

Chapter 39.116 RCW
PUBLIC CONSTRUCTION—ENVIRONMENTAL AND LABOR REPORTING

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RCW 39.116.005 Findings—2024 c 344. 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 procurement practices should encourage manufacturers and others to meet high environmental and labor standards and reduce their environmental footprint.

(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 state 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 reducing greenhouse gas emissions and 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 chapter 344, Laws of 2024 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. Policies like the buy clean and buy fair policies established in chapter 344, Laws of 2024 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 chapter 344, Laws of 2024 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 help small manufacturers offset costs they might incur when pursuing state contracting as a result of the requirements of chapter 344, Laws of 2024. [2024 c 344 s 1.]

RCW 39.116.010 Definitions. 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" includes:

(a) Structural concrete products, including 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, metal deck, and plate; and

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

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

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

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

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

(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 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. When available, the environmental product declaration must be supply chain specific.

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

(12)(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.

(13) "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.

(14) "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.

(15) "Total case incident rate" means the number of work-related injuries per 100 full-time equivalent 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.

(16) "Working conditions" means the average number of employees by employment type: Full time, part time, and temporary. [2024 c 344 s 2.]

RCW 39.116.020 Data submission for covered products—

Requirements—Selected firms—Suppliers—Department may provide financial assistance. (1)(a) Beginning July 1, 2025, 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 submit the following data for each covered product used before substantial completion, including at a minimum:

- (i) Product quantity;
- (ii) A current environmental product declaration;
- (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, 2027, an awarding authority must require in all newly executed construction contracts that the selected firm for a construction contract for a covered project 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, 2025, 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, including at a minimum:

(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, 2027, 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) If a supply chain specific environmental product declaration is not available, a product and facility specific report may be submitted.

(5) 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.

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

(7) 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.

(8) 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. [2024 c 344 s 3.]

RCW 39.116.030 Specifications for bid or proposal. By July 1, 2025, 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. [2024 c 344 s 4.]

RCW 39.116.040 Publicly accessible database—Department duties.

(1) The department must continue to develop, maintain, and refine 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 RCW 39.116.020 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, 2025, 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 RCW 39.116.020; 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 RCW 39.116.020 (1)(a) and (3)(a);

(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. [2024 c 344 s 5.]

RCW 39.116.050 Technical work group. (Expires January 1, 2028.)

(1) By December 1, 2024, the department must convene a technical work group that includes the following representatives:

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

(b) Two representatives each from Washington manufacturers of:

- (i) Steel;
 - (ii) Wood; and
 - (iii) Concrete;
 - (c) A representative from the department of enterprise services;
 - (d) A representative from the department of transportation;
 - (e) A representative from the department of ecology;
 - (f) One representative each from three environmental groups that focus on embodied carbon and climate change;
 - (g) Three representatives from labor unions, including two from unions that represent manufacturing workers and one representative from the building and construction trades;
 - (h) A representative from the minority and women-owned business community;
 - (i) A representative from the University of Washington college of built environments; and
 - (j) Representatives of other agencies and independent experts as necessary to meet the objectives of the technical work group as described in this section.
- (2) The department intends formation of subgroups with members who have subject matter expertise or industry experience to develop technical information, recommendations, and analysis specific to individual material types, and the feasibility of supply chain specific environmental product declarations. The recommendations must, where possible, align with state and national principles and laws for environmental product declaration development.
- (3) The department may contract with the University of Washington college of built environments in convening the technical work group.
- (4) The purpose of the technical work group is to identify opportunities for and barriers to growth of the use and production of low carbon materials, promote high labor standards in manufacturing, and preserve and expand low carbon materials manufacturing in Washington.
- (5) By September 1, 2025, the technical work group must submit a report to the legislature and the governor that includes:
- (a) A low carbon materials manufacturing plan that recommends policies to preserve and grow the in-state manufacturing of low carbon materials and accelerate industrial decarbonization. For this plan, the technical 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;
 - (b) Recommendations for consistent treatment in the reporting for covered products; and
 - (c) Consideration of how additional information relevant to reducing embodied carbon through strategies including, but not limited to, product life-cycle assessments could be incorporated into future reporting.
- (6) (a) By September 1, 2026, the technical 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 expand the use and production of low carbon materials, preserve and expand low carbon materials manufacturing in Washington, including opportunities to encourage continued conversion to lower carbon blended cements in public projects, and support living wage manufacturing jobs.

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

(i) Summarize data collected pursuant to RCW 39.116.020, 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. The summary must include product quantities, global warming potential, health product declarations, supplier codes of conduct, and any obstacles to the implementation of this chapter;

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

(iii) 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;

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

(v) Make recommendations, if any, for changing or clarifying the definition of "actual production facilities" in RCW 39.116.010 to better define and refine reporting and compliance obligations under chapter 39.116 RCW;

(vi) Identify barriers and opportunities to the effective use of the database maintained under RCW 39.116.040 and the data collected pursuant to this chapter;

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

(viii) Recommend approaches to designing lower embodied carbon state building projects.

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

(b) The department must provide updated guidance on reporting standards by January 1, 2027.

(8) This section expires January 1, 2028. [2024 c 344 s 6.]

RCW 39.116.900 Short title—2024 c 344. Chapter 344, Laws of 2024 may be known and cited as the buy clean and buy fair Washington act. [2024 c 344 s 8.]