

SENATE BILL REPORT

SB 5322

As of February 22, 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: Senators Wellman, Hasegawa, Keiser, Valdez and Wilson, C.; by request of Department of Commerce.

Brief History:

Committee Activity: State Government & Elections: 1/27/23 [w/oRec-ENET].
Environment, Energy & Technology: 1/31/23, 2/10/23 [DPS-WM, DNP].
Ways & Means: 2/22/23.

Brief Summary of First Substitute Bill

- Requires a selected firm for a construction contract for a covered project larger than 100,000 gross square feet to submit specified environmental, manufacturer, and labor information to an awarding authority beginning July 1, 2024.
- Requires a selected firm for a construction contract for a covered project to submit specified environmental, manufacturer, and labor information to an awarding authority 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 Buy Clean and Buy Fair Work Group by December 1, 2023.
- Requires capital budget instructions, beginning with the 2025-2027 biennium, to include information informing awarding authorities of the

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requirements of this act.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: That Substitute Senate Bill No. 5322 be substituted therefor, and the substitute bill do pass 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)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Shani Bauer (786-7468)

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 Bill (First Substitute): 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:

- product quantity;
- a current environmental product declaration (EPD)—engineered wood suppliers must report wood sourcing information if it is not included in the current EPD;
- completed 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. The selected firm must provide data for at least 90 percent of the cost of each of the covered products used in a project.

The selected firm must collect required data from product suppliers; however, it is not required to verify such data.

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

Exemption. These reporting requirements do not apply to a covered product for a particular covered product if it is determined the requirements 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.

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 and maintain the publicly accessible database funded in the 2021-2023 Omnibus Operating Appropriations Act and created in conjunction 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 Buy Clean and Buy Fair Work Group (work group). Membership includes industry professionals, manufacturers, state agencies, environmental groups, and labor unions.

By September 1, 2024, the work group must submit a low carbon materials manufacturing plan report to the Legislature and the Governor. The report must recommend policies to preserve and grow the in-state manufacturing of low carbon materials.

By September 1, 2025, the work group must submit a report on policy recommendations, including statutory changes needed, to the Legislature and the Governor. The report must

consider policies to leverage public procurement to expand the use and production of low carbon materials, to promote high labor standards in manufacturing, and to preserve and expand low carbon materials manufacturing in Washington, including opportunities to encourage continued conversion to lower carbon blended cements in public projects.

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.

EFFECT OF CHANGES MADE BY ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE (First Substitute):

- Adds intent language specifying a comprehensive approach includes designing buildings with a lower-embodied carbon footprint and making lower carbon products.
- Amends definitions for actual production facilities and supply chain by changing the contribution threshold from 80 to 70 percent when determining a product's cradle-to-gate global warming potential.
- Provides definitions for wood sourcing information and total case incident rate.
- Revises the definition of working conditions by removing the reporting requirement for collective bargaining information and changing employee data reporting requirement.
- Clarifies definitions for full time, part time, and temporary.
- Specifies engineered wood suppliers must report wood sourcing information if it is not included in the current environmental product declaration when complying with the reporting requirement that begins July 1, 2024.
- Makes technical corrections.

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 on Original Bill (Environment, Energy & Technology): *The committee recommended a different version of the bill than what was heard.* PRO: As a country we have done a decent job of looking at operational carbon in our buildings but have not addressed the embodied carbon in the construction of our buildings. Our goal should be to create policy that leverages existing state spending to incentivize manufacturers to make low carbon products and create a competitive advantage for manufacturers that meet high environmental standards. This bill aims to address the embodied carbon in the construction business and in construction of public buildings. It directs state agencies to account for the environmental impacts of the largest construction

projects and choose sustainable materials made with fair labor practices.

The bill reflects the data and information gathered during a pilot program. The Buy Clean Buy Fair work group created by the bill gives us a chance to continue working together to review project data and have input on how to address embodied carbon in the future. Transparency is the crucial first step in understanding the environmental impacts of construction materials.

CON: The bill lacks clarity and scope. It is unclear if this is a climate or labor bill. The efforts in this bill to reduce embodied carbon in wood has extremely high costs for what is believed to be very little return and overall climate impact. It is not material agnostic and requires wood products reporting that is neither feasible nor consistent with the reporting scope required and is widely outside of the scope industry standards for EPDs. The work groups established under this legislation will impose significant reporting burdens on the industry.

Buy clean is a self-proclaimed procurement bill that seeks to leverage the states extensive purchasing power to reduce carbon in the environment. It also seeks to define EDPs through preconditions for EPDs to become comparable materials, which is an improper use of EPDs for the purposes of procurement or building material selection. Public construction is already paid at prevailing wages and provides solid family wage jobs.

OTHER: Gathering data on collective bargaining, working hours, or health declarations on the supply chain in other countries is admirable but confuses the carbon reduction goals of this bill. The qualitative metrics of working conditions is far more complex than as presented in the bill and has little correlation.

Persons Testifying (Environment, Energy & Technology): PRO: Senator Lisa Wellman, Prime Sponsor; Max Puchtel, American Institute of Steel Construction; Patrick Jablonski, Nucor Steel Seattle Inc; John Traynor, Washington State Labor Council, AFL-CIO; Hanna Waterstrat, Department of Commerce; Bill Frare, Washington State Department of Enterprise Services; Darcy Nonemacher, Washington Conservation Action; Jessica Koski, BlueGreen Alliance.

CON: Tom Davis, Washington Forest Protection Association; Rachael Jamison, American Wood Council; Bruce Chattin, WA Aggregates & Concrete Assn; Christine Brewer, Associated General Contractors of Washington.

OTHER: Tien Peng, National Ready Mixed Concrete Association; Ed Chadd.

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

Staff Summary of Public Testimony (Ways & Means): PRO: This bill incentivizes contractors who work on state projects to produce environmentally friendly buildings and

gives state agencies needed information for reducing carbon emissions as part of their procurement decisions. This is a common sense way to move the state along the way of utilizing responsible construction materials.

Data is important to maximize the impact of public spending and make sure state construction meets high environmental and labor standards. Upholding strong labor standards is needed in order to grow industry here in Washington. Shedding light on suppliers who have low quality labor standards will help create good jobs here at home.

This bill is the result of over four years of work. Implementing lessons learned from the pilot project, the reporting requirements have been scaled back significantly. A contractor may also use the hardship provision if supplying the required information would be too costly or cause delay. The bill takes a very reasonable approach to collecting environmental and labor information and will be a strong tool to reward industrial manufacturers that are doing the right thing. The state has done much to put us on the path to cleaner electricity, this bill would push us forward in reducing carbon emissions and greenhouse gases. While implementing a reporting obligation, the bill does not require the state to make procurement decisions based on that information.

CON: All building materials have EPD approved data than can be provided. The difficulty is that the bill goes beyond the ISO standards in requiring sourcing information for wood products. These additional standards require a chain of custody for wood products from the job site to where the logs were farmed. This tracing is overly burdensome and costly.

Manufacturers are already producing EPDs on their own and moving toward reduced carbon in construction. If private industry is moving in this direction, it is unclear why the bill is needed. This bill places many requirements on contractors to supply documents. These obligations will increase the cost of public works projects and prevent small contractors from bidding on jobs.

Persons Testifying (Ways & Means): PRO: Senator Lisa Wellman, Prime Sponsor; Patrick Jablonski, Nucor Steel Seattle Inc; Mark Riker, WA State Building and Construction Trades Council; Darcy Nonemacher, Washington Conservation Action; Hanna Waterstrat, WA Department of Commerce (SEEP); Aubrey Newton, LIUNA Washington and northern Idaho district council of laborers.

CON: Brandon Houskeeper, American Wood Council; Tom Davis, WA Forest Protection Association; Bruce Chattin, WA Aggregates & Concrete Assn; Sophia Steele, Associated Builders and Contractors.

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