specifications for a bid or proposal for a project
36 contract by an awarding authority may only include performance-based
37 specifications for concrete used as a structural material. Awarding
38 authorities may continue to use prescriptive specifications on

1 structural elements to support special designs and emerging
2 technology implementation.

3 NEW SECTION. **Sec. 5.** (1) The department must continue to
4 develop and maintain the publicly accessible database funded by the
5 2021-2023 omnibus operating appropriations act and created by the
6 department in conjunction with the University of Washington college
7 of built environments for selected firms for contracts for covered
8 projects to submit the data required in section 3 of this act to the
9 department and to promote transparency. The department may consult
10 with the University of Washington college of built environments.

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

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

15 (a) Further elaborate covered product definitions using
16 applicable material industry standards;

17 (b) Develop measurement and reporting standards to ensure that
18 data is consistent and comparable, including standards for reporting
19 product quantities;

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

22 (d) Produce an educational brief that:

23 (i) Provides an overview of embodied carbon;

24 (ii) Describes the appropriate use of environmental product
25 declarations, including the necessary preconditions for environmental
26 product declarations to be comparable;

27 (iii) Outlines reporting standards, including covered product
28 definitions, standards for reporting product quantities, and working
29 conditions;

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

32 (v) Provides instructions for the use of the database; and

33 (vi) Lists applicable product category rules for covered
34 products.

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

1 NEW SECTION. **Sec. 6.** (1) By December 1, 2023, the department
2 must convene a buy clean and buy fair work group that includes
3 representatives from:

4 (a) Industry professionals recommended by leading associations of
5 Washington business in design, specification, and construction;

6 (b) Washington manufacturers;

7 (c) Manufacturing associations;

8 (d) The department of enterprise services;

9 (e) The department of transportation;

10 (f) The department of ecology;

11 (g) Environmental groups;

12 (h) Labor unions, including at least one representative that
13 represents manufacturing workers;

14 (i) The minority and women-owned business community;

15 (j) The University of Washington college of built environments;

16 and

17 (k) Other agencies and independent experts as necessary to meet
18 the objectives of the work group as defined in subsection (4) of this
19 section.

20 (2) The department may contract with the University of Washington
21 college of built environments in convening the work group.

22 (3) The purpose of the work group is to identify opportunities
23 and barriers to grow the use and production of low carbon materials,
24 to promote high labor standards in manufacturing, and to preserve and
25 to expand low carbon materials manufacturing in Washington.

26 (4)(a) By September 1, 2024, the buy clean and buy fair work
27 group must submit a low carbon materials manufacturing plan report to
28 the legislature and the governor. The report must recommend policies
29 to preserve and grow the in-state manufacturing of low carbon
30 materials.

31 (b) For this report, the buy clean and buy fair work group must:

32 (i) Examine barriers and opportunities to maintain and grow a
33 robust in-state supply of low carbon building materials including,
34 but not limited to, state and domestic supply of raw materials and
35 other supply chain challenges, regulatory barriers, competitiveness
36 of local and domestic manufacturers, cost, and data availability from
37 local, state, national, and foreign product suppliers; and

38 (ii) Identify opportunities to encourage the continued conversion
39 to lower carbon cements, including the use of performance-based

1 specifications and allowing Type 1-L cement in specifications for
2 public projects.

3 (5) (a) By September 1, 2025, the buy clean and buy fair work
4 group must submit a report on policy recommendations, including any
5 statutory changes needed, to the legislature and the governor. The
6 report must consider policies to leverage public procurement to
7 expand the use and production of low carbon materials, to promote
8 high labor standards in manufacturing, and to preserve and expand low
9 carbon materials manufacturing in Washington, including opportunities
10 to encourage continued conversion to lower carbon blended cements in
11 public projects.

12 (b) For this report, the buy clean and buy fair work group must:

13 (i) Summarize data collected pursuant to section 3 of this act,
14 the case study analysis funded by the 2021-2023 omnibus operating
15 appropriations act, and the pilot projects funded by the 2021-2023
16 omnibus capital appropriations act, including product quantities,
17 global warming potential, health product declarations, supplier codes
18 of conduct, working conditions, and any obstacles to the
19 implementation of this chapter;

20 (ii) Make recommendations for improving environmental production
21 declaration data quality including, but not limited to, integrating
22 reporting on variability in facility, product, and upstream data for
23 key processes;

24 (iii) Make recommendations for consideration of scope 2
25 greenhouse gas emissions mitigation through green power purchases,
26 such as energy attribute certificates and power purchase agreements;

27 (iv) Identify barriers and opportunities to the effective use of
28 the database maintained under section 5 of this act and the data
29 collected pursuant to this chapter; and

30 (v) Survey the regulatory landscape to identify areas of
31 alignment and discrepancy between local, state, federal, and private
32 policy on embodied carbon and the procurement and use of low carbon
33 materials and identify opportunities to promote consistency across
34 public and private embodied carbon and low carbon materials policies,
35 rules, and regulations.

36 (6) This section expires January 1, 2027.

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

1 (1) The office of financial management must include in its
2 capital budget instructions, beginning with its instructions for the
3 2003-05 capital budget, a request for "yes" or "no" answers for the
4 following additional informational questions from capital budget
5 applicants for all proposed major capital construction projects
6 valued over (~~10 million dollars~~) \$10,000,000 and required to
7 complete a predesign:

8 (a) For proposed capital projects identified in this subsection
9 that are located in or serving city or county planning under RCW
10 36.70A.040:

11 (i) Whether the proposed capital project is identified in the
12 host city or county comprehensive plan, including the capital
13 facility plan, and implementing rules adopted under chapter 36.70A
14 RCW;

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

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

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

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

25 (i) Whether there was regional coordination during project
26 development;

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

28 (iii) Whether environmental outcomes and the reduction of adverse
29 environmental impacts were examined.

30 (2) For projects subject to subsection (1) of this section, the
31 office of financial management shall request the required information
32 be provided during the predesign process of major capital
33 construction projects to reduce long-term costs and increase process
34 efficiency.

35 (3) The office of financial management, in fulfilling its duties
36 under RCW 43.88.030(6) to create a capital budget document, must take
37 into account information gathered under subsections (1) and (2) of
38 this section in an effort to promote state capital facility
39 expenditures that minimize unplanned or uncoordinated infrastructure
40 and development costs, support economic and quality of life benefits

1 for existing communities, and support local government planning
2 efforts.

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

7 (5) The office of financial management must include in its
8 capital budget instructions, beginning with the instructions for the
9 2025-2027 biennium, information informing awarding authorities, as
10 defined in section 2 of this act, of the requirements of chapter
11 39.--- RCW (the new chapter created in section 9 of this act),
12 including the data and information requirements in section 3 of this
13 act.

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

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

18 NEW SECTION. Sec. 10. If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

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