

SENATE BILL REPORT

ESHB 1282

As Reported by Senate Committee On:
Environment, Energy & Technology, March 21, 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: Passed House: 3/8/23, 57-40.

Committee Activity: Environment, Energy & Technology: 3/15/23, 3/21/23 [DPA-WM, DNP].

Brief Summary of Amended Bill

- Requires all newly executed construction contracts for covered projects larger than 100,000 gross square feet to include specified environmental and manufacturer information beginning July 1, 2024.
- Requires all newly executed construction contracts to include specified environmental and manufacturer information beginning July 1, 2026.
- Specifies the Department of Commerce (Commerce) must continue to develop and maintain the publicly available database funded by the 2021-2023 Omnibus Operating Appropriations Act.
- Requires Commerce to convene a technical work group by December 1, 2023.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Nguyen, Chair; Lovelett, Vice Chair; Lovick, Trudeau and Wellman.

Minority Report: Do not pass.
Signed by Senators MacEwen, Ranking Member; Boehnke and Short.

Staff: Angela Kleis (786-7469)

Background: In 2021, the Legislature commissioned the Buy Clean Buy Fair Washington Project pilot study. The pilot study required the Department of Commerce (Commerce) to contract with the University of Washington College of Built Environments to create a database and reporting system to collect product, manufacturer, environmental, and labor information for state-funded construction projects and to conduct a case study using pilot projects.

A final report including recommendations for the reporting system based on lessons learned and findings from the case study was submitted to the Legislature on November 1, 2022.

Summary of Amended Bill: Reporting Requirements. Beginning July 1, 2024, an awarding authority must require in all newly executed construction contracts that the selected firm for a construction contract for a covered project larger than 100,000 gross square feet to submit the following data for each covered product used before substantial completion, including at a minimum:

- product quantity;
- a current environmental product declaration (EPD);
- health production declaration, if any;
- manufacturer name and location;
- supplier code of conduct, if any;
- Office of Minority and Women-owned Business Enterprises certification, if any;
- names and locations of the actual production facilities; and
- working conditions at the actual production facilities for all employees.

Beginning July 1, 2026, these reporting requirements apply to all newly executed construction contracts.

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

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

Financial Assistance. Subject to appropriations, Commerce may provide financial assistance to small businesses to help offset the costs of producing an EPD.

Specifications. By July 1, 2024, and to the extent practicable, specifications for a bid or proposal for a project contract by an awarding authority may only include performance-based specifications for concrete used as a structural material. Awarding authorities may continue to use prescriptive specifications on structural elements to support special designs and emerging technology implementation.

Database. Commerce must continue to develop, maintain, and refine the publicly accessible database funded by the Legislature. and may consult with the University of Washington College of Built Environments. The database must publish global warming potential as reported in the EPDs.

By July 1, 2024, Commerce must:

- further elaborate covered product definitions;
- develop measurement and reporting standards;
- create model language for specification, bid documents, and contracts; and
- produce specified educational briefs.

Work Group. By December 1, 2023, Commerce must convene a technical work group (work group). Membership includes industry professionals, manufacturers, state agencies, environmental groups, and labor unions. The purpose of the work group is to identify opportunities for and barriers to growth of the use and production of low carbon materials, promote high labor standards in manufacturing, and preserve and expand low carbon materials manufacturing in Washington.

The work group must submit two reports:

- by September 1, 2024, a report including a low carbon materials manufacturing plan, recommendations for consistent treatment in the reporting of covered products, and consideration for how additional information relevant to reducing embodied carbon through strategies could be incorporated into future reporting ; and
- by September 1, 2025, a report including policy recommendations and specified information such as an evaluation of options for collecting reported working condition information from product suppliers and recommendations for improving EPD quality.

Commerce may update reporting standards and requirements based on input from the work group and must provide updated guidance on reporting standards by January 1, 2026.

Budget Instructions. The Office of Financial Management must include in its capital budget instructions, beginning with the instructions for the 2025-2027 biennium, information informing awarding authorities of the data and information requirements in this act.

Miscellaneous. The bill includes a severability clause.

EFFECT OF ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE AMENDMENT(S):

- Clarifies environmental product declarations must be supply chain specific when available rather than to the extent feasible.
- Specifies that the data submitted for covered projects are the minimum requirements.
- Requires Commerce to refine, in addition to develop and maintain, the publicly accessible database funded by the Legislature.
- Requires Commerce to consult with the University of Washington college of built environments when developing, maintaining, and refining the publicly available database.
- Changes the number of representatives from labor unions on the work group from one to three.
- Allows Commerce to contract with the University of Washington college of built environments in convening the work group.
- Modifies the work group's 2024 report by also requiring the consideration of how additional information relevant to reducing embodied carbon through strategies including, but not limited to, product life cycle adjustments could be incorporated into future reporting.
- Modifies the work group's 2025 report by also requiring the consideration of policies to support living-wage manufacturing jobs and the evaluation of options for aligning these reporting requirements with existing reporting requirements for preferential tax rates, credits, exemptions, and deferrals.
- Authorizes Commerce to update reporting standards and requirements based on input from the work group.
- Requires Commerce to provide updated guidance on reporting standards by January 1, 2026.

Appropriation: The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

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 on Engrossed Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Buy Clean policies are gaining steam across the country as a tool for transforming and strengthening U.S. manufacturing. A pilot project, funded by the Legislature, provided key recommendations to combat the unfair competition responsible manufacturers face from

overseas producers not subject to the same standard. Construction incentives to use low-carbon materials, made with fair labor practices, requires further knowledge about the materials used in these buildings. The database created is an important tool for making climate smart purchasing decisions. Data availability concerns are addressed for commodity products. Transparency will show the environmental benefit of using local U.S. materials.

A workgroup will be created under this bill to guarantee ongoing oversight, outreach, and data collection. Integrating reporting ensures the transition to the low-carbon economy is fair and that new clean manufacturing jobs remain the same high-quality jobs that have provided solid economic foundation for millions of communities. The process for collecting EPD's is not new and it's time to bring to same standard of care to all covered projects.

CON: This bill lacks clarity and scope. It also lacks structural life cycle assessments, which is where the real reductions arise from. It creates significant reporting, administrative, and cost burdens on publicly funded projects. Given the lack of transparency in the two provisos and an unbalanced makeup, there is a lack of confidence in the work groups ability to allow opportunities for fair input. Information can be highly variable so effective, transparent collaboration is much needed.

OTHER: This bill misses the greatest opportunity to decarbonize by ignoring the pivotal role of life cycle assessments. Teams need more than collecting EPDs and material quantities. Supply chain specific data has changed to a request when feasible, allowing manufacturers to escape the policy requirement. Few EPDs disclose their data when given the opportunity not to.

Persons Testifying: PRO: Representative Davina Duerr, Prime Sponsor; Patrick Jablonski, Nucor Steel; Alex Ianchenko, AIA Washington Council; John Traynor, Washington State Labor Council, AFL-CIO; Hanna Waterstrat, WA department of commerce; Rachel Baker, Washington Conservation Action; Jessica Koski, BlueGreen Alliance.

CON: Pete Stoltz, CalPortland; Rachael Jamison, American Wood Council; Tom Davis, WA Forest Protection Association; Bruce Chattin, WA Aggregates & Concrete Assn.

OTHER: David Walsh, Dave Walsh Consulting; Jordan Palmeri, University of Washington - Carbon Leadership Forum.

Persons Signed In To Testify But Not Testifying: No one.