
SUBSTITUTE SENATE BILL 5322

State of Washington

68th Legislature

2023 Regular Session

By Senate Environment, Energy & Technology (originally sponsored by Senators Wellman, Hasegawa, Keiser, Valdez, and C. Wilson; by request of Department of Commerce)

READ FIRST TIME 02/13/23.

1 AN ACT Relating to environmental and labor reporting for public
2 building construction and renovation material; amending RCW
3 43.88.0301; adding a new chapter to Title 39 RCW; creating new
4 sections; and providing an expiration date.

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

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

7 (1) Washington state, through its extensive purchasing power, can
8 reduce embodied carbon in the built environment, improve human and
9 environmental health, grow economic competitiveness, and promote high
10 labor standards in manufacturing by incorporating climate and other
11 types of pollution impacts and the quality of working conditions into
12 the procurement process.

13 (2) Washington state is home to multiple world-class
14 manufacturers that are investing heavily in reducing the carbon
15 intensity of their products and that provide family-wage jobs that
16 are the foundation for a fair and robust economy. Washington's
17 current procurement practices put these manufacturers and others that
18 meet high environmental and labor standards at a competitive
19 disadvantage because the state treats them the same as manufacturers
20 that are not investing in reducing their environmental footprint or
21 that have poor labor practices.

1 (3) The private sector is increasingly demanding low carbon
2 building materials that support good jobs in manufacturing. This
3 market demand has rapidly accelerated innovation and led to increased
4 production of low carbon building materials. As one of the largest
5 consumers of building materials, Washington has an opportunity to
6 leverage its purchasing power to do even more to send a clear signal
7 to the market of the growing demand for low carbon building
8 materials.

9 (4) With its low carbon electric grid and highly skilled
10 workforce, Washington state is well-positioned to capture the growing
11 demand for low carbon building materials and create and sustain a new
12 generation of good, high-wage clean manufacturing jobs.

13 (5) Washington has demonstrated a deep commitment to ensuring
14 that the transition to a low carbon economy is fair and creates
15 family-wage jobs. Both the clean energy transformation act and the
16 climate commitment act tie public investments in infrastructure to
17 reduce greenhouse gas emissions to high road construction labor
18 standards. Integrating manufacturing working conditions into the
19 procurement process reaffirms and is consistent with the state's
20 commitment to a fair transition.

21 (6) A robust state and domestic supply of low carbon materials is
22 critical for building a fair economy and meeting the needs of the low
23 carbon transition, including securing the clean energy supply chain.

24 (7) Environmental product declarations are the best available
25 tool for reporting product-specific environmental impacts using a
26 life-cycle assessment and informing the procurement of low carbon
27 building materials. Environmental product declarations cannot be used
28 to compare products across different product categories or different
29 functional units.

30 (8) The buy clean and buy fair policies established in this act
31 are critical to reduce embodied carbon in the built environment, a
32 goal identified by the Washington state 2021 energy strategy to meet
33 the state's greenhouse gas emission limits, governor Inslee's
34 Executive Order 20-01 on state efficiency and environmental
35 performance, and the Pacific coast collaborative's pathbreaking low
36 carbon construction task force.

37 (9) Reducing embodied carbon in the built environment requires a
38 holistic, comprehensive approach that includes designing buildings
39 with a lower-embodied carbon footprint and making lower carbon
40 products. Product-focused procurement policies, like the buy clean

1 and buy fair policies established in this act, are an important tool
2 for increasing the manufacture of lower carbon products.

3 (10) The 2021-2023 biennium budgets made critical progress on the
4 buy clean and buy fair policies in this act by funding the creation
5 of a publicly accessible database to facilitate reporting and promote
6 transparency on building materials purchased for state-funded
7 infrastructure projects and two large buy clean and buy fair pilot
8 projects. This ongoing work to create a database to facilitate
9 reporting of environmental impacts and labor conditions from pilot
10 projects has provided a strong foundation to inform future work on
11 buy clean and buy fair policies.

12 (11) Providing financial assistance to small manufacturers to
13 support the production of environmental product declarations will
14 ensure that small manufacturers are not put at a competitive
15 disadvantage in state contracting as a result of the requirements of
16 this act.

17 NEW SECTION. **Sec. 2.** The definitions in this section apply
18 throughout this chapter unless the context clearly requires
19 otherwise.

20 (1) "Actual production facilities" means the final manufacturing
21 facility and the facilities at which production processes occur that
22 contribute to 70 percent or more of the product's cradle-to-gate
23 global warming potential, as reflected in the environmental product
24 declaration.

25 (2) "Awarding authority" means:

26 (a) Institutions of higher education as defined in RCW
27 28B.92.030;

28 (b) The department of enterprise services, the department of
29 natural resources, the state parks and recreation commission, the
30 department of fish and wildlife, and the department of
31 transportation; and

32 (c) Any other state government agency that receives funding from
33 the omnibus capital appropriations act for a public works project
34 contracted directly by the state agency.

35 (3) "Covered product" means:

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

38 (b) Reinforcing steel products, specifically rebar and
39 posttensioning tendons;

1 (c) Structural steel products, specifically hot rolled sections,
2 hollow sections, and plate; and

3 (d) Engineered wood products, specifically cross-laminated
4 timber, glulam beams, laminated veneer lumber, and parallel strand
5 lumber.

6 (4) "Covered project" means:

7 (a) A construction project larger than 50,000 gross square feet
8 as defined in the Washington state building code, chapter 51-50 WAC;
9 or

10 (b) A building renovation project where the cost is greater than
11 50 percent of the assessed value and the project is larger than
12 50,000 gross square feet of occupied or conditioned space as defined
13 in the Washington state building code, chapter 51-50 WAC.

14 (5) "Department" means the department of commerce.

15 (6) "Employee" means any individual who is in an employment
16 relationship with the organization.

17 (7) (a) "Environmental product declaration" means a supply chain
18 specific type III environmental product declaration, as defined by
19 the international organization for standardization standard 14025 or
20 similarly robust life-cycle assessment methods that have uniform
21 standards in data collection consistent with the international
22 organization for standardization standard 14025, industry acceptance,
23 and integrity.

24 (b) For the purposes of this subsection, "supply chain specific"
25 means an environmental product declaration that includes supply chain
26 specific data for production processes that contribute 70 percent or
27 more of a product's cradle-to-gate global warming potential, as
28 defined in international organization for standardization standard
29 21930, and reports the overall percentage of supply chain specific
30 data included.

31 (8) "Full time" means an employee in a position that:

32 (a) The employer intends to be filled for at least 52 consecutive
33 weeks or 12 consecutive months, excluding any leaves of absence; and

34 (b) Requires the employee to work, excluding overtime hours, 35
35 hours per week for 52 consecutive weeks, 455 hours a quarter, or
36 1,820 hours during a period of 12 consecutive months.

37 (9) "Health product declaration" means a supply chain specific
38 health product declaration, as defined by the health product
39 declaration open standard maintained by the health product
40 declaration collaborative, that has robust methods for product

1 manufacturers and their ingredient suppliers to uniformly report and
2 disclose information about product contents and associated health
3 information.

4 (10) "Part time" means an employee in a position that:

5 (a) The employer intends to be filled for at least 52 consecutive
6 weeks or 12 consecutive months, excluding any leaves of absence; and

7 (b) Working hours are less than those required for a full-time
8 employee, as defined in this section.

9 (11)(a) "Scope 2 greenhouse gas emissions" are indirect
10 greenhouse gas emissions associated with the purchase of electricity,
11 steam, heat, or cooling.

12 (b) For purposes of this section, "greenhouse gas" has the same
13 meaning as in RCW 70A.45.010.

14 (12) "Supplier code of conduct" means a policy created by a
15 manufacturer that outlines steps taken to ensure that its suppliers
16 adhere to ethical practices, such as compliance with child and forced
17 labor laws, antidiscrimination practices, freedom of association, and
18 safe workplace conditions.

19 (13) "Temporary" means an employee in a position that is intended
20 to be filled for a period of less than 52 consecutive weeks or 12
21 consecutive months. Positions in seasonal employment are temporary
22 positions.

23 (14) "Total case incident rate" means the number of work-related
24 injuries per 100 full-time workers during a one-year period, as
25 defined by the occupational safety and health administration. Total
26 case incident rate is calculated by multiplying the number of
27 occupational safety and health administration recordable injuries and
28 illnesses by 200,000 and dividing by number of hours worked by all
29 employees.

30 (15) "Wood sourcing information" means:

31 (a) Any chain of custody certification;

32 (b) Percent volume contribution to wood sourcing with forest
33 management certification;

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

36 (d) Percent volume contribution to wood sourcing by owner type,
37 such as federal, state, private, or other.

38 (16)(a) "Working conditions" means the:

39 (i) Average number of employees by employment type: Full time,
40 part time, and temporary;

1 (ii) Average hourly wage, including all nondiscretionary wages
2 and bonuses, by hourly wage bands: \$15 or below, \$15.01-\$20, \$20.01-
3 \$25, \$25.01-\$30, \$30.01-\$50, and \$50.01 or greater;

4 (iii) Average total number of employees enrolled in medical plans
5 provided by the employer;

6 (iv) Average total number of employees enrolled in dental plans
7 provided by the employer;

8 (v) Average total number of employees enrolled in retirement
9 plans provided by the employer; and

10 (vi) Total case incident rate for the prior calendar year

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

13 (i) For the two previous years; or

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

16 NEW SECTION. **Sec. 3.** (1)(a) Beginning July 1, 2024, an awarding
17 authority must require in all newly executed construction contracts
18 that the selected firm for a construction contract for a covered
19 project larger than 100,000 gross square feet to submit the following
20 data for each covered product used before substantial completion:

21 (i) Product quantity;

22 (ii)(A) A current environmental product declaration;

23 (B) If not included in the current environmental product
24 declaration, engineered wood suppliers must report wood sourcing
25 information;

26 (iii) Health product declaration, if any, completed for the
27 product;

28 (iv) Manufacturer name and location, including state or province
29 and country;

30 (v) Supplier code of conduct, if any; and

31 (vi) Office of minority and women-owned business enterprises
32 certification, if any.

33 (b) Beginning July 1, 2026, an awarding authority shall require
34 in all newly executed construction contracts that the selected firm
35 for a construction contract for a covered project to submit the data
36 required by (a) of this subsection for each covered product used
37 before substantial completion.

1 (c) The selected firm for a contract for a covered project shall
2 provide the data required by this subsection for at least 90 percent
3 of the cost of each of the covered products used in the project.

4 (2) The selected firm for a contract for a covered project is
5 required to collect and submit from product suppliers the information
6 required in subsection (1)(a)(ii) through (vi) of this section. The
7 selected firm is not required to verify the information received from
8 product suppliers.

9 (3)(a) Beginning July 1, 2024, an awarding authority must require
10 in all newly executed construction contracts that the selected firm
11 for a construction contract for a covered project larger than 100,000
12 gross square feet to ask their suppliers to report for each covered
13 product used before substantial completion:

14 (i) Names and locations, including state or province and country,
15 of the actual production facilities; and

16 (ii) Working conditions at the actual production facilities for
17 all employees, full-time employees, part-time employees, and
18 temporary employees. In cases in which the supplier does not have
19 this information, the selected firm for a contract for a covered
20 project must ask suppliers to provide a report on steps taken to
21 reasonably obtain the data and provide suppliers' self-reports to the
22 awarding authority.

23 (b) Beginning July 1, 2026, an awarding authority must require in
24 all newly executed construction contracts that the successful bidder
25 for a construction contract for a covered project to meet the
26 requirements of (a) of this subsection for each covered product used
27 before substantial completion.

28 (c) The selected firm is not required to verify the information
29 reported by product suppliers pursuant to this subsection.

30 (d) The selected firm for a contract for a covered project shall
31 meet the requirement in (a) of this subsection for at least 90
32 percent of the cost of each of the covered products used in the
33 project.

34 (4) This section does not apply to a covered product for a
35 particular covered project if the awarding authority determines, upon
36 written justification provided to the department, that the
37 requirements in this section would cause a significant delay in
38 completion, significant increase in overall project cost, or result
39 in only one product supplier being able to provide the covered
40 product.

1 (5) An awarding authority must include the information and
2 reporting requirements in this section in a specification for bids
3 for a covered project.

4 (6) Subject to funds appropriated for this specific purpose, the
5 department may provide financial assistance to small businesses, as
6 defined in RCW 19.85.020, to help offset the costs to the small
7 business of producing an environmental product declaration required
8 under this section. Such financial assistance supports the production
9 of environmental product declarations and achievement of reductions
10 of embodied carbon in the built environment while ensuring that small
11 manufacturers are not put at a competitive disadvantage in state
12 contracting as a result of the requirements of this chapter.

13 (7) Compliance with the requirements in this section may not be
14 used as a basis for a waiver from apprenticeship utilization
15 requirements in any other statute, rule, regulation, or law.

16 NEW SECTION. **Sec. 4.** By July 1, 2024, and to the extent
17 practicable, specifications for a bid or proposal for a project
18 contract by an awarding authority may only include performance-based
19 specifications for concrete used as a structural material. Awarding
20 authorities may continue to use prescriptive specifications on
21 structural elements to support special designs and emerging
22 technology implementation.

23 NEW SECTION. **Sec. 5.** (1) The department must continue to
24 develop and maintain the publicly accessible database funded by the
25 2021-2023 omnibus operating appropriations act and created by the
26 department in conjunction with the University of Washington college
27 of built environments for selected firms for contracts for covered
28 projects to submit the data required in section 3 of this act to the
29 department and to promote transparency. The department may consult
30 with the University of Washington college of built environments.

31 (2) The database maintained pursuant to subsection (1) of this
32 section must publish global warming potential as reported in the
33 environmental product declarations.

34 (3) By July 1, 2024, the department must:

35 (a) Further elaborate covered product definitions using
36 applicable material industry standards;

1 (b) Develop measurement and reporting standards to ensure that
2 data is consistent and comparable, including standards for reporting
3 product quantities;

4 (c) Create model language for specifications, bid documents, and
5 contracts to support the implementation of section 3 of this act; and

6 (d) Produce an educational brief that:

7 (i) Provides an overview of embodied carbon;

8 (ii) Describes the appropriate use of environmental product
9 declarations, including the necessary preconditions for environmental
10 product declarations to be comparable;

11 (iii) Outlines reporting standards, including covered product
12 definitions, standards for reporting product quantities, and working
13 conditions;

14 (iv) Describes the data collection and reporting process for all
15 information required in section 3 (1) (a) and (3) (a) of this act;

16 (v) Provides instructions for the use of the database; and

17 (vi) Lists applicable product category rules for covered
18 products.

19 (4) The department may contract for the use of nationally or
20 internationally recognized databases of environmental product
21 declarations for purposes of implementing this section.

22 NEW SECTION. **Sec. 6.** (1) By December 1, 2023, the department
23 must convene a buy clean and buy fair work group that includes
24 representatives from:

25 (a) Industry professionals recommended by leading associations of
26 Washington business in design, specification, and construction;

27 (b) Washington manufacturers;

28 (c) Manufacturing associations;

29 (d) The department of enterprise services;

30 (e) The department of transportation;

31 (f) The department of ecology;

32 (g) Environmental groups;

33 (h) Labor unions, including at least one representative that
34 represents manufacturing workers;

35 (i) The minority and women-owned business community;

36 (j) The University of Washington college of built environments;

37 and

1 (k) Other agencies and independent experts as necessary to meet
2 the objectives of the work group as defined in subsection (4) of this
3 section.

4 (2) The department may contract with the University of Washington
5 college of built environments in convening the work group.

6 (3) The purpose of the work group is to identify opportunities
7 and barriers to grow the use and production of low carbon materials,
8 to promote high labor standards in manufacturing, and to preserve and
9 to expand low carbon materials manufacturing in Washington.

10 (4)(a) By September 1, 2024, the buy clean and buy fair work
11 group must submit a low carbon materials manufacturing plan report to
12 the legislature and the governor. The report must recommend policies
13 to preserve and grow the in-state manufacturing of low carbon
14 materials.

15 (b) For this report, the buy clean and buy fair work group must:

16 (i) Examine barriers and opportunities to maintain and grow a
17 robust in-state supply of low carbon building materials including,
18 but not limited to, state and domestic supply of raw materials and
19 other supply chain challenges, regulatory barriers, competitiveness
20 of local and domestic manufacturers, cost, and data availability from
21 local, state, national, and foreign product suppliers; and

22 (ii) Identify opportunities to encourage the continued conversion
23 to lower carbon cements, including the use of performance-based
24 specifications and allowing Type 1-L cement in specifications for
25 public projects.

26 (5)(a) By September 1, 2025, the buy clean and buy fair work
27 group must submit a report on policy recommendations, including any
28 statutory changes needed, to the legislature and the governor. The
29 report must consider policies to leverage public procurement to
30 expand the use and production of low carbon materials, to promote
31 high labor standards in manufacturing, and to preserve and expand low
32 carbon materials manufacturing in Washington, including opportunities
33 to encourage continued conversion to lower carbon blended cements in
34 public projects.

35 (b) For this report, the buy clean and buy fair work group must:

36 (i) Summarize data collected pursuant to section 3 of this act,
37 the case study analysis funded by the 2021-2023 omnibus operating
38 appropriations act, and the pilot projects funded by the 2021-2023
39 omnibus capital appropriations act, including product quantities,
40 global warming potential, health product declarations, supplier codes

1 of conduct, working conditions, and any obstacles to the
2 implementation of this chapter;

3 (ii) Make recommendations for improving environmental production
4 declaration data quality including, but not limited to, integrating
5 reporting on variability in facility, product, and upstream data for
6 key processes;

7 (iii) Make recommendations for consideration of scope 2
8 greenhouse gas emissions mitigation through green power purchases,
9 such as energy attribute certificates and power purchase agreements;

10 (iv) Identify barriers and opportunities to the effective use of
11 the database maintained under section 5 of this act and the data
12 collected pursuant to this chapter; and

13 (v) Survey the regulatory landscape to identify areas of
14 alignment and discrepancy between local, state, federal, and private
15 policy on embodied carbon and the procurement and use of low carbon
16 materials and identify opportunities to promote consistency across
17 public and private embodied carbon and low carbon materials policies,
18 rules, and regulations.

19 (6) This section expires January 1, 2027.

20 **Sec. 7.** RCW 43.88.0301 and 2021 c 54 s 4 are each amended to
21 read as follows:

22 (1) The office of financial management must include in its
23 capital budget instructions, beginning with its instructions for the
24 2003-05 capital budget, a request for "yes" or "no" answers for the
25 following additional informational questions from capital budget
26 applicants for all proposed major capital construction projects
27 valued over (~~(10 million dollars)~~) \$10,000,000 and required to
28 complete a predesign:

29 (a) For proposed capital projects identified in this subsection
30 that are located in or serving city or county planning under RCW
31 36.70A.040:

32 (i) Whether the proposed capital project is identified in the
33 host city or county comprehensive plan, including the capital
34 facility plan, and implementing rules adopted under chapter 36.70A
35 RCW;

36 (ii) Whether the proposed capital project is located within an
37 adopted urban growth area:

1 (A) If at all located within an adopted urban growth area
2 boundary, whether a project facilitates, accommodates, or attracts
3 planned population and employment growth;

4 (B) If at all located outside an urban growth area boundary,
5 whether the proposed capital project may create pressures for
6 additional development;

7 (b) For proposed capital projects identified in this subsection
8 that are requesting state funding:

9 (i) Whether there was regional coordination during project
10 development;

11 (ii) Whether local and additional funds were leveraged;

12 (iii) Whether environmental outcomes and the reduction of adverse
13 environmental impacts were examined.

14 (2) For projects subject to subsection (1) of this section, the
15 office of financial management shall request the required information
16 be provided during the predesign process of major capital
17 construction projects to reduce long-term costs and increase process
18 efficiency.

19 (3) The office of financial management, in fulfilling its duties
20 under RCW 43.88.030(6) to create a capital budget document, must take
21 into account information gathered under subsections (1) and (2) of
22 this section in an effort to promote state capital facility
23 expenditures that minimize unplanned or uncoordinated infrastructure
24 and development costs, support economic and quality of life benefits
25 for existing communities, and support local government planning
26 efforts.

27 (4) The office of community development must provide staff
28 support to the office of financial management and affected capital
29 budget applicants to help collect data required by subsections (1)
30 and (2) of this section.

31 (5) The office of financial management must include in its
32 capital budget instructions, beginning with the instructions for the
33 2025-2027 biennium, information informing awarding authorities, as
34 defined in section 2 of this act, of the requirements of chapter
35 39.--- RCW (the new chapter created in section 9 of this act),
36 including the data and information requirements in section 3 of this
37 act.

38 NEW SECTION. Sec. 8. This act may be known and cited as the buy
39 clean and buy fair Washington act.

1 NEW SECTION. **Sec. 9.** Sections 2 through 6 of this act
2 constitute a new chapter in Title 39 RCW.

3 NEW SECTION. **Sec. 10.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

--- **END** ---