

SENATE BILL REPORT

SB 5659

As of January 26, 2022

Title: An act relating to establishing climate and labor standards for building materials used in state public works projects.

Brief Description: Establishing climate and labor standards for building materials used in state public works projects.

Sponsors: Senators Wellman, Lovelett, Hasegawa, Nguyen, Nobles, Saldaña and Wilson, C..

Brief History:

Committee Activity: State Government & Elections: 1/28/22.

Brief Summary of Bill

- Requires the Department of Commerce to establish guidance for any awarding authority regarding a maximum acceptable global warming potential for each eligible product.
- Adds environmental and labor requirements to the procurement process for certain public works contracts entered into on or after July 1, 2024.

SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

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Background: Public Works Projects. Public works projects include construction, renovation, remodeling, and repair, other than maintenance, of real property at the cost of the state or a municipality. Most public works projects are subject to public works laws and procured using the design-bid-build procedure where a governmental entity selects an architectural engineering firm to develop drawings and specifications for the project along with an estimate of the cost, then the construction contract is awarded to the lowest responsible bidder. Public works contracts that meet certain criteria may be awarded

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through alternative contracting procedures in which the selection of a contractor is based on factors other than low bid. There are three alternative procedures authorized by law—design-build, job order contracting, and general contractor/construction manager. Contractors are required to follow the specifications and drawings and may use whatever means to do so as long as the materials meet the specifications. Typical materials used in public works projects may include concrete, steel, and other materials.

Global Warming Potential. The Global Warming Potential (GWP) compares the global warming impacts of different greenhouse gases. The United States Environmental Protection Agency and the Department of Ecology identify carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride as greenhouse gases because of their capacity to trap heat in the Earth's atmosphere.

Environmental Product Declaration. An environmental product declaration (EPD) is a report providing what a product is made of and how it impacts targeted aspects of the environment, including the manufacturing impacts, transportation impacts, and construction impacts. EPDs are created according to internationally recognized standards and are third-party verified or self-declared. EPDs can be based on industry averages or specific to individual products or facilities.

Labor Laws. Several laws address employment standards. The International Labour Organization within the United Nations maintains and develops a system of international labor standards.

Summary of Bill: Department of Commerce. By January 1, 2024, the Department of Commerce (Commerce), in consultation with the Department of Ecology, must establish guidance for any awarding authority regarding a maximum acceptable GWP for each eligible product. The maximum acceptable GWP must be set at the 20th percentile value for each eligible product category, determined by consulting with nationally or internationally recognized databases of EPDs of like performance and quality materials. Commerce must maintain a list of relevant product category rules and express the maximum acceptable GWP as a number that states the GWP for each eligible product by product category rule. Commerce must submit a report by January 1, 2024, to the Legislature describing the method used to develop the maximum acceptable GWP.

By January 1, 2027, and every three years thereafter, Commerce must review the maximum acceptable GWP and may adjust that number downward for any eligible product to reflect industry improvements.

By January 1, 2026, Commerce must submit a report to the Legislature on any obstacles to the implementation of this act, effectiveness in reducing the embodied emissions from public works, and the compliance of suppliers and eligible products with the labor standards.

Public Works Projects. Additional requirements are added to the procurement process for certain public works contracts entered into on or after July 1, 2024.

Environmental Requirements. Awarding authorities must include in a specification for bids for eligible projects that the GWP for an eligible product does not exceed the maximum acceptable GWP as determined by Commerce. A successful bidder must submit a current EPD for each eligible product to be used. No installation of an eligible product may occur until the EPD is submitted.

The requirements may be waived if the awarding authority determines that an emergency exists or provides written justification, published on the awarding authorities website, outlining that requiring those eligible products to comply would be technically infeasible, result in significant increase in project costs or a delay in completion, or would result in only one source or manufacturer being able to provide the type of product needed by the state.

Labor Requirements. Awarding authorities must require a successful bidder report on their suppliers for eligible products' compliance with the International Labour Organization's core labor standards as those standards existed on January 1, 2022. Successful bidders may meet the requirements by:

- providing supplier codes of conduct from manufacturers; or
- asking the supplier to provide a report on their measures taken to comply with the standards if they do not have a code of conduct.

Between July 1, 2022 and June 20, 2024, awarding authorities must encourage, but may not require, successful bidders to comply with these requirements.

Definitions. Eligible product includes any of the following:

- structural concrete, specifically ready mix, shotcrete, precast, and concrete masonry units;
- reinforcing steel, specifically rebar and post-tensioning tendons;
- structural steel, specifically hot rolled sections, hollow sections, plate, and cold formed; and
- engineered wood, specifically composite lumber and mass timber.

Awarding authority includes any of the following:

- a state agency for a contract for a public works project that is subject to public works chapter law or alternative public works contracting procedures chapter law; or
- the governing boards of the institutions of higher education for a public works project that is subject to public works chapter law or alternative public works contracting procedures chapter law.

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

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.