

SENATE BILL REPORT

SB 5659

As of January 28, 2022

Title: An act relating to establishing climate and labor standards for building materials used in state public works projects.

Brief Description: Establishing climate and labor standards for building materials used in state public works projects.

Sponsors: Senators Wellman, Lovelett, Hasegawa, Nguyen, Nobles, Saldaña and Wilson, C..

Brief History:

Committee Activity: State Government & Elections: 1/28/22.

Brief Summary of Bill

- Requires the Department of Commerce to establish guidance for any awarding authority regarding a maximum acceptable global warming potential for each eligible product.
- Adds environmental and labor requirements to the procurement process for certain public works contracts entered into on or after July 1, 2024.

SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

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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. Most public works projects are subject to public works laws and procured using the design-bid-build procedure where a governmental entity selects an architectural engineering firm to develop drawings and specifications for the project along with an estimate of the cost, then the construction contract is awarded to the lowest responsible bidder. Public works contracts that meet certain criteria may be awarded

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through alternative contracting procedures in which the selection of a contractor is based on factors other than low bid. There are three alternative procedures authorized by law—design-build, job order contracting, and general contractor/construction manager. Contractors are required to follow the specifications and drawings and may use whatever means to do so as long as the materials meet the specifications. Typical materials used in public works projects may include concrete, steel, and other materials.

Global Warming Potential. The Global Warming Potential (GWP) compares the global warming impacts of different greenhouse gases. The United States Environmental Protection Agency and the Department of Ecology identify carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride as greenhouse gases because of their capacity to trap heat in the Earth's atmosphere.

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.

Summary of Bill: Department of Commerce. By January 1, 2024, the Department of Commerce (Commerce), in consultation with the Department of Ecology, must establish guidance for any awarding authority regarding a maximum acceptable GWP for each eligible product. The maximum acceptable GWP must be set at the 20th percentile value for each eligible product category, determined by consulting with nationally or internationally recognized databases of EPDs of like performance and quality materials. Commerce must maintain a list of relevant product category rules and express the maximum acceptable GWP as a number that states the GWP for each eligible product by product category rule. Commerce must submit a report by January 1, 2024, to the Legislature describing the method used to develop the maximum acceptable GWP.

By January 1, 2027, and every three years thereafter, Commerce must review the maximum acceptable GWP and may adjust that number downward for any eligible product to reflect industry improvements.

By January 1, 2026, Commerce must submit a report to the Legislature on any obstacles to the implementation of this act, effectiveness in reducing the embodied emissions from public works, and the compliance of suppliers and eligible products with the labor standards.

Public Works Projects. Additional requirements are added to the procurement process for certain public works contracts entered into on or after July 1, 2024.

Environmental Requirements. Awarding authorities must include in a specification for bids for eligible projects that the GWP for an eligible product does not exceed the maximum acceptable GWP as determined by Commerce. A successful bidder must submit a current EPD for each eligible product to be used. No installation of an eligible product may occur until the EPD is submitted.

The requirements may be waived if the awarding authority determines that an emergency exists or provides written justification, published on the awarding authorities website, outlining that requiring those eligible products to comply would be technically infeasible, result in significant increase in project costs or a delay in completion, or would result in only one source or manufacturer being able to provide the type of product needed by the state.

Labor Requirements. Awarding authorities must require a successful bidder report on their suppliers for eligible products' compliance with the International Labour Organization's core labor standards as those standards existed on January 1, 2022. Successful bidders may meet the requirements by:

- providing supplier codes of conduct from manufacturers; or
- asking the supplier to provide a report on their measures taken to comply with the standards if they do not have a code of conduct.

Between July 1, 2022 and June 20, 2024, awarding authorities must encourage, but may not require, successful bidders to comply with these requirements.

Definitions. Eligible product includes any of the following:

- structural concrete, specifically ready mix, shotcrete, precast, and concrete masonry units;
- reinforcing steel, specifically rebar and post-tensioning tendons;
- structural steel, specifically hot rolled sections, hollow sections, plate, and cold formed; and
- engineered wood, specifically composite lumber and mass timber.

Awarding authority includes any of the following:

- a state agency for a contract for a public works project that is subject to public works chapter law or alternative public works contracting procedures chapter law; or
- the governing boards of the institutions of higher education for a public works project that is subject to public works chapter law or alternative public works contracting procedures chapter law.

"Eligible project" means a project that the awarding authority determines will require eligible materials.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Washington State has always had a decent report card from the society of engineers but currently we are at a C-. There is a large amount of money invested in our state infrastructure. This is an opportunity to look at the purchases for these projects to address the embodied carbon in those materials. Embodied carbon is the carbon footprint of the building/infrastructure project before it becomes operational. Minimizing embodied carbon in the build environment is a goal called out in the state strategy and Executive Order 20-01 that requires state agencies to consider the embodied carbon in new construction. The State's Efficiency and Environmental Performance office (SEEP) is leading this work with the University of Washington to start this work. Industry has come forward and I am listening and want them to know that industry must be involved in this work to have it done well. I would like to set the table during interim to discuss this work more.

CON: We see the importance of decarbonizing the build environment and achieving state, national and international climate goals. We appreciate Washington's leadership in supporting the production of mass timber and forest health issues that are also related to climate change by creating markets for wood products. Impacted industries need to be involved in the conversation. This bill goes further than existing International Organization for Standardization compliant environmental product declarations and conflates issues related to carbon and the building environment and forest practices. Wood has a low level of embodied carbon and a high level of stored carbon so any efforts to reduce embodied carbon has extremely high cost with wood with very low overall climate impact. We should avoid policies that would make wood less competitive in the marketplace.

OTHER: We spent the last decade working to understand how to reduce and ultimately eliminate the environmental impact of building materials, specifically embodied carbon which is often overlooked. These emissions are the result of consuming materials used to construct buildings and infrastructure and these emissions are primarily generated from industrial manufacturing and have a global and local environmental impact. Action on embodied carbon is urgent and we look forward to the work moving forward. This bill is generally aligned with embodied carbon policies that we see across the United States. We think it is important to consider inclusion of a grant program to provide support small and midsize manufacturers to provide equitable compliance. Ideas to improve implementation: a centralized database will be an important component to support data tracking, compliance and reporting; suggest limiting required reporting to projects over a specific square foot threshold; and having ongoing stakeholder engagement could strengthen this bill and

increase market availability for lower carbon materials. We look forward to building on the work that we have done to have low carbon construction.

Persons Testifying: PRO: Senator Lisa Wellman, Prime Sponsor.

CON: Rachael Jamison, American Wood Council; Jason Callahan, Washington Forest Protection Association.

OTHER: Kate Simonen, Carbon Leadership Forum and Professor and Chair of the Department of Architecture at the University; Hanna Waterstrat, Washington State Department of Commerce; Stacy Smedley, Building Transparency.

Persons Signed In To Testify But Not Testifying: CON: Max Puchtel, American Institute of Steel Construction; Pat Jablonski, Nucor Steel; Jerry VanderWood, Associated General Contractors; Peter Godlewski, Association of Washington Business; Bruce Chattin, WA Aggregates & Concrete Association; Matthew Hinck, CalPortland Company; Heath Heikkila, American Resource Council.

OTHER: Charlie Brown, Puget Sound Schools Coalition; Darcy Nonemacher, Washington Environmental Council; Willa Jeffers, Sierra Club; Jessica Koski, BlueGreen Alliance.