

SENATE BILL REPORT

2ESHB 1282

As Passed Senate - Amended, March 1, 2024

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: 2/13/24, 58-39.

Committee Activity: Environment, Energy & Technology: 3/15/23, 3/21/23 [DPA-WM, DNP]; 2/16/24, 2/21/24 [DP-WM, DNP].

Ways & Means: 3/28/23; 2/24/24, 2/26/24 [DPA, DNP, w/oRec].

Floor Activity: Passed Senate - Amended: 3/1/24, 28-20.

Brief Summary of Bill (As Amended by Senate)

- Requires firms selected by certain state agencies and institutions of higher education for large construction or building renovation contracts to report Environmental Product Declarations, Health Product Declarations, and other specified information.
- Directs the Department of Commerce to continue administering a public database for reported data and other information.
- Establishes a technical work group, including members from industry, state agencies, and other areas.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: Do pass and be referred to Committee on Ways & Means.

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.

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: Matt Shepard-Koningsor (786-7627)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Robinson, Chair; Mullet, Vice Chair, Capital; Nguyen, Vice Chair, Operating; Billig, Conway, Dhingra, Hasegawa, Hunt, Keiser, Pedersen, Randall, Saldaña and Wellman.

Minority Report: Do not pass.

Signed by Senators Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Boehnke, Muzzall, Torres, Van De Wege and Wagoner.

Minority Report: That it be referred without recommendation.

Signed by Senators Wilson, L., Ranking Member, Operating; Rivers, Assistant Ranking Member, Capital; Braun.

Staff: Matt Shepard-Koningsor (786-7627)

Background: Environmental Product Declaration. Embodied carbon—also known as embodied greenhouse gas emissions—refers to the amount of greenhouse gas emissions associated with the extraction, production, transport, and manufacturing stages of a product's life.

An Environmental Product Declaration (EPD) is a document that presents environmental information on the lifecycle of a product, including a measurement of embodied greenhouse gas emissions of construction material and products. EPDs are created according to internationally-recognized standards, 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.

Federal Buy Clean Initiative. In 2021 through the Federal Buy Clean Initiative, the United States Government launched a Buy Clean Task Force and initiative promoting the use of low-carbon, domestically-made construction materials in federal procurement and federally-funded projects.

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 the businesses the maximum practicable opportunity to participate in public contracts for public works, goods, and services.

Buy Clean Pilot Projects and Database. Building upon a 2018 pilot, the 2021-23 biennial capital budget required the Department of Commerce (Commerce) 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 Commerce to contract with UW to create a database and reporting system for building materials for state-funded construction projects.

State Building Code. The State Building Code (Code) establishes minimum performance standards and requirements for construction and construction materials in the state, consistent with accepted standards of engineering, fire, and life safety. The Code includes several model codes and standards, developed and published by international and national organizations, which are adopted by reference in the State Building Code Act. Model codes include the International Building Code, International Residential Code, and Energy Code.

Summary of Amended Bill: Definitions. An awarding authority is an institution of higher education or a state agency that receives funding from the omnibus capital appropriations act for a public works project. Covered product includes structural concrete products, reinforcing and structural steel products, and engineered wood products. Examples of each are listed. Covered project means a construction project larger than 50,000 gross square feet or a 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, as defined in the Code. Several other terms are defined.

Reporting Requirements. Reporting requirements take effect July 1, 2025, for new construction contracts for covered projects larger than 100,000 gross square feet and July 1, 2027, for all new construction contracts for covered projects and covered products. Beginning on these dates, awarding authorities must require the selected firm or successful bidder to:

- report, prior to substantial project completion:

1. the quantity of covered products; and
2. 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 EPD, or a product and facility specific report if a supply chain specific EPD is not available;
 - a health product declaration, if any, for the product;
 - the manufacturer name and location;
 - supplier code of conduct, if any; and
 - OWMBE certification, if any; and
- ask suppliers to report, for at least 90 percent of the cost of each covered product used in the project, and prior to substantial project completion:
 1. names and locations of actual production facilities; and
 2. working conditions at the actual production facilities for all employees.

The selected firm is not required to verify the information reported by product suppliers. By July 1, 2025, 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. If the awarding authority determines the data collection and reporting requirements for a covered product would cause 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.

Duties of the Department of Commerce. Database. Commerce must continue to develop, maintain, and refine the database funded by the 2021-23 operating budget, and may consult with UW. The database must publish global warming potential as reported in the EPDs.

Technical Work Group. By December 1, 2024, Commerce must convene a technical work group (work group) 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 include specified representatives from industry, state government, labor unions, higher education, community, and other experts.

Subgroups are intended to form with members who have certain experience to develop technical information, recommendations, and analysis specific to individual material types, and the feasibility of supply chain specific EPDs. Subgroup recommendations must, where possible, align with state and national principles and laws for EPD development. Commerce may contract with UW in convening the work group.

The work group must submit two reports to the Governor and Legislature. The first report is due September 1, 2025, and must include: (1) a low carbon materials manufacturing plan, recommending policies to preserve and grow the in-state manufacturing of low carbon

materials and accelerate industrial decarbonization; (2) recommendations for consistent treatment in the reporting for covered products; and (3) consideration of how additional information relevant to reducing embodied carbon through strategies including, but not limited to, product life-cycle assessments could be incorporated into future reporting.

The second report is due September 1, 2026, and must: (1) include policy recommendations and any necessary statutory changes; (2) consider policies to expand the use and production of low carbon materials; and (3) preserve and expand low carbon materials manufacturing in Washington. For this report, the work group must:

- summarize data collected 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;
- make recommendations, if any, for changing or clarifying the definition of actual production facilities to better define and refine reporting and compliance obligations under the act;
- 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.

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, 2027.

Other Duties. By July 1, 2025, Commerce must:

- further elaborate covered product definitions using applicable material industry standards;
- develop measurement and reporting standards to ensure data is consistent and comparable;
- create model language for specifications, bid documents, and contracts to support the implementation of the industry reporting requirements; and
- produce an educational brief:
 1. providing an overview of embodied carbon;
 2. describing the appropriate use of EPDs;
 3. outlining reporting standards;
 4. describing the data collection and reporting process for the industry reporting requirements;
 5. providing database use instructions; and
 6. listing applicable product category rules for covered products.

Commerce may contract to use nationally, or internationally, recognized databases of EPDs to implement the duties above.

Other. Subject to appropriation, Commerce may provide financial assistance to small businesses to help offset costs associated with producing an EPD. 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: 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 (Environment, Energy & Technology) (Regular Session 2023): *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 (Environment, Energy & Technology): 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 (Environment, Energy & Technology): PRO: David Walsh, Dave Walsh Consulting; 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.

OTHER: Jordan Palmeri, University of Washington - Carbon Leadership Forum.

Staff Summary of Public Testimony on Bill as Amended by Environment, Energy & Technology (Ways & Means) (Regular Session 2023): PRO: In 2021, the Legislature recognized the need for policies to tackle greenhouse gas emissions in state construction. The federal government, as well as several other states, have adopted similar policies. Several components of this law were implemented as part of a pilot project and are in place. This is strictly a reporting requirement and does not require the state to change its procurement decisions. A hardship clause allows the reporting requirements to be suspended if needed.

Climate crisis is a threat to our democracy. Transparency is a crucial first step to understanding the decarbonization of the industry and holding construction materials to high standards.

Washington is well positioned to meet the surge of low carbon production and should do its part by passing this law. The law will promote fair competition for companies that implement low carbonization strategies and fair labor standards.

CON: Advocates tout this bill as a reporting only requirement for information that is readily available. If information is easily accessible, there is no need to spend state resources to collect it. The bill started with the admirable goal of reducing carbon. Unfortunately it has split into the dual purpose of attempting to advance labor standards and practices. This is a missed opportunity to look at materials used in a building throughout the entire life cycle, beginning with design. Instead the bill adopts burdensome reporting

requirements and does not meet the goal of designing and building structures with a lower carbon footprint.

Persons Testifying (Ways & Means): PRO: Hanna Waterstrat, WA department of commerce; John Traynor, Washington State Labor Council; Jessica Koski, BlueGreen Alliance; Max Puchtel, American Institute of Steel Construction; Martin Gibbins, League of Women Voters of WA.

CON: Brandon Houskeeper, American Wood Council; Tom Davis, Washington Forest Protection Association; Bruce Chattin, WA Aggregates & Concrete Assn.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.

Staff Summary of Public Testimony on Second Engrossed Substitute House Bill (Environment, Energy & Technology) (Regular Session 2024): PRO: Buy clean policies do not add costs to projects, but they do add transparency. This is a reporting bill only and will not inform procurement decisions. The bill seeks to promote innovation in our manufacturing. While previous versions of this bill were better, this version was worked out with stakeholders and is still desirable. This bill benefits Washington companies that do right by their workers and the environment. This bill is an important step to address embodied carbon and transparency through the building material supply chain. Enacting embodied carbon legislation needs to happen now. This bill will help get Washington closer to 100 percent clean energy. This language reflects a compromise, but we do think the Legislature will be back to revisit this. The database will help inform the Legislature for many years.

OTHER: The first step to reduce embodied carbon is to study it, and this bill does that. These policies can be successful when working collaboratively with industry. The technical work group created in the bill is setup for success. Seven states and the federal government are developing or implementing buy clean policies, so Washington is not alone. We have an ongoing question related to the definition of "final production facility" and will bring language to address the concern.

Persons Testifying (Environment, Energy & Technology): PRO: Representative Davina Duerr, Prime Sponsor; Brittany Porter, American Institute of Architects WA Council; Patrick Jablonski, Nucor Steel Seattle, Inc.; Donny Donovan, IAM District 751; Hanna Waterstrat, WA department of commerce; Michael Transue, WA Aggregate and Concrete Association.

OTHER: Jordan Palmeri, University of Washington - Carbon Leadership Forum; Brandon Houskeeper, American Wood Council.

Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology): No one.

Staff Summary of Public Testimony on Second Engrossed Substitute House Bill (Ways & Means) (Regular Session 2024): *The committee recommended a different version of the bill than what was heard.* PRO: The language in the bill reflects a compromise that allows the policy of reporting product information to move forward. The included subgroups are very important to help formulate recommendations for the future. Industry remains committed to working on this issue and lowering the carbon intensity of products.

This bill reflects a long conversation amongst many stakeholders. It is an important step to understanding where products come in.

OTHER: A lot of work has gone into getting the bill to this point. If the bill moves forward, an amendment would be helpful to address wood products. Stakeholders are in agreement with the amendment.

Persons Testifying (Ways & Means): PRO: Dave Pringle, Dept. of Commerce; Michael Transue, WA Aggregate and Concrete Association.

OTHER: Brandon Houskeeper, American Wood Council.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.