

HOUSE BILL REPORT

ESHB 1282

As Passed House:

March 8, 2023

Title: An act relating to environmental and labor reporting for public building construction and renovation material.

Brief Description: Requiring environmental and labor reporting for public building construction and renovation material.

Sponsors: House Committee on Capital Budget (originally sponsored by Representatives Duerr, Hackney, Berry, Ramel, Doglio, Reed and Pollet; by request of Department of Commerce).

Brief History:

Committee Activity:

Capital Budget: 2/2/23, 2/16/23 [DPS].

Floor Activity:

Passed House: 3/8/23, 57-40.

Brief Summary of Engrossed Substitute Bill

- Requires firms selected by state agencies and institutions of higher education for large construction or building renovation contracts to report Environmental Product Declarations, Health Product Declarations, working conditions, and other data.
- Directs the Department of Commerce to continue development of a public database for reported data.
- Establishes a technical work group.

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives Tharinger, Chair; Callan, Vice Chair; Hackney,

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Vice Chair; Alvarado, Bateman, Farivar, Fosse, Kloba, Leavitt, Morgan, Orwall, Peterson, Reed, Rule, Shavers and Stearns.

Minority Report: Do not pass. Signed by 12 members: Representatives Steele, Ranking Minority Member; Abbarno, Assistant Ranking Minority Member; Sandlin, Assistant Ranking Minority Member; Cheney, Christian, Couture, Dye, Eslick, McClintock, McEntire, Mosbrucker and Waters.

Minority Report: Without recommendation. Signed by 1 member: Representative Maycumber.

Staff: Dawn Eychaner (786-7135).

Background:

Environmental Product Declarations.

An Environmental Product Declaration (EPD) is a document that presents environmental information on the lifecycle of a product, including measurements of embodied greenhouse gas emissions of construction material and products. The EPDs are created according to internationally recognized standards and are third-party verified or self-declared and may be based on industry averages or be specific to individual products or facilities. The International Organization for Standardization (ISO) has published specifications for developing EPDs.

Health Product Declarations.

The Health Product Declaration Open Standard (HPDOS) is a standardized format for reporting building product content and associated health information. The HPDOS is managed by the Health Product Declaration Collaborative, a nonprofit member organization whose membership includes industry and advocacy representatives.

Office of Minority and Women's Business Enterprises.

The state Office of Minority and Women's Business Enterprises (OMWBE) certifies small businesses owned and controlled by minority, women, and socially and economically disadvantaged persons. State agencies and educational institutions must consult with the OMWBE to afford minority and women-owned businesses the maximum practicable opportunity to participate in public contracts for public works, goods, and services.

Buy Clean Pilots and Database.

Building upon a 2018 pilot, the 2021-23 biennial capital budget required the Department of Commerce (COM) to coordinate with the University of Washington College of Built Environments (UW) to test proposed methods and availability of EPDs and working condition information for manufacturing facilities that are primary producers of covered products for pilot projects.

In addition, the 2021-23 biennial operating budget directed the COM to contract with the

UW to create a database and reporting system for building materials for state-funded construction projects.

Summary of Engrossed Substitute Bill:

Reporting Requirements.

Reporting requirements take effect July 1, 2024, for new construction contracts for covered projects larger than 100,000 gross square feet and on July 1, 2026, for all other new construction contracts for covered projects and products. Beginning on these dates, awarding authorities must require the construction contractor to:

1. report, prior to substantial project completion:
 - the quantity of covered products; and
 - the following supplier-reported data for at least 90 percent of the cost of each of the covered products used in the project:
 - a current Environmental Product Declaration (EPD);
 - a Health Product Declaration (HPD), if any, for the product;
 - the manufacturer name and location;
 - supplier code of conduct, if any; and
 - Office of Minority and Women's Business Enterprise Certification, if any; and
2. ask suppliers to report, for at least 90 percent of the cost of each covered product used in the project, and prior to substantial completion:
 - names and locations of actual production facilities; and
 - working conditions at the actual production facilities for all employees. (If the supplier does not have this information, the selected firm must ask the supplier to report on steps taken to reasonably obtain the data and provide suppliers' self-reports to the awarding authority).

Awarding authorities must include data collection and reporting requirements in specifications for bids for covered projects. By July 1, 2024, and to the extent practicable, specifications for a bid or proposal for a project contract may only include performance-based specifications for concrete used as a structural material. An awarding authority may continue to use prescriptive specifications on structural elements to support special designs and emerging technology implementation.

Exceptions.

If a supply chain specific EPD is not available, a product and facility specific report may be submitted.

If the awarding authority determines that the data collection and reporting requirements for a covered product would cause a significant delay in completion, significant increase in overall project cost, or result in only one product supplier being able to provide the covered product, the reporting requirements do not apply.

Definitions.

Awarding Authority.

An awarding authority is a state agency or institution of higher education that receives funding from the capital budget and contracts directly for public works projects.

Covered Project.

A covered project is a:

- construction project larger than 50,000 gross square feet; or
- building renovation project where the cost is greater than 50 percent of the assessed value and the project is larger than 50,000 gross square feet of occupied or conditioned space.

Covered Product.

Covered products are certain structural concrete products, reinforcing steel products, structural steel products, and engineered wood products.

Environmental Product Declarations.

An EPD means a type III EPD, as defined by International Organization for Standardization (ISO) standard 14025 or similarly robust life-cycle assessment methods. To the extent feasible, the EPD must be supply chain specific.

Supply chain specific means an EPD that includes supply chain specific data for production processes that contribute 70 percent or more of a product's cradle-to-gate global warming potential, as defined by ISO standard 21930.

A product and facility specific report means an EPD whereby the environmental impacts can be attributed to a single manufacturer and a specific manufacturing or production facility.

Health Product Declaration.

An HPD means a supply chain specific health product declaration as defined by the HPD Collaborative, that has robust methods for product manufacturers and their ingredient suppliers to uniformly report and disclose information about product contents and associated health information.

Actual Production Facilities.

Actual production facilities means the final manufacturing facility and the facilities at which production processes occur that contribute to 70 percent or more of the product's cradle-to-gate global warming potential, as reflected in the EPD.

Working Conditions.

Working conditions means the average number of employees by employment type: full time, part time, and temporary.

Other Provisions.

Financial Assistance.

Subject to funds appropriated for this specific purpose, the Department of Commerce (COM) may provide financial assistance to small businesses with 50 or fewer employees to offset costs of producing EPDs.

Database.

The COM must continue to develop and maintain the publicly accessible database created in conjunction with the University of Washington College of Built Environments (UW) for construction firms to report data collected under the act. The COM may contract for the use of a nationally or internationally recognized database of EPDs for this purpose. By July 1, 2024, the COM must:

- further elaborate covered product definitions using applicable industry standards;
- develop measurement and reporting standards;
- create model language for specifications, bid documents, and contracts; and
- produce an educational brief that describes embodied carbon, the appropriate use of EPDs, reporting requirements and standards, instructions for using the database, and lists applicable product category rules for covered products.

Technical Work Group.

By December 1, 2023, the COM must convene a technical work group (Work Group) to identify opportunities and barriers for using and producing low-carbon materials, promote high labor standards in manufacturing, and preserve and expand low carbon material manufacturing in Washington.

Work Group Members must include representatives from industry, Washington manufacturers, specified state agencies, environmental groups, a labor union, the minority and women-owned business community, the UW, and other agencies and experts as necessary to meet Work Group objectives.

The Work Group must submit two reports to the Legislature and Governor:

1. by September 1, 2024, a low carbon materials manufacturing plan, recommendations for consistent treatment in the reporting for covered products, and consideration of how product life cycle assessments conducted by project designers could be incorporated into future reporting; and
2. by September 1, 2025, policy recommendations and any needed statutory changes. For this report the Work Group must summarize data collected from reports required under the act, evaluate options for collecting additional working condition information from product suppliers, make recommendations for improving EPD data quality, make recommendations for consideration of scope 2 greenhouse gas emissions mitigation through green power purchases, identify barriers and opportunities to the effective use of the database, identify emerging and foreseeable trends in embodied carbon policy and procurement, and recommend approaches to designing lower embodied carbon state building projects.

The Work Group expires on January 1, 2027.

Other.

The Office of Financial Management must inform awarding authorities about the requirements in the act.

The act may be known and cited as the Buy Clean and Buy Fair Washington Act.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 9, 2023.

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

Staff Summary of Public Testimony:

(In support) Buy Clean policies combat unfair competition that responsible manufacturers face and put local businesses who are trying to do the right thing for the environment and workers on an equal playing field with their competitors. This is a "reporting only" bill for basic working conditions in manufacturing facilities. This policy provides a solid economic foundation for communities, was first introduced in 2019, and this version is the best policy to come before the Legislature yet. This bill is focused on the most carbon-intense building materials. There is a hardship clause to ensure this will not create delay or hardship for suppliers and is an important step to strengthen clean building material production in Washington. The infrastructure is already in place to implement this policy. Washington must ensure that manufacturing jobs are good jobs and the state is well-situated to meet the growing demand. This policy is the first step toward a carbon-free economy that lifts up workers and does not pit the environment against working people. Jobs provided in the new clean economy must be family-wage jobs. The steel industry has already moved toward making changes to become more sustainable. The wood industry is behind the curve and should be held to the same standard. Local companies are going out of business because they cannot compete with foreign materials coming into the United States that are manufactured in less responsible ways. Offshore manufacturing drags down workers' rights, and poor labor conditions are a threat to national security. The 2021 State Energy Strategy includes policies like this that will get the state on track to achieving its environmental performance goals. Accounting for the environmental impacts of the biggest buildings constructed by the state will help the state build more sustainably. The pilot projects showed that model specifications and outreach are needed to continue this work. Eligible materials in this bill emit more than 25,000 tons of carbon before the building is even opened. Architects recognize an urgent need to decarbonize materials. This bill will send product suppliers a message that this data is important. The cost of inaction for another year is too great. The workgroup will collect important stakeholder input and help

address supply chain challenges facing manufacturers.

(Opposed) Feedback that has been offered for proposals put forward in previous years has not been considered. This bill lacks clarity of scope, is not materials agnostic and requires reporting from wood products that is not feasible, and is outside International Organization for Standardization standards for Environmental Product Declarations (EPDs). Wood products have industry average EPDs but also have product and facility-specific EPDs. Provisions of the bill related to the supplier code of conduct and working conditions reporting are areas of concern. The pilots funded in the 2021-2023 budgets required reporting from suppliers and there was significant concern from suppliers about what was required. Reporting on the number of employees covered by collective bargaining is not relevant. This bill seeks to redefine EPDs so they are comparable among materials. Many elements in the bill focus on regulation, academic studies, and redundant reporting with undefined criteria that are expensive and those costs will be added to the construction products. Decarbonizing our built environment is important but the bill's approach toward management of engineered wood has costly, unnecessary, and infeasible chain of custody mandates for wood products that are impractical.

(Other) This bill contains laudable goals for the environment and labor but there is a built-in bias that favors timber because it is much easier to skew data on timber. The timber industry has published distorted EPDs. The bill will be prevented from achieving its policy goals unless the Buy Clean and Buy Fair Work Group is empowered to be truly impartial.

Persons Testifying:

(In support) Representative Davina Duerr, prime sponsor; Patrick Jablonski, Nucor Steel Seattle, Incorporated; John Cross, American Institute of Steel Construction; Donny Donovan, International Association of Machinists and Aerospace Workers 75; Robin Everett, Sierra Club; Heather Kurtenbach, Iron Workers Local 86; Darcy Nonemacher, Washington Conservation Action; Kane Wardle, United Steelworkers District 12; Jessica Koski, BlueGreen Alliance; Hanna Waterstrat, Department of Commerce; Bill Frare, Department of Enterprise Services; Alex Ianchenko, American Institute of Architects Washington Council and Architects and Engineers Legislative Council; John Traynor, Washington State Labor Council, American Federation of Labor and Congress of Industrial Organizations; and Zoe Lipman, American Federation of Labor and Congress of Industrial Organizations.

(Opposed) Rachael Jamison, American Wood Council; Christine Brewer, Associated General Contractors of Washington; Bruce Chatten, Washington Aggregates and Concrete Association; and Tom Davis, Washington Forest Protection Association.

(Other) Ed Chadd.

Persons Signed In To Testify But Not Testifying:

Kate Simonen, Carbon Leadership Forum, University of Washington.