

Proposed Substitute House Bill 1103

(H-0557.3)

By Representative Shewmake

Proposed substitute bill compared to original bill:

- Defines "health certification"
- Makes the first year of reporting voluntary
- Eliminates the requirement to report purchase quantity and amount
- Changes the amount of covered materials that are reported on to "90 percent of cost"
- Adds that compliance with the act may not be used as a basis of a waiver from apprenticeship utilization requirements
- Modifies the directions to the Office of Financial Management regarding updating the capital budget instructions
- Corrects Executive Order reference
- Adds intent language related to environmental product declarations

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-0557.3/21 3rd draft

ATTY/TYPIST: ES:eab

BRIEF DESCRIPTION: Improving environmental and social outcomes with the production of building materials.

AN ACT Relating to improving environmental and social outcomes with the production of building materials; amending RCW 43.88.0301; adding a new chapter to Title 39 RCW; and providing an expiration date.

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

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

(1) Washington state, through its extensive purchasing power, can accelerate necessary greenhouse gas reductions, 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 does not currently spend public dollars for materials on state-funded infrastructure projects in a way that is consistent with the state's carbon reduction goals or its high environmental and labor standards. Meanwhile, the private sector is increasingly demanding building materials that reduce carbon and other types of pollution and support good jobs in manufacturing. For

state spending, manufacturers that exploit workers and the environment are treated the same as manufacturers that meet high environmental and labor standards. This treatment puts manufacturers that invest in emissions reduction technologies, other pollution controls, and a 21st century workforce at a competitive disadvantage for state projects.

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

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

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

(6) 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 enable fair comparison of products fulfilling the same function and performance characteristics within a product category. To be comparable, environmental product declarations must follow the same product

category rule and include identical life-cycle stages. Environmental product declarations cannot be used to compare products across different product categories or different functional units.

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

(8) The legislature has committed to carbon reduction measures by requiring action by public agencies. Those actions do not currently encourage public dollars to be spent in a way that is consistent with the state's carbon reduction goals as it relates to the global warming potential embedded within the materials procured for state-funded infrastructure projects.

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

(10) 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 chapter.

NEW SECTION. **Sec. 2.** 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 80 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) The department of enterprise services;

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

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

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

(e) The department of transportation.

(3) "Covered product" means:

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

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

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

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

(4) "Covered project" means:

(a) A construction project larger than 25,000 gross square feet of space 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 25,000 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, according to national law or its application.

(7) "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.

(8) "Full-time" employee means an employee with an employment contract that is for at least 12 consecutive months and whose working hours per week, month, or year are defined as full time according to national law or practice regarding working time.

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

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

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

(12) "Nonsupervisory employees" means every employee except those whose responsibility it is to supervise, plan, or direct the work of others, including working supervisors and group leaders who may be in charge of a group of employees, but whose supervisory functions are only incidental to their regular work.

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

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

(15) "Supply chain specific" means an environmental product declaration that includes supply chain specific data for production processes that contribute to 80 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. For engineered wood products, supply chain specific also means an environmental product declaration that reports:

(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, e.g., federal, state, private, or other.

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

(17) (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 quartiles;

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

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

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

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

- (i) A current environmental product declaration;
- (ii) Health certifications, if any, completed for the product;
- (iii) Manufacturer name and location, including state or province and country;
- (iv) Measures taken, if any, to promote the international labor organization's four fundamental principles and rights at work within the manufacturer supply chain;
- (v) Names and locations, including state or province and country, of the actual production facilities; and
- (vi) Working conditions at the actual production facilities for all employees.

(b) Beginning July 1, 2022, an awarding authority shall require the selected firm for a contract for a covered project to submit the data required by (a) of this subsection for each covered product used prior to the final construction retainage payment.

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

(d) 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 the covered products used in the project.

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

(3) If the selected firm for a contract cannot meet the requirements of subsection (1) of this section on the grounds of

hardship, then the selected firm must report on its efforts taken to obtain the data, and it bears the burden of providing evidence that:

(a) The data does not exist in a form that is recorded or transferable;

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

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

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

(5) Each awarding authority must annually transmit to the department a copy of all information that the awarding authority receives pursuant to subsection (3) of this section.

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

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

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

(9) An awarding authority may amend their fee schedule to accommodate this chapter.

(10) Subject to funds made available for this purpose, the department may provide financial assistance to small businesses, as defined in RCW 19.85.020, equal to no less than half of the cost to

the small business of producing an environmental product declaration required under this section.

(11) Compliance with the requirements in subsections (1) through (9) of this section may not be used as a basis for a waiver from apprenticeship utilization requirements in any other statute, regulation, or law.

Sec. 4. RCW 43.88.0301 and 2017 3rd sp.s. c 25 s 2 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 (~~five million dollars~~) \$5,000,000 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(~~(+5)~~) (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 2021-2023 supplemental budget, information informing awarding authorities, as defined in section 2 of this act, of the requirements of this act, including the data and information requirements in section 3 (1) and (3) of this act for selected firms for covered projects and the instruction for awarding authorities in section 3(5) of this act.

NEW SECTION. **Sec. 5.** (1) By January 1, 2025, and in conformance with RCW 43.01.036, the department shall submit to the legislature a report summarizing the data submitted in pursuit of

this chapter, including product quantities and purchase amounts, global warming potential, labor conditions, health certifications, and any obstacles to the implementation of this chapter.

(2) This section expires January 1, 2026.

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

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

NEW SECTION. **Sec. 8.** 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.

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