

# HOUSE BILL REPORT

## HB 1103

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**As Reported by House Committee On:**  
Capital Budget

**Title:** An act relating to improving environmental and social outcomes with the production of building materials.

**Brief Description:** Improving environmental and social outcomes with the production of building materials.

**Sponsors:** Representatives Duerr, Shewmake, Fitzgibbon, Bateman, Ramel, Ryu, Kloba and Macri.

**Brief History:**

**Committee Activity:**

Capital Budget: 1/26/21, 2/17/21 [DPS].

**Brief Summary of Substitute Bill**

- Requires firms selected for large construction or building renovation contracts to provide an Environmental Product Declaration (EPD) and labor data for at least 90 percent of the cost of each covered material used in the project (primary reporting requirements).
- Provides alternative reporting requirements for firms that cannot fulfill the primary reporting requirements on the grounds of hardship.
- Directs the University of Washington College of Built Environment to create a publicly accessible database, with projects anonymized, to report the collected data.
- Directs the Department of Commerce to submit a report to the Legislature summarizing the collected data by January 1, 2025.

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### HOUSE COMMITTEE ON CAPITAL BUDGET

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*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.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Tharinger, Chair; Callan, Vice Chair; Hackney, Vice Chair; Bateman, Kloba, Leavitt, Peterson, Riccelli, Rule, Santos, Sells and Shewmake.

**Minority Report:** Do not pass. Signed by 10 members: Representatives Steele, Ranking Minority Member; Abbarno, Assistant Ranking Minority Member; McEntire, Assistant Ranking Minority Member; Dye, Eslick, Gilday, Kraft, MacEwen, Mosbrucker and Volz.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Maycumber.

**Staff:** Richelle Geiger (786-7139).

### **Background:**

#### Public Works.

Public works include construction, renovation, remodeling, and repair, other than maintenance, of real property at the cost of the state or a municipality. The capital budget provides direct appropriations and grants to state agencies, other governmental entities, and nonprofit organizations for public works. The transportation budget provides funding to construct and preserve roads and bridges, ferries and terminals, and freight rail. Typical materials used in those projects may include concrete, steel, and other materials. Most public works are procured using the Design-Bid-Build procedure when 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. The contractor is required to follow the specifications and drawings and may use whatever means to do so as long as the materials meet the specifications.

#### Global Warming Potential.

The Global Warming Potential (GWP) compares the global warming impacts of different gases. The United States Environmental Protection Agency (EPA) and the Department of Ecology identify carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride as greenhouse gases (GHGs) because of their capacity to trap heat in the Earth's atmosphere. According to the EPA, the GWP of each GHG is a function of how much of the gas is concentrated in the atmosphere, how long the gas stays in the atmosphere, and how strongly the particular gas affects global atmospheric temperatures. Under state law, the GWP of a gas is measured in terms of the equivalence to the emission of an identical volume of carbon dioxide over a 100-year timeframe.

#### 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. Environmental Product Declarations are created according to internationally recognized standards and are third-

party verified or self-declared. Environmental Product Declarations may be based on industry averages or specific to individual products or facilities.

#### Labor Laws and Standards.

Several laws address employment standards and working conditions. The International Labour Organization (ILO) within the United Nations maintains and develops a system of international labor standards. The ILO's four fundamental principles and rights to work are: (1) effective abolition of child labor; (2) elimination of discrimination in respect of employment and occupation; (3) elimination of all forms of forced or compulsory labor; and (4) freedom of association and the effective recognition of the right to collective bargaining.

#### Buy Clean Study and Pilot.

The 2018 Supplemental Capital Budget included funding for a Buy Clean study and a pilot project. The University of Washington (UW), in collaboration with Central Washington University, Washington State University, and the Department of Enterprise Services (DES), submitted a report analyzing existing embodied carbon policy, and proposing methods to categorize structural materials. The DES and the awarding authorities of four capital projects are collaborating with the UW to test the proposed methods and the availability of EPDs.

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### **Summary of Substitute Bill:**

#### Definitions.

Awarding authorities are state agencies and institutions of higher education that contract directly for a public works project that receives funding from the capital budget.

A covered project is a:

- construction project larger than 50,000 gross square feet of space; or
- 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 and conditioned space.

Covered materials are:

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

Working conditions are defined as:

- average number of employees, by employment type;
- average hourly wage;

- hours worked by weekly hour bands;
- maximum number of hours that an employee can be required to work per week; and
- percent of employees covered by a collective bargaining agreement.

#### Reporting Requirements.

Firms that are selected for a covered project contract are directed to submit an EPD and additional specified data, including information about working conditions at the production facilities, for at least 90 percent of the cost of each of the covered products used as follows:

- Beginning July 1, 2021, an awarding authority may encourage, but not require, submittal prior to the final construction retainage payment.
- Beginning July 1, 2022, submittal is required before substantial completion.
- Beginning on July 1, 2023, submittal is required before the material is installed in the project.

If a selected firm cannot meet the primary reporting requirements, they must report on its efforts to obtain the data, provide documentation demonstrating the steps undertaken to reasonably obtain the data, and, if a firm cannot meet the requirements on the grounds of hardship, demonstrate the nature of the hardship.

Subject to funds made available for this purpose, the Department of Commerce (Department) may provide financial assistance to small businesses to produce an EPD.

#### Other Provisions.

Each awarding authority must transmit a copy of all collected data to the Department, annually. The UW College of Built Environment is directed to create a publicly accessible database, with projects anonymized, to report the collected data and will publish global warming potential as reported in the EPDs. By January 1, 2025, the Department will submit a report to the Legislature, summarizing the collected data.

The Office of Financial Management must inform awarding authorities about the requirements in this act.

The act may be known and cited as the Buy Clean and Buy Fair Washington Act.

#### **Substitute Bill Compared to Original Bill:**

The substitute bill:

- removes cold formed steel products from the list of specific structural steel products identified in the definition of "covered product;"
- increases the minimum gross square footage (sq ft) of a "covered project" as defined in the bill, to 50,000 sq ft, from 25,000 sq ft;
- defines "health certification";
- makes the first year reporting voluntary;
- beginning in 2022, requires firms to report data before substantial completion of the

- project, rather than prior to the final construction retainage payment;
- eliminates the requirement to report purchase amount;
- changes the amount of covered materials that are reported on to 90 percent of cost for each type of covered material, rather than 90 percent of the weight of the covered materials;
- adds that compliance with the act may not be used as a basis of a waiver from apprenticeship utilization requirements;
- modifies the hardship clause;
- modifies the directions to the Office of Financial Management regarding updating the Capital Budget instructions;
- specifies that the UW database will publish the GWP as reported in the environmental product declarations;
- corrects an Executive Order reference; and
- adds intent language related to environmental product declarations.

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**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This policy will advance the state's energy goals, align state capital purchases with those goals, and give the state an opportunity to lead by example. This bill is a signal to the economy of what the state values—a healthy environment and fair labor conditions. These policies reward manufacturers that invest in high labor and environmental standards. Good jobs mean a strong economy. The bill is a win for the forests, climate, workers, and the economy.

This bill puts Washington manufacturers at a competitive advantage because of the state's high labor and environmental standards and low energy grid. Additionally, this bill favors domestic-made material over foreign-made material because the United States has the highest standards and regulations in the world. This will help bring good manufacturing jobs back to America. Too often across the world, the treatment of workers is disregarded while manufacturing more eco-friendly building materials. This policy is a first step in reversing the damage caused by de-industrialization.

The private sector and local governments are interested in building with materials that have less embodied carbon. Materials can look and cost the same but have very different carbon impacts. The largest hurdle in making informed purchases is a lack of data and the EPD make more informed purchases possible.

The EPDs for many products already exist. The creation of free, verified EPDs is not a future state—it is happening now in Washington and elsewhere. Environmental Product Declarations were required during the construction of the Helen Sommers Building and it was a successful project.

This is a reporting-only bill and will not result in an undue burden on contractors. Reporting EPDs may seem like a simple act but what is not measured can not be managed. This policy will not increase the cost of doing business, but it will have a real impact on carbon reduction.

The built environment is one of the largest contributors of greenhouse gas emissions, and embodied carbon accounts for about a quarter of those emissions. This policy is necessary because once a project is complete, the carbon impact is locked in. With these policies, the construction industry can be part of the solution, by growing demand for materials with higher environmental standards.

This version of the bill is an improvement upon previous Buy Clean policies considered by the Legislature.

(Opposed) This bill has requirements beyond reporting. Compliance will be a burden on state agencies because it adds complexity to the procurement process. The policy should be simplified to direct state agencies to consider EPDs when available instead of creating reporting requirements.

The minimize size of eligible projects should be increased from 25,000 gross sq ft to 50,000 sq ft. The requirement to report health certificates should be removed. Health certifications are required in the bill, but the term is not defined. The requirement that data is reported on 90 percent of weight of a covered project should be replaced with 90 percent of cost, because weight has no correlation to carbon emissions.

The reporting requirements set to begin in 2023 will not be possible for all materials, including concrete. There are many EPDs currently available for concrete.

There is concern about how EPDs will be used. Environmental Product Declarations cannot be used to compare different types of materials. Life-cycle analysis is a better measurement tool than EPDs.

The reporting requirements go beyond EPDs and would place an undue burden on contractors and manufacturers without achieving the state's energy goals. Some of the required information may not be available to manufacturers, such as labor information in the supply chain and health certifications.

The labor reporting requirements should be removed and decoupled from the environmental

requirements. It is not fair to insist other countries meet the United States labor and environmental standards.

This version of the Buy Clean policy does not incorporate feedback from impacted manufacturing industries.

The Legislature and contractors have worked for many years to shorten the period of time that contractors have to wait to get paid by the state. This policy would undo that work. Retainage payment should not be held hostage over reporting requirements.

Many support reducing carbon emissions in the built environment, but believe that this is not the way to achieve that objective.

(Other) This version of the bill is an improvement to previous versions of the policy that have been considered over the years.

The reporting requirements are not achievable for the wood product industry. Information is not tracked at the required level of detail and wood disclosures would not add value. Most Washington wood is already certified sustainable by industry standards. Also, the definitions in the bill related to wood products are vague.

The intent of the bill is not clear. Asking contractors to report embodied carbon in building materials after the project is complete does not help reduce carbon emissions. If the objective is to create an EPD database, there are a number of databases already available at the federal level. The most effective way to ensure high environmental and labor standards are considered in the procurement process is to require that public works are constructed with domestically produced material.

More building materials should be included in the definition of "covered material."

**Persons Testifying:** (In support) Representative Duerr, prime sponsor; Alex Ianchenko, The Miller Hull Partnership; Donald Davies, Magnusson Klemencic Associates; Stacy Smedley, Building Transparency; Heather Kurtenbach, Ironworkers Local 86; Rachel Baker, Washington Environmental Council; Hillary Haden, Washington Fair Trade Coalition; Gaylan Prescott, United Steelworkers District 12; and Todd Beyreuther.

(Opposed) Tonia Sorrell-Neal, Masonry Institute of Washington; Jerry VanderWood, The Associated General Contractors of Washington; Tien Peng, National Ready Mixed Concrete Association; Bruce Chattin, Washington Aggregates and Concrete Association; and Bettilyn Clingman, Washington State Conference of Mason Contractors.

(Other) Patrick Jablonski, Nucor Steel Seattle, Inc; Jason Callahan, Washington Forest Protection Association; and Heath Curtiss, Hampton Lumber.

**Persons Signed In To Testify But Not Testifying:** None.