

HOUSE BILL REPORT

HB 2744

As Reported by House Committee On: Capital Budget

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

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

Sponsors: Representatives Doglio, Duerr, Davis, Fitzgibbon and Ramel.

Brief History:

Committee Activity:

Capital Budget: 1/28/20, 2/6/20 [DPS].

Brief Summary of Substitute Bill

- Requires selected firms of contracts for large construction and transportation projects to provide an Environmental Product Declaration for at least 90 percent of the mass of eligible materials.
- Requires selected firms to submit domestic labor law compliance data, or efforts to collect the information, from facilities that submit Environmental Product Declarations.

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Tharinger, Chair; Callan, Vice Chair; Doglio, Vice Chair; Davis, Harris, Leavitt, Lekanoff, Morgan, Peterson, Riccelli, Santos, Sells and Stonier.

Minority Report: Do not pass. Signed by 10 members: Representatives DeBolt, Ranking Minority Member; Smith, Assistant Ranking Minority Member; Steele, Assistant Ranking Minority Member; Corry, Dye, Eslick, Gildon, Irwin, Jenkin and Walsh.

Staff: Kelci Karl-Robinson (786-7116).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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. The capital budget provides direct appropriations and grants to state agencies, other governmental entities, and nonprofit organizations for public works projects. 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 projects 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 (GHG) 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 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.

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, 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 University of Washington to test the proposed methods and the availability of EPDs.

Summary of Substitute Bill:

Environmental Product Declaration.

Awarding authorities must require selected firms of contracts for eligible projects to submit a facility-specific Environmental Product Declaration (EPD) for at least 90 percent of the mass of eligible materials within the following timeframe:

- beginning July 1, 2020, submittal if the EPD is available;
- beginning July 1, 2021, submittal of EPDs for all materials used; and
- beginning July 1, 2022, submittal of EPDs before the materials are installed.

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

Eligible projects include:

- a construction project larger than 50,000 gross square feet or a building renovation when greater than 50 percent of space is being renovated; or
- a transportation system project funded or carried out by the Department of Transportation that costs greater than \$1 million and uses more than a de minimis amount of eligible materials.

Eligible material categories include:

- concrete;
- carbon steel rebar;
- structural steel;
- concrete masonry units;
- wood; and
- gauge metal products for roof and floor decking, wall studs, and floor system studs.

Subject to funds available, the Department of Commerce (Department) may provide financial assistance to small businesses in producing an EPD. Bidders are encouraged to submit EPDs beginning July 1, 2020.

Labor Laws.

Beginning January 1, 2022, selected firms of contracts for eligible projects must report the following information for facilities that submit EPDs:

- locations;
- compliance with domestic labor law in the countries where they produce goods or services over the last five years;
- lowest wages received by workers;
- whether an explicit neutrality agreement exists on any issue involving the organization of employees; and

- any requirement that employees sign predispute arbitration agreements regarding claims for employment discrimination, sexual assault, or sexual harassment.

Selected firms may report on efforts undertaken to collect the information from the facilities when the information is unattainable.

Other Provisions.

Awarding authorities must annually transmit the EPD and domestic labor law data to the Department. The Department must track the data in a publicly accessible database with projects anonymized.

The Office of Financial Management must incorporate requirements for state agencies to consider lower carbon building materials and domestic labor law compliance declarations within existing business processes and tools.

Awarding authorities must strive to achieve a continuous reduction of emissions over time and improve labor standards in manufacturing.

The Department must submit a report to the Legislature by January 1, 2025, addressing obstacles to the implementation of new EPD and global warming potential requirements, and the effectiveness of the new requirements in reducing global warming potential and improving labor standards in manufacturing.

Substitute Bill Compared to Original Bill:

The substitute bill removes the requirements that:

- the Department of Commerce establish and publish a maximum acceptable global warming potential for each category of eligible materials;
- state agencies consider the material with the comparatively lower global warming potential in bid decisions; and
- state agencies, local municipalities, and the State Building Code Council do not include or require prescriptive specifications for the functional use of concrete or unit masonry products as a structural material.

The size of eligible projects are increased from 5,000 to 50,000 gross square feet. Selected firms, instead of bidders, are required to submit the Environmental Product Declaration (EPD) information. Domestic labor law compliance data requirements are added. The data must come from facilities that submit EPDs instead of the bidders or proposers of contracts and their subcontractors. When the information is unattainable, selected firms may report on efforts undertaken to collect the labor law information from the facilities. Various other changes are made.

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) Washington is leading the country in efforts to reduce the carbon intensity of building materials, particularly through the Carbon Leadership Forum at the University of Washington. The Buy Clean study identified how upfront emissions of building material manufacturing, or embodied carbon, could be reduced. The Embodied Carbon in Construction Calculator database makes Environmental Product Declarations (EPDs) information more readily available to set targets. Buildings make up one-third of greenhouse gas emissions, yet there is not as much reporting on the carbon used in the production of the building materials as there is in building operations. Public sector building and transportation projects can drive market transformation in lowering the embodied carbon of building materials. The goal is to ensure materials are made in manufacturing facilities that take care of their workers. A reasonable target is initially set at the eightieth percentile and then lowered over time. The structural materials identified in the bill have the largest consumption and is the best first step in an embodied carbon reduction strategy. Intentionally, the goal is to not compare between materials and instead award the best of class within each category of materials. Washington-made materials will be rewarded due to the fact that the energy grid in Washington is one of the cleanest in the world, which means steel made in Washington has a smaller carbon footprint. In the private sector, there have been win-win scenarios where the lowest carbon material is also the lowest cost. The Helen Sommers Building project was the first state project to require EPDs. The use of rigorous performance specifications instead of traditional prescriptive specifications get better results. Some manufacturers will need more time and smaller businesses will need support to prepare facility-specific EPDs. There should be a high bar for compliance, such as 90 percent by mass, but not 100 percent, because there will be legitimate situations when a material could be above emissions baselines. The state purchasing power will influence the market in making climate friendly building material choices. Clean building materials and a strong union labor place are not necessarily priorities in the global economy. Without incentives to tap into those forces, markets will continue to search for cheap markets and cheap labor. The bill ensures worker fairness by increasing transparency of labor practices. Additional reporting requirements, including wages and collective bargaining data, should be added. Requiring reporting of labor standards is a starting point to incentivize better labor practices, and the bill should go further by establishing and enforcing labor standards in state procurement policies. Manufacturers that have cleaned up their emissions should not have an unfair economic advantage against those that have not. The International Panel for Climate Change has demonstrated scientific consensus as to the devastating impacts of climate change. Architects want the EPD information in order to inform material and supplier choices. The market responds to regulatory changes, such as energy code changes. "Wood" should be defined as a structural material. Rewarding companies with higher environmental and labor standards will lead to increased use of materials made in the United States and this region.

(Opposed) Performance specifications would lead to the lower use of concrete and unit masonry products and the loss of jobs in Washington. The cost of EPDs could result in smaller manufacturers going out of business.

(Other) Steel produced in Washington is one of the lowest global warming potential (GWP) products in the world. Environmental Product Declarations should not be used to compare different types of materials. Environmental Product Declarations measure the environmental impact of a product from the raw materials used through the manufacturing process, but it does not always measure the transportation costs. Facility-specific EPDs do not take into consideration the emissions across the product lifecycle. An aggressive GWP reduction target will eliminate product options. There is significant variation within structural steel products and a better definition is needed. Concrete mixes may not be known at the time of bidding and those mixes change throughout construction. Environmental Product Declarations will be difficult to measure at bid. Prescriptive specifications restrict the ability to reduce emissions and achieve performance goals. Leadership in Energy and Environmental Design 4.0 encourages a focus on whole building life cycle instead of just focusing on the manufacturing of the building material. Smaller businesses and women- and minority-owned businesses will have difficulty navigating the procurement process. The current bid process is already complex and the added complexity may lead to litigation, construction delays, and higher costs. There may be consequences to federal funding sources as a result of not awarding the contract to the lowest bid. Alternative public works should be exempted. There will be increased utilization of EPDs and market transformation to reduce GWP emissions in building materials. The Department of Commerce, in collaboration with University of Washington, will be able to successfully measure the maximum acceptable GWP.

Persons Testifying: (In support) Representative Doglio, prime sponsor; Kate Simonen, Carbon Leadership Forum; Don Davies, Magnusson Klemencic Associates; David Walsh, Sellen Construction; Chris van Daalen, Northwest EcoBuilding Guild; Chelsea Mason, Aerospace Machinists Union District 751; Vlad Gutman, Washington State Labor Council and Climate Solutions; Darcy Nonemacher, Washington Environmental Council; Hillary Haden, Washington Fair Trade Coalition; Jessica Koski, BlueGreen Alliance; and Kirsten Smith, American Institute of Architects.

(Opposed) Michael Transue, Washington State Conference of Mason Contractors and International Masonry Institute.

(Other) Pat Jablonski and Keith Lindemulder, Nucor Steel; Jane Wall, Washington State Association of Counties; Bill Frare, Department of Enterprise Services; Alyson Cummings, Washington State Department of Transportation; Chuck Murray, Department of Commerce; Chris Herman, Washington Public Ports Association; and Bruce Chattin.

Persons Signed In To Testify But Not Testifying: None.