

ESHB 1282 - S COMM AMD

By Committee on Environment, Energy & Technology

NOT CONSIDERED 05/17/2023

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds and declares that:

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

10 (2) Washington state is home to multiple world-class
11 manufacturers that are investing heavily in reducing the carbon
12 intensity of their products and that provide family-wage jobs that
13 are the foundation for a fair and robust economy. Washington's
14 procurement practices should encourage manufacturers and others to
15 meet high environmental and labor standards and reduce their
16 environmental footprint.

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

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

29 (5) Washington has demonstrated a deep commitment to ensuring
30 that the transition to a low carbon economy is fair and creates
31 family-wage jobs. Both the clean energy transformation act and the

1 climate commitment act tie public investments in infrastructure to
2 reduce greenhouse gas emissions to high road construction labor
3 standards. Integrating manufacturing working conditions into the
4 procurement process reaffirms and is consistent with the state's
5 commitment to a fair transition.

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

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

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

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

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

37 (11) Providing financial assistance to small manufacturers to
38 support the production of environmental product declarations will
39 help small manufacturers offset costs they might incur when pursuing
40 state contracting as a result of the requirements of this act.

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

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

9 (2) "Awarding authority" means:

10 (a) Institutions of higher education as defined in RCW
11 28B.92.030;

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

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

19 (3) "Covered product" includes:

20 (a) Structural concrete products, including ready mix, shotcrete,
21 precast, and concrete masonry units;

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

24 (c) Structural steel products, specifically hot rolled sections,
25 hollow sections, metal deck, and plate; and

26 (d)(i) Engineered wood products, such as cross-laminated timber
27 per ANSI form no. PRG 320, glulam beams, laminated veneer lumber,
28 parallel strand lumber, dowel laminated timber, nail laminated
29 timber, glulam laminated timber, prefabricated wood joists per ASTM
30 D5055, wood structural panel per product standard 1 or product
31 standard 2, solid sawn lumber per product standard 20, structural
32 composite lumber per ASTM D5456, and structural sawn lumber.

33 (ii) For the purposes of this subsection (3)(d):

34 (A) "ANSI" means the American national standards institute.

35 (B) "ASTM" means the American society for testing and materials.

36 (C) "Product standard" means a voluntary product standard
37 published by the United States department of commerce national
38 institute of standards and technology.

39 (4) "Covered project" means:

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

4 (b) A building renovation project where the cost is greater than
5 50 percent of the assessed value and the project is larger than
6 50,000 gross square feet of occupied or conditioned space as defined
7 in the Washington state building code, chapter 51-50 WAC.

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

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

11 (7)(a) "Environmental product declaration" means a type III
12 environmental product declaration, as defined by the international
13 organization for standardization standard 14025 or similarly robust
14 life-cycle assessment methods that have uniform standards in data
15 collection consistent with the international organization for
16 standardization standard 14025, industry acceptance, and integrity.
17 When available, the environmental product declaration must be supply
18 chain specific.

19 (b) For the purposes of this subsection, "supply chain specific"
20 means an environmental product declaration that includes supply chain
21 specific data for production processes that contribute 70 percent or
22 more of a product's cradle-to-gate global warming potential, as
23 defined in international organization for standardization standard
24 21930, and reports the overall percentage of supply chain specific
25 data included.

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

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

29 (b) Requires the employee to work, excluding overtime hours, 35
30 hours per week for 52 consecutive weeks, 455 hours a quarter, or
31 1,820 hours during a period of 12 consecutive months.

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

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

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

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

5 (11) "Product and facility specific report" means an
6 environmental product declaration whereby the environmental impacts
7 can be attributed to a single manufacturer and a specific
8 manufacturing or production facility.

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

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

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

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

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

30 (16) "Working conditions" means the average number of employees
31 by employment type: Full time, part time, and temporary.

32 NEW SECTION. **Sec. 3.** (1)(a) Beginning July 1, 2024, an awarding
33 authority must require in all newly executed construction contracts
34 that the selected firm for a construction contract for a covered
35 project larger than 100,000 gross square feet submit the following
36 data for each covered product used before substantial completion,
37 including at a minimum:

38 (i) Product quantity;

39 (ii) A current environmental product declaration;

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (4) If a supply chain specific environmental product declaration
8 is not available, a product and facility specific report may be
9 submitted.

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

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

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

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

32 NEW SECTION. **Sec. 4.** By July 1, 2024, and to the extent
33 practicable, specifications for a bid or proposal for a project
34 contract by an awarding authority may only include performance-based
35 specifications for concrete used as a structural material. Awarding
36 authorities may continue to use prescriptive specifications on
37 structural elements to support special designs and emerging
38 technology implementation.

1 NEW SECTION. **Sec. 5.** (1) The department must continue to
2 develop, maintain, and refine the publicly accessible database funded
3 by the 2021-2023 omnibus operating appropriations act and created by
4 the department in conjunction with the University of Washington
5 college of built environments for selected firms for contracts for
6 covered projects to submit the data required in section 3 of this act
7 to the department and to promote transparency. The department may
8 consult with the University of Washington college of built
9 environments.

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

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

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

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

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

21 (d) Produce an educational brief that:

22 (i) Provides an overview of embodied carbon;

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

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

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

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

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

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

37 NEW SECTION. **Sec. 6.** (1) By December 1, 2023, the department
38 must convene a technical work group that includes the following
39 representatives:

1 (a) One industry professional in design, one industry
2 professional in structural design, one industry professional in
3 specification, and one industry professional in construction who are
4 recommended by leading associations of Washington business;

5 (b) One representative each from Washington manufacturers of:

6 (i) Steel;

7 (ii) Wood; and

8 (iii) Concrete;

9 (c) A representative from the department of enterprise services;

10 (d) A representative from the department of transportation;

11 (e) A representative from the department of ecology;

12 (f) One representative each from three environmental groups that
13 focus on embodied carbon and climate change;

14 (g) Three representatives from labor unions, including two unions
15 that represent manufacturing workers and one representative from the
16 building and construction trades;

17 (h) A representative from the minority and women-owned business
18 community;

19 (i) A representative from the University of Washington college of
20 built environments; and

21 (j) Representatives of other agencies and independent experts as
22 necessary to meet the objectives of the technical work group as
23 described in this section.

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

26 (3) The purpose of the technical work group is to identify
27 opportunities for and barriers to growth of the use and production of
28 low carbon materials, promote high labor standards in manufacturing,
29 and preserve and expand low carbon materials manufacturing in
30 Washington.

31 (4) By September 1, 2024, the technical work group must submit a
32 report to the legislature and the governor that includes:

33 (a) A low carbon materials manufacturing plan that recommends
34 policies to preserve and grow the in-state manufacturing of low
35 carbon materials and accelerate industrial decarbonization. For this
36 plan, the technical work group must:

37 (i) Examine barriers and opportunities to maintain and grow a
38 robust in-state supply of low carbon building materials including,
39 but not limited to, state and domestic supply of raw materials and
40 other supply chain challenges, regulatory barriers, competitiveness

1 of local and domestic manufacturers, cost, and data availability from
2 local, state, national, and foreign product suppliers; and

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

7 (b) Recommendations for consistent treatment in the reporting for
8 covered products; and

9 (c) Consideration of how additional information relevant to
10 reducing embodied carbon through strategies including, but not
11 limited to, product life-cycle assessments could be incorporated into
12 future reporting.

13 (5) (a) By September 1, 2025, the technical work group must submit
14 a report on policy recommendations, including any statutory changes
15 needed, to the legislature and the governor. The report must consider
16 policies to expand the use and production of low carbon materials, to
17 preserve and expand low carbon materials manufacturing in Washington,
18 including opportunities to encourage continued conversion to lower
19 carbon blended cements in public projects, and to support living-wage
20 manufacturing jobs.

21 (b) For this report, the technical work group must:

22 (i) Summarize data collected pursuant to section 3 of this act,
23 the case study analysis funded by the 2021-2023 omnibus operating
24 appropriations act, and the pilot projects funded by the 2021-2023
25 omnibus capital appropriations act. The summary must include product
26 quantities, global warming potential, health product declarations,
27 supplier codes of conduct, and any obstacles to the implementation of
28 this chapter;

29 (ii) Evaluate options for collecting reported working condition
30 information from product suppliers, including hourly wages, employee
31 benefits, and total case incident rates, and for aligning these
32 reporting requirements with existing reporting requirements for
33 preferential tax rates, credits, exemptions, and deferrals;

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

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

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

4 (vi) Identify emerging and foreseeable trends in local, state,
5 federal, and private policy on embodied carbon and the procurement
6 and use of low carbon materials and opportunities to promote
7 consistency across public and private embodied carbon and low carbon
8 materials policies, rules, and regulations; and

9 (vii) Recommend approaches to designing lower embodied carbon
10 state building projects.

11 (6)(a) The department may update reporting standards and
12 requirements based on input from the technical work group.

13 (b) The department must provide updated guidance on reporting
14 standards by January 1, 2026.

15 (7) This section expires January 1, 2027.

16 **Sec. 7.** RCW 43.88.0301 and 2021 c 54 s 4 are each amended to
17 read as follows:

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

25 (a) For proposed capital projects identified in this subsection
26 that are located in or serving city or county planning under RCW
27 36.70A.040:

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

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

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

37 (B) If at all located outside an urban growth area boundary,
38 whether the proposed capital project may create pressures for
39 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(6) to create a capital budget document, must take
15 into account information gathered under subsections (1) and (2) of
16 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 2025-2027 biennium, information informing awarding authorities, as
28 defined in section 2 of this act, of the requirements of chapter
29 39.--- RCW (the new chapter created in section 9 of this act),
30 including the data and information requirements in section 3 of this
31 act.

32 NEW SECTION. Sec. 8. This act may be known and cited as the buy
33 clean and buy fair Washington act.

34 NEW SECTION. Sec. 9. Sections 2 through 6 of this act
35 constitute a new chapter in Title 39 RCW.

36 NEW SECTION. Sec. 10. If any provision of this act or its
37 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected."

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By Committee on Environment, Energy & Technology

NOT CONSIDERED 05/17/2023

3 On page 1, line 2 of the title, after "material;" strike the
4 remainder of the title and insert "amending RCW 43.88.0301; adding a
5 new chapter to Title 39 RCW; creating new sections; and providing an
6 expiration date."

EFFECT: Clarifies environmental product declarations must be supply chain specific when available rather than to the extent feasible.

Specifies that the data submitted for covered projects are the minimum requirements.

Requires the department of commerce (commerce) to refine, in addition to develop and maintain, the publicly accessible database funded by the legislature.

Requires commerce to consult with the University of Washington college of built environments when developing, maintaining, and refining the publicly available database.

Changes the number of representatives from labor unions on the work group from one to three.

Allows commerce to contract with the University of Washington college of built environments in convening the work group.

Modifies the work group's 2024 report by also requiring the consideration of how additional information relevant to reducing embodied carbon through strategies including, but not limited to, product life cycle adjustments could be incorporated into future reporting.

Modifies the work group's 2026 report by also requiring the consideration of policies to support living-wage manufacturing jobs and the evaluation of options for aligning these reporting requirements with existing reporting requirements for preferential tax rates, credits, exemptions, and deferrals.

Authorizes commerce to update reporting standards and requirements based on input from the work group.

Requires commerce to provide updated guidance on reporting standards by January 1, 2026.

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