
SUBSTITUTE HOUSE BILL 1103

State of Washington

67th Legislature

2021 Regular Session

By House Capital Budget (originally sponsored by Representatives Duerr, Shewmake, Fitzgibbon, Bateman, Ramel, Ryu, Kloba, and Macri)

READ FIRST TIME 02/18/21.

1 AN ACT Relating to improving environmental and social outcomes
2 with the production of building materials; amending RCW 43.88.0301;
3 adding a new chapter to Title 39 RCW; and providing an expiration
4 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 accelerate necessary greenhouse gas reductions, 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 does not currently spend public dollars for
14 materials on state-funded infrastructure projects in a way that is
15 consistent with the state's carbon reduction goals or its high
16 environmental and labor standards. Meanwhile, the private sector is
17 increasingly demanding building materials that reduce carbon and
18 other types of pollution and support good jobs in manufacturing. For
19 state spending, manufacturers that exploit workers and the
20 environment are treated the same as manufacturers that meet high
21 environmental and labor standards. This treatment puts manufacturers

1 that invest in emissions reduction technologies, other pollution
2 controls, and a 21st century workforce at a competitive disadvantage
3 for state projects.

4 (3) Incorporating carbon pollution, other types of pollution
5 impacts, and working conditions into the procurement process will
6 level the playing field for manufacturers that meet high
7 environmental and labor standards. This process will encourage other
8 manufacturers to reduce greenhouse gas emissions, invest in pollution
9 controls, and improve working conditions while growing the demand for
10 ethically produced materials with a smaller environmental footprint.

11 (4) Washington state is already home to multiple world-class
12 manufacturing facilities and with a low carbon electric grid and
13 highly skilled workforce, the state is well-positioned to capture the
14 growing demand for low carbon materials and create and sustain a new
15 generation of good, high-wage clean manufacturing jobs. By leveling
16 the playing field for manufacturers that meet high environmental and
17 labor standards and meeting the growing demand for ethically and
18 sustainably produced materials, Washington's manufacturing base will
19 continue to expand.

20 (5) Incorporating emissions and working conditions into the
21 procurement process will also improve the state's ability to make
22 purchasing decisions that align with its carbon reduction goals and
23 economic development goals.

24 (6) 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 enable fair
28 comparison of products fulfilling the same function and performance
29 characteristics within a product category. To be comparable,
30 environmental product declarations must follow the same product
31 category rule and include identical life-cycle stages. Environmental
32 product declarations cannot be used to compare products across
33 different product categories or different functional units.

34 (7) Great quantities of greenhouse gas emissions are released
35 during the manufacturing of building materials and the state and
36 local government are among the largest consumers of these building
37 materials.

38 (8) The legislature has committed to carbon reduction measures by
39 requiring action by public agencies. Those actions do not currently
40 encourage public dollars to be spent in a way that is consistent with

1 the state's carbon reduction goals as it relates to the global
2 warming potential embedded within the materials procured for state-
3 funded infrastructure projects.

4 (9) The buy clean and buy fair policies established in this
5 chapter are critical to reduce embodied carbon in the built
6 environment, a goal identified in the Washington state 2021 energy
7 strategy to meet the state's greenhouse gas emission limits and
8 governor Inslee's Executive Order 20-01 on state efficiency and
9 environmental performance.

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

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

18 (1) "Actual production facilities" means the final manufacturing
19 facility and the facilities at which production processes occur that
20 contribute to 80 percent or more of the product's cradle-to-gate
21 global warming potential, as reflected in the environmental product
22 declaration.

23 (2) "Awarding authority" means:

24 (a) The department of enterprise services;

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

27 (c) Natural resource agencies, including the department of
28 natural resources, the state parks and recreation commission, and the
29 department of fish and wildlife;

30 (d) Any other state governmental entity that receives funding
31 from the omnibus capital appropriations act for a public works
32 project contracted directly by the state agency; and

33 (e) The department of transportation.

34 (3) "Covered product" means:

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

37 (b) Reinforcing steel products, specifically rebar and post
38 tensioning tendons;

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

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

5 (4) "Covered project" means:

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

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

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

14 (6) "Employee" means any individual who is in an employment
15 relationship with the organization, according to national law or its
16 application.

17 (7) "Environmental product declaration" means a supply chain
18 specific type III environmental product declaration as defined by the
19 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 (8) "Full-time" employee means an employee with an employment
25 contract that is for at least 12 consecutive months and whose working
26 hours per week, month, or year are defined as full time according to
27 national law or practice regarding working time.

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

29 (10) "Health certification" means a health product declaration,
30 as reported in accordance with the health product declaration open
31 standard, and any product certification that includes health-related
32 criteria.

33 (11) "International labor organization's four fundamental
34 principles and rights at work" means: Effective abolition of child
35 labor; elimination of discrimination in respect of employment and
36 occupation; elimination of all forms of forced or compulsory labor;
37 and freedom of association and the effective recognition of the right
38 to collective bargaining.

39 (12) "Nonsupervisory employees" means every employee except those
40 whose responsibility it is to supervise, plan, or direct the work of

1 others, including working supervisors and group leaders who may be in
2 charge of a group of employees, but whose supervisory functions are
3 only incidental to their regular work.

4 (13) "Part-time" employee means an employee with an employment
5 contract that is for at least 12 consecutive months and whose working
6 hours are less than required for a full-time employee, as defined in
7 subsection (8) of this section.

8 (14) "Production employees" means every employee with a
9 production occupation, as defined by the standard occupation
10 classification code 51-0000.

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

19 (a) Any chain of custody certification;

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

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

24 (d) Percent volume contribution to wood sourcing by owner type,
25 e.g., federal, state, private, or other.

26 (16) "Temporary" employee means an employee who has an employment
27 contract that is for fewer than 12 months or who is terminated by a
28 specific event including, but not limited to, the end of a project or
29 the return of replaced employees.

30 (17)(a) "Working conditions" means the:

31 (i) Average number of employees by employment type, full time,
32 part time, and temporary;

33 (ii) Average hourly wage, including all nondiscretionary wages
34 and bonuses, by quartiles;

35 (iii) Hours worked by weekly hour bands, 1-19 hours, 20-29 hours,
36 30-39 hours, 40-49 hours, 50-59 hours, and 60 or more hours;

37 (iv) Maximum number of hours that an employee can be required to
38 work per week; and

39 (v) Percent of employees covered by a collective bargaining
40 agreement.

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

3 (i) For the two previous years; or

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

6 NEW SECTION. **Sec. 3.** (1)(a) Beginning July 1, 2021, an awarding
7 authority must encourage, but may not require, the selected firm for
8 a contract for a covered project to submit the following data for
9 each covered product used prior to the final construction retainage
10 payment:

11 (i) Product quantity;

12 (ii) A current environmental product declaration;

13 (iii) Health certifications, if any, completed for the product;

14 (iv) Manufacturer name and location, including state or province
15 and country;

16 (v) Measures taken, if any, to promote the international labor
17 organization's four fundamental principles and rights at work within
18 the manufacturer supply chain;

19 (vi) Names and locations, including state or province and
20 country, of the actual production facilities; and

21 (vii) Working conditions at the actual production facilities for
22 all employees.

23 (b) Beginning July 1, 2022, an awarding authority shall require
24 the selected firm for a contract for a covered project to submit the
25 data required by (a) of this subsection for each covered product used
26 before substantial completion.

27 (c) Beginning July 1, 2023, an awarding authority shall require
28 the selected firm for a contract for a covered project to submit the
29 data required by (a) of this subsection for each covered product used
30 before the material is installed in the project.

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

34 (2) The University of Washington college of built environments
35 shall create a publicly accessible database with projects anonymized
36 for selected firms for contracts for covered projects to report the
37 data required in subsection (1) of this section to the state and to
38 promote transparency.

1 (3) The database created by the University of Washington college
2 of built environments pursuant to subsection (2) of this section will
3 publish global warming potential as reported in the environmental
4 product declarations.

5 (4) The selected firm for a contract for a covered project must
6 make good-faith effort to meet the requirements of subsection (1) of
7 this section.

8 (5) If the selected firm for a contract for a covered project
9 cannot meet the requirements of subsection (1) of this section, then
10 the selected firm must report on and provide documentation,
11 including, but not limited to, letters, emails, and phone logs with
12 names, dates, and outcomes, demonstrating the specific steps
13 undertaken to reasonably obtain the data.

14 (6) If the selected firm for a contract for a covered project
15 cannot meet the requirements of subsections (1) and (4) of this
16 section on the grounds of hardship, then the selected firm must
17 report on any specific steps taken to obtain the data and demonstrate
18 at least one of the following:

19 (a) The requirements would be a hardship relative to the size of
20 the firm or the product supplier based on a specific estimate of
21 costs to collect and transfer the information; or

22 (b) The requirements would disrupt the selected firm's ability to
23 perform its contractual obligations.

24 (7) The selected firm for a contract for a covered project shall
25 provide all data required in subsection (1) of this section that can
26 be obtained.

27 (8) Each awarding authority must annually transmit to the
28 department a copy of all information that the awarding authority
29 receives pursuant to subsections (5) and (6) of this section.

30 (9) All environmental product declarations must follow nationally
31 or internationally recognized rules for producing environmental
32 product declarations for the subject material, follow standards
33 established for life-cycle analysis material reporting of global
34 warming potentials, and conform to the international organization for
35 standardization standard 14025, 14040, 14044, and 21930.

36 (10) Beginning January 1, 2026, environmental product
37 declarations must report actual data quality assessments including
38 variability in facility, product, and upstream data for key
39 processes.

1 (11) The department may contract for the use of nationally or
2 internationally recognized databases of environmental product
3 declarations for purposes of implementing this section.

4 (12) An awarding authority may amend their fee schedule to
5 accommodate this chapter.

6 (13) Subject to funds made available for this purpose, the
7 department may provide financial assistance to small businesses, as
8 defined in RCW 19.85.020, equal to no less than half of the cost to
9 the small business of producing an environmental product declaration
10 required under this section.

11 (14) Compliance with the requirements in subsections (1) through
12 (12) of this section may not be used as a basis for a waiver from
13 apprenticeship utilization requirements in any other statute,
14 regulation, or law.

15 **Sec. 4.** RCW 43.88.0301 and 2017 3rd sp.s. c 25 s 2 are each
16 amended to read as follows:

17 (1) The office of financial management must include in its
18 capital budget instructions, beginning with its instructions for the
19 2003-05 capital budget, a request for "yes" or "no" answers for the
20 following additional informational questions from capital budget
21 applicants for all proposed major capital construction projects
22 valued over (~~five million dollars~~) \$5,000,000 and required to
23 complete a predesign:

24 (a) For proposed capital projects identified in this subsection
25 that are located in or serving city or county planning under RCW
26 36.70A.040:

27 (i) Whether the proposed capital project is identified in the
28 host city or county comprehensive plan, including the capital
29 facility plan, and implementing rules adopted under chapter 36.70A
30 RCW;

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

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

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

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

3 (i) Whether there was regional coordination during project
4 development;

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

6 (iii) Whether environmental outcomes and the reduction of adverse
7 environmental impacts were examined.

8 (2) For projects subject to subsection (1) of this section, the
9 office of financial management shall request the required information
10 be provided during the predesign process of major capital
11 construction projects to reduce long-term costs and increase process
12 efficiency.

13 (3) The office of financial management, in fulfilling its duties
14 under RCW 43.88.030(~~(5)~~) (6) to create a capital budget document,
15 must take into account information gathered under subsections (1) and
16 (2) of this section in an effort to promote state capital facility
17 expenditures that minimize unplanned or uncoordinated infrastructure
18 and development costs, support economic and quality of life benefits
19 for existing communities, and support local government planning
20 efforts.

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

25 (5) The office of financial management must include in its
26 capital budget instructions, beginning with the instructions for the
27 2021-2023 supplemental budget, information informing awarding
28 authorities, as defined in section 2 of this act, of the requirements
29 of this act, including the data and information requirements in
30 section 3 (1), (5), and (6) of this act for selected firms for
31 covered projects and the instruction for awarding authorities in
32 section 3(8) of this act.

33 NEW SECTION. Sec. 5. (1) By January 1, 2025, and in conformance
34 with RCW 43.01.036, the department shall submit to the legislature a
35 report summarizing the data submitted in pursuit of this chapter,
36 including product quantities and purchase amounts, global warming
37 potential, labor conditions, health certifications, and any obstacles
38 to the implementation of this chapter.

39 (2) This section expires January 1, 2026.

1 NEW SECTION. **Sec. 6.** This act may be known and cited as the buy
2 clean and buy fair Washington act.

3 NEW SECTION. **Sec. 7.** Sections 1 through 3, 5, and 6 of this act
4 constitute a new chapter in Title 39 RCW.

5 NEW SECTION. **Sec. 8.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

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