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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 2170

02/21/2023 Authored by Berg, Lislegard, Long, Hornstein, Elkins and others
The bill was read for the first time and referred to the Committee on Sustainable Infrastructure Policy

1.1 A bill for an act
1.2 relating to state purchasing; requiring the establishment of global warming impact
1.3 standards for certain construction materials used in state buildings and roads;
1.4 integrating those global warming standards into the procurement process;
1.5 establishing pilot programs to report greenhouse gas emissions from the
1.6 manufacture of certain products; establishing a grant program; establishing a
1.7 technical advisory committee; requiring reports; proposing coding for new law in
1.8 Minnesota Statutes, chapter 16B.

1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.10 Section 1. 16B.312 CONSTRUCTION MATERIALS; ENVIRONMENTAL
1.11 ANALYSIS.

1.12 Subdivision 1. Title. This act may be known and cited as the "Buy Clean and Buy Fair
1.13 Minnesota Act."

1.14 Subd. 2. Definitions. For purposes of this section, the following terms have the meanings
1.15 given.

1.16 (a) "Carbon steel" means steel in which the main alloying element is carbon and whose
1.17 properties are chiefly dependent on the percentage of carbon present.

1.18 (b) "Commissioner" means the commissioner of the Department of Administration.

1.19 (c) "Eligible material" means:

1.20 (1) carbon steel rebar;

1.21 (2) structural steel;

1.22 (3) concrete; or

1.23 (4) asphalt paving mixtures.

2.1 (d) "Eligible project" means:

2.2 (1) new construction of a state building larger than 50,000 gross square feet of occupied
2.3 or conditioned space;

2.4 (2) renovation of more than 50,000 gross square feet of occupied or conditioned space
2.5 in a state building whose renovation cost exceeds 50 percent of the building's assessed value;
2.6 or

2.7 (3) new construction or reconstruction of two or more lane-miles of a trunk highway.

2.8 (e) "Environmental product declaration" means a supply chain specific type III
2.9 environmental product declaration that:

2.10 (1) contains a lifecycle assessment of the environmental impacts of manufacturing a
2.11 specific product by a specific firm, including the impacts of extracting and producing the
2.12 raw materials and components that compose the product;

2.13 (2) is verified and registered by a third party; and

2.14 (3) meets the ISO 14025 standard developed and maintained by the International
2.15 Organization for Standardization (ISO).

2.16 (f) "Global warming potential" has the meaning given in section 216H.10, subdivision
2.17 5.

2.18 (g) "Greenhouse gas" has the meaning given to "statewide greenhouse gas emissions"
2.19 in section 216H.01, subdivision 2.

2.20 (h) "Lifecycle" means an analysis that includes the environmental impacts of all stages
2.21 of a specific product's production, from mining and processing its raw materials to the
2.22 process of manufacturing the product itself.

2.23 (i) "Rebar" means a steel reinforcing bar or rod encased in concrete.

2.24 (j) "State building" means a building whose construction or renovation is funded wholly
2.25 or partially from the proceeds of bonds issued by the state of Minnesota.

2.26 (k) "Structural steel" means steel that is classified by the shapes of its cross-sections,
2.27 such as I, T, and C shapes.

2.28 (l) "Supply chain specific" means an environmental product declaration that includes
2.29 specific data for the production processes of the materials and components composing a
2.30 product that contribute at least 80 percent of the product's lifecycle global warming potential,
2.31 as defined in International Organization for Standardization standard 21930.

3.1 Subd. 3. **Standard; maximum global warming potential.** (a) The commissioner shall
3.2 establish and publish a maximum acceptable global warming potential for each eligible
3.3 material used in an eligible project, in accordance with the following schedule:

3.4 (1) for concrete and structural steel, no later than January 15, 2025; and

3.5 (2) for carbon steel rebar and, after conferring with the commissioner of transportation,
3.6 for asphalt paving mixtures, no later than January 15, 2027.

3.7 (b) The commissioner shall, after considering nationally or internationally recognized
3.8 databases of environmental product declarations for an eligible material, establish the
3.9 maximum acceptable global warming potential at the industry average global warming
3.10 potential for that eligible material.

3.11 (c) The commissioner may set different maximum global warming potentials for different
3.12 specific products that are examples of the same eligible material.

3.13 (d) The commissioner must establish maximum global warming potentials that are
3.14 consistent with criteria in an environmental product declaration.

3.15 (e) Three years after establishing the maximum global warming potential for an eligible
3.16 material under paragraph (a), and every three years thereafter, the commissioner, after
3.17 conferring with the commissioner of transportation with respect to asphalt paving mixtures,
3.18 shall review the maximum acceptable global warming potential for each eligible material
3.19 and for specific eligible material products. The commissioner may adjust any of those values
3.20 downward to reflect industry improvements if, based on the process described in paragraph
3.21 (b), the commissioner determines that the industry average has declined, but may not adjust
3.22 the maximum acceptable global warming potential upward for any eligible material or
3.23 product.

3.24 Subd. 4. **Procurement process.** (a) The Department of Administration and the
3.25 Department of Transportation:

3.26 (1) shall require in a specification for bids for an eligible project that the global warming
3.27 potential reported by a bidder in the environmental product declaration for any eligible
3.28 material must not exceed the maximum acceptable global warming potential for that eligible
3.29 material or product established under subdivision 3; and

3.30 (2) may require in a specification for bids for an eligible project a global warming
3.31 potential for any eligible material that is lower than the maximum acceptable global warming
3.32 potential for that material established under subdivision 3.

4.1 (b) A successful bidder for a contract may not use or install any eligible material on the
4.2 project until the commissioner or commissioner of transportation, as applicable, has provided
4.3 notice to the bidder in writing that a supply chain-specific environmental product declaration
4.4 submitted by the bidder for that material meets the requirements of this subdivision.

4.5 (c) The Department of Administration and the Department of Transportation may, when
4.6 evaluating proposals from vendors offering eligible materials:

4.7 (1) award higher scores to proposals whose products have a global warming potential
4.8 below the maximum acceptable level established by the commissioner under subdivision
4.9 3;

4.10 (2) select a vendor whose product is below the established maximum acceptable global
4.11 warming potential level if the price of the product is no more than ... percent above that of
4.12 the next most preferred vendor; and

4.13 (3) elect to pay a vendor whose product is significantly below the established maximum
4.14 acceptable global warming potential level a premium amount, up to an additional ... percent.

4.15 Subd. 5. **Pilot program.** (a) No later than July 1, 2024, the Departments of Administration
4.16 and Transportation must establish a pilot program that seeks to obtain from vendors an
4.17 estimate of the lifecycle greenhouse gas emissions of products selected by the departments
4.18 from among those procured. The pilot program must encourage, but may not require, a
4.19 vendor to submit the following data for each selected product that represents at least 90
4.20 percent of the total cost of the materials or components composing the selected product:

4.21 (1) the quantity of the product purchased by the department;

4.22 (2) a current environmental product declaration for the product;

4.23 (3) the name and location of the product's manufacturer;

4.24 (4) a copy of the vendor's Supplier Code of Conduct, if any;

4.25 (5) the names and locations of the product's actual production facilities; and

4.26 (6) an assessment of employee working conditions at the product's production facilities.

4.27 (b) The Departments of Administration and Transportation must each construct a publicly
4.28 accessible database posted on their websites containing the data reported to each department
4.29 under this subdivision. The data must be reported in a manner that precludes, directly, or
4.30 in combination with other publicly available data, the identification of the product
4.31 manufacturer.

5.1 Subd. 6. **Waiver process.** The commissioner shall establish a process and develop
5.2 administrative procedures that allow manufacturers of eligible materials to petition the
5.3 commissioner for a waiver from the requirements of subdivision 4 based on technical
5.4 considerations or financial hardship. A waiver request must be supported by evidence
5.5 supplied by the petitioner. A waiver granted under this subdivision may extend no longer
5.6 than two years and may be renewed.

5.7 Subd. 7. **Grants to develop environmental product declarations.** (a) The commissioner
5.8 shall design and implement a program to award grants to assist manufacturers of eligible
5.9 materials located in Minnesota to obtain environmental product declarations for eligible
5.10 materials. The commissioner shall develop administrative procedures governing eligibility,
5.11 and the application review and grant award processes. Grants must be awarded on a
5.12 first-come, first-served basis.

5.13 (b) A grant awarded under this subdivision may pay up to ... percent of the cost of
5.14 obtaining an environmental product declaration. In determining the amount of a grant award,
5.15 the commissioner shall consider the cost of obtaining an environmental product declaration
5.16 for the product, the size and financial strength of the manufacturer, and other criteria deemed
5.17 relevant by the commissioner.

5.18 (c) A manufacturer may not receive more than one grant award under this subdivision.

5.19 Subd. 8. **Environmental standards procurement task force.** (a) No later than October
5.20 1, 2023, the commissioners of administration and transportation must establish an
5.21 environmental standards procurement task force to examine issues surrounding the
5.22 implementation of a program requiring vendors of certain construction materials purchased
5.23 by the state to:

5.24 (1) submit environmental product declarations that assess the lifecycle environmental
5.25 impacts of those materials to state officials as part of the procurement process; and

5.26 (2) meet standards established by the commissioner of administration that limit
5.27 greenhouse gas emissions impacts of those materials.

5.28 (b) The task force must examine, at a minimum, the following:

5.29 (1) which construction materials should be subject to the program requirements;

5.30 (2) what factors should be considered in establishing greenhouse gas emissions standards;

5.31 (3) a schedule for the development of standards for specific materials and for
5.32 incorporating the standards into the purchasing process;

6.1 (4) the development and use of financial incentives to reward vendors for developing
6.2 products whose greenhouse gas emissions are below the standards;

6.3 (5) the provision of grants to defer a vendor's cost to obtain environmental product
6.4 declarations;

6.5 (6) how the issues in clauses (1) to (5) are addressed by existing programs in other states
6.6 and countries;

6.7 (7) coordinate with the federal Buy Clean Task Force established under Executive Order
6.8 14057 and representatives of the United States Departments of Commerce, Energy, Housing
6.9 and Urban Development, Transportation, Environmental Protection Agency, General Services
6.10 Administration, White House Office of Management and Budget, and the White House
6.11 Domestic Climate Policy Council; and

6.12 (8) any other issues the task force deems relevant.

6.13 (c) Members of the advisory committee must include, but may not be limited to,
6.14 representatives of:

6.15 (1) the Departments of Administration and Transportation;

6.16 (2) the Center for Sustainable Building Research at the University of Minnesota;

6.17 (3) manufacturers of eligible materials;

6.18 (4) suppliers of eligible materials;

6.19 (5) building and transportation construction firms;

6.20 (6) organized labor in the construction trades; and

6.21 (7) environmental advocacy organizations.

6.22 (d) The Department of Administration shall provide meeting space and serve as staff to
6.23 the advisory committee.

6.24 (e) The commissioner of administration, or the commissioner's designee, shall serve as
6.25 chair of the advisory committee. The advisory committee shall meet at least four times
6.26 annually, and shall convene additional meetings at the call of the chair.

6.27 (f) The commissioner of administration shall summarize the findings and
6.28 recommendations of the task force in a report submitted to the chairs and ranking minority
6.29 members of the senate and house of representatives committees with primary responsibility
6.30 for state government, transportation, and energy no later than December 1, 2025.

6.31 (g) The advisory committee is subject to section 15.059, subdivision 6.

7.1 Subd. 9. Reports. No later than February 1, 2025, the commissioner of administration,
7.2 after consulting with the commissioner of transportation, shall submit a written report to
7.3 the chairs and ranking minority members of the senate and house of representatives
7.4 committees with primary jurisdiction over climate policy and state government that contains,
7.5 at a minimum, the following information:

7.6 (1) the maximum global warming potential values established for each eligible material
7.7 under subdivision 3;

7.8 (2) the experience of vendors in obtaining environmental product declarations for eligible
7.9 materials, including the cost of and time required to obtain environmental product
7.10 declarations;

7.11 (3) impacts of the requirement to submit environmental product declarations on the
7.12 procurement process, including but not limited to the number of bids received for eligible
7.13 materials and the length of the bidding process;

7.14 (4) estimates of greenhouse gas emissions reductions resulting from operation of the
7.15 program required under this section;

7.16 (5) estimates of increases in the cost of eligible materials, if any, resulting from
7.17 implementation of the program required under this section; and

7.18 (6) results of the pilot program required under subdivision 5, and any recommendations
7.19 to change or expand the program.

7.20 **EFFECTIVE DATE.** This section is effective the day following final enactment.