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**SUBSTITUTE SENATE BILL 5322**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senate Environment, Energy & Technology (originally sponsored by Senators Wellman, Hasegawa, Keiser, Valdez, and C. Wilson; by request of Department of Commerce)

AN ACT Relating to environmental and labor reporting for public building construction and renovation material; amending RCW 43.88.0301; adding a new chapter to Title 39 RCW; creating new sections; and providing an expiration date.

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

NEW SECTION. **Sec.**  The legislature finds and declares that:

(1) Washington state, through its extensive purchasing power, can reduce embodied carbon in the built environment, improve human and environmental health, grow economic competitiveness, and promote high labor standards in manufacturing by incorporating climate and other types of pollution impacts and the quality of working conditions into the procurement process.

(2) Washington state is home to multiple world-class manufacturers that are investing heavily in reducing the carbon intensity of their products and that provide family-wage jobs that are the foundation for a fair and robust economy. Washington's current procurement practices put these manufacturers and others that meet high environmental and labor standards at a competitive disadvantage because the state treats them the same as manufacturers that are not investing in reducing their environmental footprint or that have poor labor practices.

(3) The private sector is increasingly demanding low carbon building materials that support good jobs in manufacturing. This market demand has rapidly accelerated innovation and led to increased production of low carbon building materials. As one of the largest consumers of building materials, Washington has an opportunity to leverage its purchasing power to do even more to send a clear signal to the market of the growing demand for low carbon building materials.

(4) With its low carbon electric grid and highly skilled workforce, Washington state is well-positioned to capture the growing demand for low carbon building materials and create and sustain a new generation of good, high-wage clean manufacturing jobs.

(5) Washington has demonstrated a deep commitment to ensuring that the transition to a low carbon economy is fair and creates family-wage jobs. Both the clean energy transformation act and the climate commitment act tie public investments in infrastructure to reduce greenhouse gas emissions to high road construction labor standards. Integrating manufacturing working conditions into the procurement process reaffirms and is consistent with the state's commitment to a fair transition.

(6) A robust state and domestic supply of low carbon materials is critical for building a fair economy and meeting the needs of the low carbon transition, including securing the clean energy supply chain.

(7) Environmental product declarations are the best available tool for reporting product-specific environmental impacts using a life-cycle assessment and informing the procurement of low carbon building materials. Environmental product declarations cannot be used to compare products across different product categories or different functional units.

(8) The buy clean and buy fair policies established in this act are critical to reduce embodied carbon in the built environment, a goal identified by the Washington state 2021 energy strategy to meet the state's greenhouse gas emission limits, governor Inslee's Executive Order 20-01 on state efficiency and environmental performance, and the Pacific coast collaborative's pathbreaking low carbon construction task force.

(9) Reducing embodied carbon in the built environment requires a holistic, comprehensive approach that includes designing buildings with a lower-embodied carbon footprint and making lower carbon products. Product-focused procurement policies, like the buy clean and buy fair policies established in this act, are an important tool for increasing the manufacture of lower carbon products.

(10) The 2021-2023 biennium budgets made critical progress on the buy clean and buy fair policies in this act by funding the creation of a publicly accessible database to facilitate reporting and promote transparency on building materials purchased for state-funded infrastructure projects and two large buy clean and buy fair pilot projects. This ongoing work to create a database to facilitate reporting of environmental impacts and labor conditions from pilot projects has provided a strong foundation to inform future work on buy clean and buy fair policies.

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

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

(1) "Actual production facilities" means the final manufacturing facility and the facilities at which production processes occur that contribute to 70 percent or more of the product's cradle-to-gate global warming potential, as reflected in the environmental product declaration.

(2) "Awarding authority" means:

(a) Institutions of higher education as defined in RCW 28B.92.030;

(b) The department of enterprise services, the department of natural resources, the state parks and recreation commission, the department of fish and wildlife, and the department of transportation; and

(c) Any other state government agency that receives funding from the omnibus capital appropriations act for a public works project contracted directly by the state agency.

(3) "Covered product" means:

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

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

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

(d) Engineered wood products, specifically cross-laminated timber, glulam beams, laminated veneer lumber, and parallel strand lumber.

(4) "Covered project" means:

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

(b) A 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 or conditioned space as defined in the Washington state building code, chapter 51-50 WAC.

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

(6) "Employee" means any individual who is in an employment relationship with the organization.

(7)(a) "Environmental product declaration" means a supply chain specific type III environmental product declaration, as defined by the international organization for standardization standard 14025 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.

(b) For the purposes of this subsection, "supply chain specific" means an environmental product declaration that includes supply chain specific data for production processes that contribute 70 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.

(8) "Full time" means an employee in a position that:

(a) The employer intends to be filled for at least 52 consecutive weeks or 12 consecutive months, excluding any leaves of absence; and

(b) Requires the employee to work, excluding overtime hours, 35 hours per week for 52 consecutive weeks, 455 hours a quarter, or 1,820 hours during a period of 12 consecutive months.

(9) "Health product declaration" means a supply chain specific health product declaration, as defined by the health product declaration open standard maintained by the health product declaration collaborative, that has robust methods for product manufacturers and their ingredient suppliers to uniformly report and disclose information about product contents and associated health information.

(10) "Part time" means an employee in a position that:

(a) The employer intends to be filled for at least 52 consecutive weeks or 12 consecutive months, excluding any leaves of absence; and

(b) Working hours are less than those required for a full-time employee, as defined in this section.

(11)(a) "Scope 2 greenhouse gas emissions" are indirect greenhouse gas emissions associated with the purchase of electricity, steam, heat, or cooling.

(b) For purposes of this section, "greenhouse gas" has the same meaning as in RCW 70A.45.010.

(12) "Supplier code of conduct" means a policy created by a manufacturer that outlines steps taken to ensure that its suppliers adhere to ethical practices, such as compliance with child and forced labor laws, antidiscrimination practices, freedom of association, and safe workplace conditions.

(13) "Temporary" means an employee in a position that is intended to be filled for a period of less than 52 consecutive weeks or 12 consecutive months. Positions in seasonal employment are temporary positions.

(14) "Total case incident rate" means the number of work-related injuries per 100 full-time workers during a one-year period, as defined by the occupational safety and health administration. Total case incident rate is calculated by multiplying the number of occupational safety and health administration recordable injuries and illnesses by 200,000 and dividing by number of hours worked by all employees.

(15) "Wood sourcing information" means:

(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, such as federal, state, private, or other.

(16)(a) "Working conditions" means the:

(i) Average number of employees by employment type: Full time, part time, and temporary;

(ii) Average hourly wage, including all nondiscretionary wages and bonuses, by hourly wage bands: $15 or below, $15.01-$20, $20.01-$25, $25.01-$30, $30.01-$50, and $50.01 or greater;

(iii) Average total number of employees enrolled in medical plans provided by the employer;

(iv) Average total number of employees enrolled in dental plans provided by the employer;

(v) Average total number of employees enrolled in retirement plans provided by the employer; and

(vi) Total case incident rate for the prior calendar year

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

(i) For the two previous years; or

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

NEW SECTION. **Sec.**  (1)(a) Beginning July 1, 2024, an awarding authority must require in all newly executed construction contracts that the selected firm for a construction contract for a covered project larger than 100,000 gross square feet to submit the following data for each covered product used before substantial completion:

(i) Product quantity;

(ii)(A) A current environmental product declaration;

(B) If not included in the current environmental product declaration, engineered wood suppliers must report wood sourcing information;

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

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

(v) Supplier code of conduct, if any; and

(vi) Office of minority and women-owned business enterprises certification, if any.

(b) Beginning July 1, 2026, an awarding authority shall require in all newly executed construction contracts that the selected firm for a construction contract for a covered project to submit the data required by (a) of this subsection for each covered product used before substantial completion.

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

(2) The selected firm for a contract for a covered project is required to collect and submit from product suppliers the information required in subsection (1)(a)(ii) through (vi) of this section. The selected firm is not required to verify the information received from product suppliers.

(3)(a) Beginning July 1, 2024, an awarding authority must require in all newly executed construction contracts that the selected firm for a construction contract for a covered project larger than 100,000 gross square feet to ask their suppliers to report for each covered product used before substantial completion:

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

(ii) Working conditions at the actual production facilities for all employees, full-time employees, part-time employees, and temporary employees. In cases in which the supplier does not have this information, the selected firm for a contract for a covered project must ask suppliers to provide a report on steps taken to reasonably obtain the data and provide suppliers' self-reports to the awarding authority.

(b) Beginning July 1, 2026, an awarding authority must require in all newly executed construction contracts that the successful bidder for a construction contract for a covered project to meet the requirements of (a) of this subsection for each covered product used before substantial completion.

(c) The selected firm is not required to verify the information reported by product suppliers pursuant to this subsection.

(d) The selected firm for a contract for a covered project shall meet the requirement in (a) of this subsection for at least 90 percent of the cost of each of the covered products used in the project.

(4) This section does not apply to a covered product for a particular covered project if the awarding authority determines, upon written justification provided to the department, that the requirements in this section would cause a significant delay in completion, significant increase in overall project cost, or result in only one product supplier being able to provide the covered product.

(5) An awarding authority must include the information and reporting requirements in this section in a specification for bids for a covered project.

(6) Subject to funds appropriated for this specific purpose, the department may provide financial assistance to small businesses, as defined in RCW 19.85.020, to help offset the costs to the small business of producing an environmental product declaration required under this section. Such financial assistance supports the production of environmental product declarations and achievement of reductions of embodied carbon in the built environment while ensuring that small manufacturers are not put at a competitive disadvantage in state contracting as a result of the requirements of this chapter.

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

NEW SECTION. **Sec.**  By July 1, 2024, and to the extent practicable, specifications for a bid or proposal for a project contract by an awarding authority may only include performance-based specifications for concrete used as a structural material. Awarding authorities may continue to use prescriptive specifications on structural elements to support special designs and emerging technology implementation.

NEW SECTION. **Sec.**  (1) The department must continue to develop and maintain the publicly accessible database funded by the 2021-2023 omnibus operating appropriations act and created by the department in conjunction with the University of Washington college of built environments for selected firms for contracts for covered projects to submit the data required in section 3 of this act to the department and to promote transparency. The department may consult with the University of Washington college of built environments.

(2) The database maintained pursuant to subsection (1) of this section must publish global warming potential as reported in the environmental product declarations.

(3) By July 1, 2024, the department must:

(a) Further elaborate covered product definitions using applicable material industry standards;

(b) Develop measurement and reporting standards to ensure that data is consistent and comparable, including standards for reporting product quantities;

(c) Create model language for specifications, bid documents, and contracts to support the implementation of section 3 of this act; and

(d) Produce an educational brief that:

(i) Provides an overview of embodied carbon;

(ii) Describes the appropriate use of environmental product declarations, including the necessary preconditions for environmental product declarations to be comparable;

(iii) Outlines reporting standards, including covered product definitions, standards for reporting product quantities, and working conditions;

(iv) Describes the data collection and reporting process for all information required in section 3 (1)(a) and (3)(a) of this act;

(v) Provides instructions for the use of the database; and

(vi) Lists applicable product category rules for covered products.

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

NEW SECTION. **Sec.**  (1) By December 1, 2023, the department must convene a buy clean and buy fair work group that includes representatives from:

(a) Industry professionals recommended by leading associations of Washington business in design, specification, and construction;

(b) Washington manufacturers;

(c) Manufacturing associations;

(d) The department of enterprise services;

(e) The department of transportation;

(f) The department of ecology;

(g) Environmental groups;

(h) Labor unions, including at least one representative that represents manufacturing workers;

(i) The minority and women-owned business community;

(j) The University of Washington college of built environments; and

(k) Other agencies and independent experts as necessary to meet the objectives of the work group as defined in subsection (4) of this section.

(2) The department may contract with the University of Washington college of built environments in convening the work group.

(3) The purpose of the work group is to identify opportunities and barriers to grow the use and production of low carbon materials, to promote high labor standards in manufacturing, and to preserve and to expand low carbon materials manufacturing in Washington.

(4)(a) By September 1, 2024, the buy clean and buy fair work group must submit a low carbon materials manufacturing plan report to the legislature and the governor. The report must recommend policies to preserve and grow the in-state manufacturing of low carbon materials.

(b) For this report, the buy clean and buy fair work group must:

(i) Examine barriers and opportunities to maintain and grow a robust in-state supply of low carbon building materials including, but not limited to, state and domestic supply of raw materials and other supply chain challenges, regulatory barriers, competitiveness of local and domestic manufacturers, cost, and data availability from local, state, national, and foreign product suppliers; and

(ii) Identify opportunities to encourage the continued conversion to lower carbon cements, including the use of performance-based specifications and allowing Type 1-L cement in specifications for public projects.

(5)(a) By September 1, 2025, the buy clean and buy fair work group must submit a report on policy recommendations, including any statutory changes needed, to the legislature and the governor. The report must consider policies to leverage public procurement to expand the use and production of low carbon materials, to promote high labor standards in manufacturing, and to preserve and expand low carbon materials manufacturing in Washington, including opportunities to encourage continued conversion to lower carbon blended cements in public projects.

(b) For this report, the buy clean and buy fair work group must:

(i) Summarize data collected pursuant to section 3 of this act, the case study analysis funded by the 2021-2023 omnibus operating appropriations act, and the pilot projects funded by the 2021-2023 omnibus capital appropriations act, including product quantities, global warming potential, health product declarations, supplier codes of conduct, working conditions, and any obstacles to the implementation of this chapter;

(ii) Make recommendations for improving environmental production declaration data quality including, but not limited to, integrating reporting on variability in facility, product, and upstream data for key processes;

(iii) Make recommendations for consideration of scope 2 greenhouse gas emissions mitigation through green power purchases, such as energy attribute certificates and power purchase agreements;

(iv) Identify barriers and opportunities to the effective use of the database maintained under section 5 of this act and the data collected pursuant to this chapter; and

(v) Survey the regulatory landscape to identify areas of alignment and discrepancy between local, state, federal, and private policy on embodied carbon and the procurement and use of low carbon materials and identify opportunities to promote consistency across public and private embodied carbon and low carbon materials policies, rules, and regulations.

(6) This section expires January 1, 2027.

**Sec.**  RCW 43.88.0301 and 2021 c 54 s 4 are each amended to read as follows:

(1) The office of financial management must include in its capital budget instructions, beginning with its instructions for the 2003-05 capital budget, a request for "yes" or "no" answers for the following additional informational questions from capital budget applicants for all proposed major capital construction projects valued over ((~~10 million dollars~~)) $10,000,000 and required to complete a predesign:

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

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

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

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

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

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

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

(ii) Whether local and additional funds were leveraged;

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

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

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

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

(5) The office of financial management must include in its capital budget instructions, beginning with the instructions for the 2025-2027 biennium, information informing awarding authorities, as defined in section 2 of this act, of the requirements of chapter 39.--- RCW (the new chapter created in section 9 of this act), including the data and information requirements in section 3 of this act.

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

NEW SECTION. **Sec.**  Sections 2 through 6 of this act constitute a new chapter in Title 39 RCW.

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

**--- END ---**