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**SENATE BILL 5366**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senators Stanford, Das, Hasegawa, Hunt, Kuderer, Lovelett, Nguyen, Saldaña, and Wellman

Read first time 01/28/21. Referred to Committee on State Government & Elections.

1 AN ACT Relating to improving environmental and social outcomes  
2 with the production of building materials; adding a new chapter to  
3 Title 39 RCW; and providing an expiration date.

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

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

6 (1) Washington state, through its extensive purchasing power, can  
7 accelerate necessary greenhouse gas reductions, improve human and  
8 environmental health, grow economic competitiveness, and promote high  
9 labor standards in manufacturing by incorporating climate and other  
10 types of pollution impacts and the quality of working conditions into  
11 the procurement process.

12 (2) Washington state does not currently spend public dollars for  
13 materials on state-funded infrastructure projects in a way that is  
14 consistent with the state's carbon reduction goals or its high  
15 environmental and labor standards. Meanwhile, the private sector is  
16 increasingly demanding building materials that reduce carbon and  
17 other types of pollution and support good jobs in manufacturing. For  
18 state spending, manufacturers that exploit workers and the  
19 environment are treated the same as manufacturers that meet high  
20 environmental and labor standards. This treatment puts manufacturers  
21 that invest in emissions reduction technologies, other pollution

1 controls, and a 21st century workforce at a competitive disadvantage  
2 for state projects.

3 (3) Incorporating carbon pollution, other types of pollution  
4 impacts, and working conditions into the procurement process will  
5 level the playing field for manufacturers that meet high  
6 environmental and labor standards. This process will encourage other  
7 manufacturers to reduce greenhouse gas emissions, invest in pollution  
8 controls, and improve working conditions while growing the demand for  
9 ethically produced materials with a smaller environmental footprint.

10 (4) Washington state is already home to multiple world-class  
11 manufacturing facilities and with a low carbon electric grid and  
12 highly skilled workforce, the state is well-positioned to capture the  
13 growing demand for low carbon materials and create and sustain a new  
14 generation of good, high-wage clean manufacturing jobs. By leveling  
15 the playing field for manufacturers that meet high environmental and  
16 labor standards and meeting the growing demand for ethically and  
17 sustainably produced materials, Washington's manufacturing base will  
18 continue to expand.

19 (5) Incorporating emissions and working conditions into the  
20 procurement process will also improve the state's ability to make  
21 purchasing decisions that align with its carbon reduction goals and  
22 economic development goals.

23 (6) Great quantities of greenhouse gas emissions are released  
24 during the manufacturing of building materials and the state and  
25 local government are among the largest consumers of these building  
26 materials.

27 (7) The legislature has committed to carbon reduction measures by  
28 requiring action by public agencies. Those actions do not currently  
29 encourage public dollars to be spent in a way that is consistent with  
30 the state's carbon reduction goals as it relates to the global  
31 warming potential embedded within the materials procured for state-  
32 funded infrastructure projects.

33 (8) The buy clean and buy fair policies established in this  
34 chapter are critical to reduce embodied carbon in the built  
35 environment, a goal identified in the Washington state 2021 energy  
36 strategy to meet the state's greenhouse gas emission limits and  
37 governor Inslee's Executive Order 18-01 on state efficiency and  
38 environmental performance.

39 (9) Providing financial assistance to small manufacturers to  
40 support the production of environmental product declarations will

1 ensure that small manufacturers are not put at a competitive  
2 disadvantage in state contracting as a result of the requirements of  
3 this chapter.

4 NEW SECTION. **Sec. 2.** The definitions in this section apply  
5 throughout this chapter unless the context clearly requires  
6 otherwise.

7 (1) "Awarding authority" means:

8 (a) The department of enterprise services;

9 (b) Institutions of higher education as defined in RCW  
10 28B.92.030;

11 (c) Natural resource agencies, including the department of  
12 natural resources, the state parks and recreation commission, and the  
13 department of fish and wildlife;

14 (d) Any other state governmental entity that receives funding  
15 from the omnibus capital appropriations act for a public works  
16 project contracted directly by the state agency; and

17 (e) The department of transportation.

18 (2) "Covered product" means:

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

21 (b) Reinforcing steel products, specifically rebar and post  
22 tensioning tendons;

23 (c) Structural steel products, specifically hot rolled sections,  
24 hollow sections, plate, and cold formed; and

25 (d) Engineered wood products, specifically composite lumber and  
26 mass timber.

27 (3) "Covered project" means:

28 (a) A construction project larger than 25,000 gross square feet  
29 of space as defined in the Washington state building code, chapter  
30 51-50 WAC; or

31 (b) A building renovation project where the cost is greater than  
32 50 percent of the assessed value and the project is larger than  
33 25,000 gross square feet of occupied or conditioned space as defined  
34 in the Washington state building code, chapter 51-50 WAC.

35 (4) "Department" means the department of commerce.

36 (5) "Employee" means any individual who is in an employment  
37 relationship with the organization, according to national law or its  
38 application.

1 (6) "Environmental product declaration" means a supply chain  
2 specific type III environmental product declaration as defined by the  
3 international organization for standardization standard 14025 or  
4 similarly robust life-cycle assessment methods that have uniform  
5 standards in data collection consistent with the international  
6 organization for standardization standard 14025, industry acceptance,  
7 and integrity.

8 (7) "Greenhouse gas" has the same meaning as in RCW 70A.45.010.

9 (8) "International labor organization's four fundamental  
10 principles and rights at work" means: Effective abolition of child  
11 labor; elimination of discrimination in respect of employment and  
12 occupation; elimination of all forms of forced or compulsory labor;  
13 and freedom of association and the effective recognition of the right  
14 to collective bargaining.

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

23 (a) Any chain of custody certification;

24 (b) Percent volume contribution to wood sourcing with forest  
25 management certification;

26 (c) Percent volume contribution to wood sourcing by state or  
27 province and country; and

28 (d) Percent volume contribution to wood sourcing by owner type,  
29 e.g., federal, state, private, or other.

30 NEW SECTION. **Sec. 3.** (1)(a) Beginning July 1, 2021, an awarding  
31 authority shall require the selected firm for a contract for a  
32 covered project to submit the following data for each covered product  
33 used for which an environmental product declaration is available  
34 prior to the final construction retainage payment:

35 (i) A current environmental product declaration;

36 (ii) Product quantity and purchase amount;

37 (iii) Any health certifications completed for the product;

38 (iv) Manufacturer name and location, including state or province  
39 and country;

1 (v) Measures taken, if any, to promote the international labor  
2 organization's four fundamental principles and rights at work within  
3 the manufacturer supply chain;

4 (vi) Names and locations, including state or province and  
5 country, of the actual production facilities; and

6 (vii) Working conditions at the actual production facilities for  
7 all employees.

8 (b) Beginning July 1, 2022, an awarding authority shall require  
9 the selected firm for a contract for a covered project to submit the  
10 data required by (a) of this subsection for each covered product used  
11 prior to the final construction retainage payment.

12 (c) Beginning July 1, 2023, an awarding authority shall require  
13 the selected firm for a contract for a covered project to submit the  
14 data required by (a) of this subsection for each covered product used  
15 before the material is installed in the project.

16 (d) The selected firm for a contract for a covered project shall  
17 provide the data required by this subsection for at least 90 percent  
18 of the weight of the covered products used in the project.

19 (2) The University of Washington college of built environments  
20 shall create a publicly accessible database with projects anonymized  
21 for selected firms for contracts for covered projects to report the  
22 data required in subsection (1) of this section to the state and to  
23 promote transparency.

24 (3) If the selected firm for a contract cannot meet the  
25 requirements of subsection (1) of this section on the grounds of  
26 hardship, then the selected firm must report on its efforts taken to  
27 obtain the data, and it bears the burden of providing evidence that:

28 (a) The data does not exist in a form that is recorded or  
29 transferable;

30 (b) The requirements would be a hardship relative to the size of  
31 the firm or the product supplier based on a specific estimate of  
32 costs to collect and transfer the information; or

33 (c) The requirements would disrupt the selected firm's ability to  
34 perform its contractual obligations.

35 (4) The selected firm for a contract for a covered project shall  
36 provide all data required in subsection (1) of this section that can  
37 be obtained.

38 (5) Each awarding authority must annually transmit to the  
39 department a copy of all information that the awarding authority  
40 receives pursuant to subsection (3) of this section.

1 (6) All environmental product declarations must follow nationally  
2 or internationally recognized rules for producing environmental  
3 product declarations for the subject material, follow standards  
4 established for life-cycle analysis material reporting of global  
5 warming potentials, and conform to the international organization for  
6 standardization standard 14025, 14040, 14044, and 21930.

7 (7) Beginning January 1, 2026, environmental product declarations  
8 must report actual data quality assessments including variability in  
9 facility, product, and upstream data for key processes.

10 (8) The department may contract for the use of nationally or  
11 internationally recognized databases of environmental product  
12 declarations for purposes of implementing this section.

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

18 (10)(a) For the purposes of this section, "working conditions"  
19 means the:

20 (i) Average number of employees by employment type, full time,  
21 part time, and temporary;

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

24 (iii) Hours worked by weekly hour bands, 1-19 hours, 20-29 hours,  
25 30-39 hours, 40-49 hours, 50-59 hours, and 60 or more hours;

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

28 (v) Percent of employees covered by a collective bargaining  
29 agreement.

30 (b) For the purpose of this subsection, "average" means the mean  
31 value:

32 (i) For the two previous years; or

33 (ii) If the business has been operational for less than two  
34 years, since the business has been operational.

35 (11) For the purposes of this section, "production employees"  
36 means every employee with a production occupation, as defined by the  
37 standard occupation classification code 51-0000.

38 (12) For the purposes of this section, "nonsupervisory employees"  
39 means every employee except those whose responsibility it is to  
40 supervise, plan, or direct the work of others, including working

1 supervisors and group leaders who may be in charge of a group of  
2 employees, but whose supervisory functions are only incidental to  
3 their regular work.

4 (13) For the purposes of this section, a "full-time" employee  
5 means an employee with an employment contract that is for at least 12  
6 consecutive months and whose working hours per week, month, or year  
7 are defined as full time according to national law or practice  
8 regarding working time.

9 (14) For the purposes of this section, a "part-time" employee  
10 means an employee with an employment contract that is for at least 12  
11 consecutive months and whose working hours are less than required for  
12 a full-time employee, as defined in subsection (13) of this section.

13 (15) For the purposes of this section, a "temporary" employee  
14 means an employee who has an employment contract that is for fewer  
15 than 12 months or who is terminated by a specific event including,  
16 but not limited to, the end of a project or the return of replaced  
17 employees.

18 (16) An awarding authority may amend their fee schedule to  
19 accommodate this chapter.

20 (17) Subject to funds made available for this purpose, the  
21 department may provide financial assistance to small businesses, as  
22 defined in RCW 19.85.020, equal to no less than half of the cost to  
23 the small business of producing an environmental product declaration  
24 required under this section.

25 NEW SECTION. **Sec. 4.** The office of financial management must  
26 inform awarding authorities of the requirements of the policies in  
27 this chapter, including the data and information requirements in  
28 section 3 (1) and (3) of this act for selected firms for contracts  
29 for covered projects and the instructions for awarding authorities in  
30 section 3(5) of this act.

31 NEW SECTION. **Sec. 5.** (1) By January 1, 2025, and in conformance  
32 with RCW 43.01.036, the department shall submit to the legislature a  
33 report summarizing the data submitted in pursuit of this chapter,  
34 including product quantities and purchase amounts, global warming  
35 potential, labor conditions, health certifications, and any obstacles  
36 to the implementation of this chapter.

37 (2) This section expires January 1, 2026.

1        NEW SECTION.    **Sec. 6.**    This act may be known and cited as the buy  
2 clean and buy fair Washington act.

3        NEW SECTION.    **Sec. 7.**    Sections 1 through 6 of this act  
4 constitute a new chapter in Title 39 RCW.

5        NEW SECTION.    **Sec. 8.**    If any provision of this act or its  
6 application to any person or circumstance is held invalid, the  
7 remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected.

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