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## Capital Budget Committee

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### HB 2744

**Brief Description:** Improving environmental and social outcomes associated with the production of building materials.

**Sponsors:** Representatives Doglio, Duerr, Davis, Fitzgibbon and Ramel.

#### Brief Summary of Bill

- Requires bidders of contracts for large construction and transportation projects to provide an environmental product declaration for eligible materials and report on their compliance, and their subcontractor's compliance, with domestic labor law in countries where they produce goods or services.
- Requires state agencies to award the contracts for large projects to the bid with the lower carbon eligible material when the bid prices are lower than the engineer's estimate.
- Requires the Department of Commerce to establish and publish a maximum acceptable global warming potential for each category of eligible materials.

**Hearing Date:** 1/28/20

**Staff:** Kelci Karl-Robinson (786-7116).

#### **Background:**

##### Public Works Projects.

Public works projects include construction, renovation, remodeling, and repair, other than maintenance, of real property at the cost of the state or a municipality. The capital budget provides direct appropriations and grants to state agencies, other governmental entities, and nonprofit organizations for public works projects. The transportation budget provides funding to construct and preserve roads and bridges, ferries and terminals and freight rail. Typical materials used in those projects may include concrete, steel, and other materials. Most public works projects are procured using the design-bid-build procedure when a governmental entity selects an architectural engineering firm to develop drawings and specifications for the project along with

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an estimate of the cost, then the construction contract is awarded to the lowest responsible bidder. The contractor is required to follow the specifications and drawings and may use whatever means to do so as long as the materials meet the specifications.

#### Global Warming Potential.

The Global Warming Potential (GWP) compares the global warming impacts of different gases. The United States Environmental Protection Agency (EPA) and the Department of Ecology (ECY) identify carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride as greenhouse gases (GHG) because of their capacity to trap heat in the Earth's atmosphere. According to the EPA, the GWP of each GHG is a function of how much of the gas is concentrated in the atmosphere, how long the gas stays in the atmosphere, and how strongly the particular gas affects global atmospheric temperatures. Under state law, the GWP of a gas is measured in terms of the equivalence to the emission of an identical volume of carbon dioxide over a 100-year timeframe.

#### Environmental Product Declaration.

An Environmental Product Declaration (EPD) is a report providing what a product is made of and how it impacts targeted aspects of the environment, including the manufacturing impacts, transportation impacts, and construction impacts. EPDs are created according to internationally recognized standards and are third-party verified or self-declared. EPDs can be based on industry averages or specific to individual products or facilities.

#### Labor Laws.

Several laws address employment standards. The International Labour Organization within the United Nations maintains and develops a system of international labor standards.

#### The State Building Code.

The State Building Code (SBC) provides statewide minimum performance standards and requirements for construction and construction materials, consistent with accepted standards of engineering, fire, and life safety. The SBC is comprised of model codes, adopted by reference in statute, as well as rules developed and adopted by the State Building Code Council (Council). The Council is responsible for adopting, amending, and maintaining as appropriate the model codes adopted by reference. The Council reviews updated editions of model codes on a three-year cycle.

#### Buy Clean Study and Pilot.

The 2018 Supplemental Capital Budget included funding for a Buy Clean study and a pilot project. The University of Washington, in collaboration with Central Washington University, Washington State University and the Department of Enterprise Services, submitted a report analyzing existing embodied carbon policy and proposing methods to categorize structural materials. The Department of Enterprise Services and the awarding authorities of four capital projects are collaborating with the University of Washington to test the proposed methods and the availability of EPDs.

### **Summary of Bill:**

#### Global Warming Potential.

By January 1, 2023, the Department of Commerce (Department) must establish and publish a maximum acceptable global warming potential (MAGWP) for each category of eligible materials.

Eligible material categories include:

- concrete;
- carbon steel rebar;
- structural steel;
- unit masonry;
- wood; and
- gauge metal products for roof and floor decking, wall studs, and floor system studs.

The Department must review and downwardly adjust the MAGWP every three years until the MAGWP reaches zero global warming potential by 2050.

#### Public Works Projects.

Beginning January 1, 2023, when awarding contracts for eligible projects that feature an eligible primary structural material that does not exceed the MAGWP, awarding authorities must:

- Award the bid with the lower carbon eligible primary structural material when there are bid prices lower than the engineer's estimate.
- Consider awarding a contract to the bid with the lower carbon eligible primary structural material if the bid is no greater than 15 percent of the lowest bid.
- May award a contract to the bid with the lower carbon eligible primary structural material if the bid is greater than 15 percent of the lowest bid.

Awarding authorities include:

- state agencies;
- institutions of higher education; and
- nonprofit organizations receiving funding from the capital budget.

Eligible projects include:

- A construction project larger than 5,000 gross square feet or a building renovation when the cost is greater than 50 percent of the assessed value.
- A transportation system project funded or carried out by the Department of Transportation that costs greater than \$1 million and uses more than a de minimis amount of eligible materials.

Beginning January 1, 2023, bid specifications for a project from a state agency, city, county, town or other municipal corporation may only include performance-based specifications for the desired outcomes related to the strength, durability, permeability or other attribute in the functional use of concrete and unit masonry products as a structural material.

#### Environmental Product Declaration.

Beginning January 1, 2022, bidders for contracts for eligible projects must submit a facility-specific Environmental Product Declaration (EPD), or similarly acceptable document, for each eligible material category to be used on the project. Subject to funds available, the Department may provide financial assistance to small businesses in producing an EPD. Bidders are encouraged to submit EPDs beginning July 1, 2020.

Labor Laws.

Beginning January 1, 2022, bidders or proposers of contracts for eligible projects must report on their compliance, and their subcontractors' compliance, with domestic labor law in countries where they produce goods or services.

Other Provisions.

The Office of Financial Management shall incorporate requirements for state agencies to consider lower carbon building materials and domestic labor law compliance declarations within existing business processes and tools.

Awarding authorities must strive to achieve a continuous reduction of emissions over time.

To the extent practicable, the State Building Code Council shall adopt rules that do not include or require prescriptive specifications as to the manufacturing process, design features, technologies or proportion of concrete or unit masonry used as a structural material.

The Department must submit a report to the Legislature by January 1, 2025, addressing obstacles to the implementation of new EPD and global warming potential requirements, and the effectiveness of the new EPD and global warming potential requirements in reducing global warming potential.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.