S-3377.2

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 5659**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 67th Legislature 2022 Regular Session**

**By** Senators Wellman, Lovelett, Hasegawa, Nguyen, Nobles, Saldaña, and C. Wilson

AN ACT Relating to establishing climate and labor standards for building materials used in state public works projects; and adding a new chapter to Title 39 RCW.

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

NEW SECTION. **Sec.**  (1) The legislature finds that while the state has done much work to address the operational carbon emissions attributed to the building sector, such as through the adoption of clean buildings standards and the clean energy transformation act to decarbonize the grid, much can still be done to reduce emissions from embodied carbon. Embodied carbon refers to the greenhouse gas emissions from the manufacturing and other life-cycle stages of building material, including transportation, installation, maintenance, and disposal of material used in the construction of buildings, roads, and other infrastructure. Approximately 40 percent of all global carbon emissions are attributed to the building sector, with around 10 percent resulting from the manufacturing of construction materials.

(2) As stated in the Paris climate accords, in order to avoid an irreversible and catastrophic climate change trajectory, average global temperatures must not rise more than two degrees Celsius. Since emissions accumulate in the atmosphere and there is limited time remaining before the arrival of this tipping point, emissions released now may be more critical than emissions released later. Policies to reduce embodied carbon can help achieve short-term climate targets, since the majority of a building's total embodied carbon is released upfront in the product stage at the beginning of a building's life. Further, unless action is taken soon, these emissions will only continue to increase due to rising global demand for construction materials to accommodate population growth and replacement of aging infrastructure.

(3) While reducing embodied carbon starts with action in the manufacturing sector, the construction industry can play a key role by creating a market demand for lower carbon products. Further, public policy can send a signal to manufacturers that it is time to invest in short-term and long-term solutions. Using its extensive purchasing power, the state can employ buy clean policies, such as procurement policies that incorporate low-carbon construction materials purchasing requirements, to accelerate the adoption of lower carbon materials in the wider construction materials sector.

(4) The legislature further finds that buy clean policies have the potential to result in large emissions reductions. The state of Washington spent approximately $94,000,000,000 on construction between the years of 2008 and 2018, which translated to approximately 39,000,000 metric tons of carbon dioxide equivalent. The amount of carbon is equivalent to the energy used by all the homes in the state for more than two years, or the annual impact of 8,400,000 passenger vehicles.

(5) Furthermore, these strategies have already been used successfully on public sector projects to achieve significant emissions reductions. The Helen Sommers building used a procurement approach similar to buy clean to lower the carbon footprint of the concrete used on the project by 27 percent compared to the Pacific Northwest average, saving over 1,300 metric tons of greenhouse gas emissions.

(6) In addition, procurement policies can be used not only to achieve climate goals, but also to promote a fair economy by incorporating high labor standards into procurement decisions. Incorporating emissions information and high labor standards will acknowledge those companies that have invested in emissions reduction technologies and practices and reward responsible manufacturers that are promoting and protecting a modern workforce through livable wages, benefits, and workforce training. Further, such policies will encourage other companies to take action to reduce emissions and improve labor practices to become more competitive in the Washington contracting process.

(7) Therefore, the legislature intends to establish climate and labor standards as part of the state procurement process to achieve significant carbon reductions and promote fair labor practices in state public works projects. In doing so, the legislature also intends to leverage the purchasing power of the state to encourage these practices in the broader construction materials market.

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

(1) "Awarding authority" includes any of the following:

(a) A state agency for a contract for a public works project that is subject to chapter 39.04 or 39.10 RCW; or

(b) The governing boards of the institutions of higher education as defined in RCW 28B.10.016 for a public works project that is subject to chapter 39.04 or 39.10 RCW.

(2) "Department" means the department of commerce.

(3) "Eligible product" includes any of the following:

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

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

(c) Structural steel, specifically hot rolled sections, hollow sections, plate, and cold formed; and

(d) Engineered wood, specifically composite lumber and mass timber.

(4) "Eligible project" means a project that the awarding authority determines will require eligible materials.

(5) "Environmental product declaration" means a supply chain specific type III environmental product declaration as defined by the international organization for standardization standard 14025 as that standard existed as of January 1, 2022, or similarly robust life-cycle assessment methods that have uniform standards in data collection consistent with the international organization for standardization standard 14025, industry acceptance, and integrity, as those standards existed as of January 1, 2022.

(6) "Greenhouse gas" has the same meaning as defined in RCW 70A.45.010.

(7) "State agency" includes any state board, commission, bureau, committee, department, institution, division, or tribunal in the legislative, executive, or judicial branch of state government.

(8) "Supply chain specific" means an environmental product declaration that includes supply chain specific data for production processes that contribute to 80 percent or more of a product's cradle-to-gate global warming potential, as defined in international organization for standardization standard 21930, and reports the overall percentage of supply chain specific data included. For engineered wood products, "supply chain specific" also means an environmental product declaration that reports:

(a) Any chain of custody certification;

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

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

(d) Percent volume contribution to wood sourcing by owner type. For example: Federal, state, private, or other.

NEW SECTION. **Sec.**  (1) By January 1, 2024, the department, in consultation with the department of ecology, must establish, and publish in guidance for awarding authorities, a maximum acceptable global warming potential for each eligible product in accordance with the following requirements:

(a) The department must set the maximum acceptable global warming potential at the 20th percentile value of global warming potential for each eligible product category, whereby 20 percent of products meeting the specifications for the category are achieving a value lower than this threshold. The department must determine this value by consulting nationally or internationally recognized databases of environmental product declarations of like performance and quality materials and may rely on the data in these databases or published evaluations of that data for purposes of identifying industry averages, ranges, and variations, and for establishing the maximum acceptable global warming potentials for eligible products. The department may establish a phase-in period of not more than two years for each eligible product to achieve the maximum acceptable global warming potential; and

(b) The department must maintain a list of relevant product category rules for each eligible product and express the maximum acceptable global warming potential as a number that states the maximum acceptable global warming potential for each eligible product by product category rule.

(2) By January 1, 2024, the department must submit a report to the legislature that describes the method that the department used to develop the maximum acceptable global warming potential for each eligible product pursuant to subsection (1) of this section. The report required by this subsection must be submitted in compliance with RCW 43.01.036.

(3) By January 1, 2027, and every three years thereafter, the department must review the maximum acceptable global warming potential for each eligible product established pursuant to subsection (1) of this section, and may adjust that number downward for any eligible product to reflect industry improvements if the department, based on the process described in subsection (1)(a) of this section, determines that the industry average has changed, but the department must not adjust that number upward for any eligible product. At that time, the department must update guidance to reflect that adjustment.

NEW SECTION. **Sec.**  (1) An awarding authority must require the successful bidder for a contract described in subsection (2) of this section to submit a current environmental product declaration for each eligible product to be used.

(2) An awarding authority must include in a specification for bids for an eligible project that the global warming potential for any eligible product does not exceed the maximum acceptable global warming potential for that product determined pursuant to section 3 of this act. An awarding authority may include in a specification for bids for an eligible project a global warming potential for any eligible product that is lower than the maximum acceptable global warming potential for that product determined pursuant to section 3 of this act.

(3) A successful bidder for a contract described in subsection (2) of this section may not install any eligible product on the project until that bidder submits an environmental product declaration for that product pursuant to subsection (1) of this section.

(4) This section only applies to a contract entered into on or after July 1, 2024.

(5) This section does not apply to an eligible product for a particular contract if the awarding authority determines, upon written justification published on its internet website, that requiring those eligible products to comply would be technically infeasible, would result in a significant increase in the project cost or a significant delay in completion, or would result in only one source or manufacturer being able to provide the type of product needed by the state.

(6)(a) The requirements of this section may be waived if the awarding authority determines that an emergency exists.

(b) For the purposes of this section, "emergency" means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

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

NEW SECTION. **Sec.**  In carrying out its duties under this chapter, an awarding authority must strive to achieve a continuous reduction of emissions over time.

NEW SECTION. **Sec.**  (1) Beginning July 1, 2024, an awarding authority must require the successful bidder for a contract for an eligible project to report on their suppliers for eligible products' compliance with the international labor organization's core labor standards as those standards existed as of January 1, 2022.

(2) Successful bidders for a contract for an eligible project may meet the requirements of subsection (1) of this section in one of two ways:

(a) Providing supplier codes of conduct from manufacturers that they are procuring eligible products from; or

(b) In cases in which a supplier does not have a code of conduct, the successful bidder for a contract for an eligible project must ask suppliers to provide a report on their measures taken to comply with the international labor organization's core labor standards and provide suppliers' self-reports to the awarding authority.

(3) Beginning July 1, 2022, until June 30, 2024, awarding authorities must encourage, but may not require, successful bidders to comply with the requirements of subsection (1) of this section.

NEW SECTION. **Sec.**  Any standards referenced or utilized for the purposes of this chapter may be updated by the department by rule.

NEW SECTION. **Sec.**  By July 1, 2026, the department must submit a report to the legislature on any obstacles to the implementation of this chapter, the effectiveness of this chapter in reducing the embodied emissions from public works, and the compliance of suppliers of eligible products for public works with the labor standards referenced in section 6 of this act. The report required by this section must be submitted in compliance with RCW 43.01.036.

NEW SECTION. **Sec.**  Sections 1 through 8 of this act constitute a new chapter in Title 39 RCW.

**--- END ---**