

CHAPTER 454

GOVERNMENT - STATE

HOUSE BILL 21-1303

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also SENATOR(S) Hansen, Bridges, Fenberg, Fields, Gonzales, Jaquez Lewis, Lee, Moreno, Pettersen, Story.

AN ACT**CONCERNING MEASURES TO LIMIT THE GLOBAL WARMING POTENTIAL FOR CERTAIN MATERIALS USED IN PUBLIC PROJECTS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Climate change will have devastating global impacts;

(b) All scientific evidence points to the need for Colorado and the world to reduce greenhouse gas emissions to avert the worst effects of climate change. Climate change impacts are already apparent in Colorado, where scientists have determined that annual temperature increases and a long-term drought are consequences of human-induced climate change.

(c) The general assembly has committed to reduce greenhouse gases through numerous statutes requiring regulatory and other action by public agencies. Those regulations and actions do not currently encourage public dollars for infrastructure projects to be spent in a way that is consistent with the state's goals to reduce greenhouse gas emissions.

(d) Several executive orders in Colorado have highlighted the importance of reducing greenhouse gas emissions in the state, supporting the state's clean energy transition, maintaining progress on clean vehicles, and supporting a transition to zero emission vehicles;

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(e) Great quantities of emissions are released during the manufacture and transport of products used in public construction projects;

(f) Colorado, through its extensive purchasing power, can improve environmental outcomes and accelerate necessary greenhouse gas reductions to protect public health, the environment, and conserve a livable climate by incorporating emissions information from throughout the supply chain and product life cycle into procurement decisions, and using that information to help direct expenditure;

(g) Incorporating emissions information will acknowledge those companies that have invested in emissions reduction technologies and practices and will encourage other companies to take action to reduce emissions to become more competitive in the Colorado bidding process; and

(h) For measuring greenhouse gas emissions, the properties of cement, concrete mixtures, asphalt, and asphalt mixtures must not be double counted.

(2) The general assembly further finds and declares that there is great potential for Colorado to reduce greenhouse gas emissions in public construction projects without imposing an additional cost on those projects.

SECTION 2. In Colorado Revised Statutes, **add** 24-92-117 and 24-92-118 as follows:

24-92-117. Maximum global warming potential for materials used in eligible projects - buildings - projects that are not roads, highways, or bridges - environmental product declaration - short title - report - definitions. (1) THE SHORT TITLE OF THIS SECTION AND SECTION 24-92-118 IS THE "BUY CLEAN COLORADO ACT".

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ELIGIBLE MATERIAL" MEANS MATERIALS USED IN THE CONSTRUCTION OF A PUBLIC PROJECT, INCLUDING:

(I) ASPHALT AND ASPHALT MIXTURES;

(II) CEMENT AND CONCRETE MIXTURES;

(III) GLASS;

(IV) POST-TENSION STEEL;

(V) REINFORCING STEEL;

(VI) STRUCTURAL STEEL; AND

(VII) WOOD STRUCTURAL ELEMENTS.

(b) "ELIGIBLE PROJECT" MEANS A PUBLIC PROJECT AS DEFINED IN SECTION 24-92-102, FOR WHICH AN AGENCY OF GOVERNMENT ISSUES A SOLICITATION ON OR

AFTER JANUARY 1, 2024; EXCEPT THAT "ELIGIBLE PROJECT" DOES NOT INCLUDE ANY MAINTENANCE PROGRAM FOR THE UPKEEP OF A PUBLIC PROJECT OR ANY ROAD, HIGHWAY, OR BRIDGE PROJECT.

(c) "GREENHOUSE GAS" HAS THE SAME MEANING AS SET FORTH IN SECTION 25-7-140 (6).

(d) "OFFICE OF THE STATE ARCHITECT" MEANS THE OFFICE OF THE STATE ARCHITECT IN THE DEPARTMENT OF PERSONNEL.

(3) (a) BY JANUARY 1, 2024, THE OFFICE OF THE STATE ARCHITECT SHALL ESTABLISH BY POLICY A MAXIMUM ACCEPTABLE GLOBAL WARMING POTENTIAL FOR EACH CATEGORY OF ELIGIBLE MATERIALS USED IN AN ELIGIBLE PROJECT IN ACCORDANCE WITH THE FOLLOWING REQUIREMENTS:

(I) THE OFFICE OF THE STATE ARCHITECT SHALL BASE THE MAXIMUM ACCEPTABLE GLOBAL WARMING POTENTIAL ON THE INDUSTRY AVERAGE OF GLOBAL WARMING POTENTIAL EMISSIONS FOR THAT MATERIAL. THE OFFICE OF THE STATE ARCHITECT SHALL DETERMINE THE INDUSTRY AVERAGE BY CONSULTING NATIONALLY OR INTERNATIONALLY RECOGNIZED DATABASES OF ENVIRONMENTAL PRODUCT DECLARATIONS AND MAY INCLUDE TRANSPORTATION-RELATED EMISSIONS AS PART OF THE GLOBAL WARMING POTENTIAL EMISSIONS.

(II) THE OFFICE OF THE STATE ARCHITECT SHALL EXPRESS THE MAXIMUM ACCEPTABLE GLOBAL WARMING POTENTIAL AS A NUMBER THAT STATES THE MAXIMUM ACCEPTABLE GLOBAL WARMING POTENTIAL FOR EACH CATEGORY OF ELIGIBLE MATERIALS. THE GLOBAL WARMING POTENTIAL SHALL BE PROVIDED IN A MANNER THAT IS CONSISTENT WITH CRITERIA IN AN ENVIRONMENTAL PRODUCT DECLARATION. THE OFFICE OF THE STATE ARCHITECT MAY ESTABLISH ADDITIONAL SUBCATEGORIES WITHIN EACH ELIGIBLE MATERIAL WITH DISTINCT MAXIMUM ACCEPTABLE GLOBAL WARMING POTENTIAL LIMITS. THE POLICY MAY PERMIT MAXIMUM ACCEPTABLE GLOBAL WARMING POTENTIAL FOR EACH MATERIAL CATEGORY IN THE AGGREGATE.

(b) IN ESTABLISHING A MAXIMUM ACCEPTABLE GLOBAL WARMING POTENTIAL FOR EACH CATEGORY OF ELIGIBLE MATERIALS USED IN AN ELIGIBLE PROJECT, THE OFFICE OF THE STATE ARCHITECT MAY CONSULT WITH ANY OTHER RELEVANT DEPARTMENT OR DIVISION OF STATE GOVERNMENT.

(c) BY JANUARY 1, 2026, AND EVERY FOUR YEARS THEREAFTER, THE OFFICE OF THE STATE ARCHITECT SHALL REVIEW THE MAXIMUM ACCEPTABLE GLOBAL WARMING POTENTIAL FOR EACH CATEGORY OF ELIGIBLE MATERIALS AND MAY ADJUST THE NUMBER FOR ANY ELIGIBLE MATERIAL TO REFLECT INDUSTRY CONDITIONS. THE OFFICE OF THE STATE ARCHITECT SHALL NOT ADJUST THE NUMBER UPWARD FOR ANY ELIGIBLE MATERIAL.

(4) (a) (I) FOR ANY SOLICITATION FOR A CONTRACT FOR THE DESIGN OF AN ELIGIBLE PROJECT, AN AGENCY OF GOVERNMENT SHALL REQUIRE THE DESIGNER WHO IS AWARDED THE CONTRACT TO INCLUDE, IN PROJECT SPECIFICATIONS WHEN FINAL CONSTRUCTION DOCUMENTS ARE RELEASED, A CURRENT ENVIRONMENTAL PRODUCT DECLARATION, TYPE III, AS DEFINED BY THE INTERNATIONAL ORGANIZATION FOR

STANDARDIZATION STANDARD 14025:2006, OR SIMILARLY ROBUST LIFE CYCLE ASSESSMENT METHODS THAT HAVE UNIFORM STANDARDS IN DATA COLLECTION, AS SET BY POLICY BY THE OFFICE OF THE STATE ARCHITECT FOR EACH ELIGIBLE MATERIAL PROPOSED TO BE USED IN THE ELIGIBLE PROJECT THAT MEET THE MAXIMUM ACCEPTABLE GLOBAL WARMING POTENTIAL FOR EACH CATEGORY OF ELIGIBLE MATERIALS.

(II) IF A PRODUCT THAT MEETS THE MAXIMUM ACCEPTABLE GLOBAL WARMING POTENTIAL FOR A CATEGORY OF ELIGIBLE MATERIALS IS NOT REASONABLY PRICED OR IS NOT AVAILABLE ON A REASONABLE BASIS AT THE TIME OF DESIGN OR CONSTRUCTION, THE OFFICE OF THE STATE ARCHITECT MAY WAIVE THE REQUIREMENTS OF THIS SECTION FOR THAT PRODUCT.

(b) FOR ANY SOLICITATION FOR A CONTRACT FOR AN ELIGIBLE PROJECT, AN AGENCY OF GOVERNMENT SHALL SPECIFY THE ELIGIBLE MATERIALS THAT WILL BE USED IN THE PROJECT AND REASONABLE MINIMUM USAGE THRESHOLDS BELOW WHICH THE REQUIREMENTS OF THIS SECTION SHALL NOT APPLY. AN AGENCY OF GOVERNMENT MAY INCLUDE IN A SPECIFICATION FOR SOLICITATIONS FOR AN ELIGIBLE PROJECT A GLOBAL WARMING POTENTIAL FOR ANY ELIGIBLE MATERIAL THAT IS LOWER THAN THE MAXIMUM ACCEPTABLE GLOBAL WARMING POTENTIAL FOR THAT MATERIAL AS DETERMINED PURSUANT TO SUBSECTION (3) OF THIS SECTION.

(c) A CONTRACTOR THAT IS AWARDED A CONTRACT FOR AN ELIGIBLE PROJECT SHALL NOT INSTALL ANY ELIGIBLE MATERIALS ON THE PROJECT UNTIL THE CONTRACTOR SUBMITS AN ENVIRONMENTAL PRODUCT DECLARATION FOR THAT MATERIAL PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION. THE ENVIRONMENTAL PRODUCT DECLARATION SHALL BE DEEMED APPROVED IF IT COMPLIES WITH THE ORIGINAL SPECIFICATION REQUIRED BY SUBSECTION (4)(a) OF THIS SECTION. IF AN ENVIRONMENTAL PRODUCT DECLARATION IS NOT AVAILABLE FOR AN ELIGIBLE MATERIAL, THE CONTRACTOR SHALL NOTIFY THE AGENCY OF GOVERNMENT AND INSTALL AN ALTERNATIVE ELIGIBLE MATERIAL WITH AN ENVIRONMENTAL PRODUCT DECLARATION. IF A PRODUCT MEETING THE MAXIMUM ACCEPTABLE GLOBAL WARMING POTENTIAL FOR A CATEGORY OF ELIGIBLE MATERIALS IS NOT REASONABLY PRICED OR IS NOT AVAILABLE TO THE CONTRACTOR ON A REASONABLE BASIS, THE AGENCY OF GOVERNMENT MAY WAIVE THE REQUIREMENTS OF THIS SECTION FOR THAT PRODUCT. THE AGENCY OF GOVERNMENT SHALL REPORT THE WAIVERS IT AWARDS TO THE OFFICE OF THE STATE ARCHITECT.

(5) IN ADMINISTERING THIS SECTION, THE OFFICE OF THE STATE ARCHITECT SHALL STRIVE TO ACHIEVE A CONTINUOUS REDUCTION OF GREENHOUSE GAS EMISSIONS OVER TIME. REDUCTION OF GREENHOUSE GAS EMISSIONS ACHIEVED UNDER THIS SECTION SHALL BE CREDITED UNDER THE PROCESS CREATED IN SECTION 25-7-105 (1)(e).

(6) BEGINNING IN 2026, AND IN EACH YEAR THEREAFTER, THE OFFICE OF THE STATE ARCHITECT SHALL PREPARE A REPORT FOR THE GENERAL ASSEMBLY THAT INCLUDES THE FOLLOWING INFORMATION:

(a) FOR THE REPORT PREPARED IN 2026 ONLY, A DESCRIPTION OF THE METHOD THAT THE OFFICE OF THE STATE ARCHITECT USED TO DEVELOP THE MAXIMUM ACCEPTABLE GLOBAL WARMING POTENTIAL FOR EACH CATEGORY OF ELIGIBLE

MATERIALS;

(b) WHAT THE OFFICE OF THE STATE ARCHITECT HAS LEARNED ABOUT HOW TO IDENTIFY AND QUANTIFY EMBODIED CARBON IN BUILDING MATERIALS, INCLUDING LIFE CYCLE COSTS; AND

(c) ANY OBSTACLES THE OFFICE OF THE STATE ARCHITECT AS WELL AS BIDDING CONTRACTORS HAVE ENCOUNTERED IN IDENTIFYING AND QUANTIFYING EMBODIED CARBON IN BUILDING MATERIALS.

24-92-118. Maximum global warming potential for materials used in public projects - road - highway - bridge projects - environmental product declaration - short title - report - definitions. (1) THE SHORT TITLE OF THIS SECTION AND SECTION 24-92-117 IS THE "BUY CLEAN COLORADO ACT".

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "DEPARTMENT" MEANS THE DEPARTMENT OF TRANSPORTATION.

(b) "ELIGIBLE MATERIAL" MEANS MATERIALS USED IN THE CONSTRUCTION OF A PUBLIC PROJECT, INCLUDING, BUT NOT LIMITED TO:

(I) ASPHALT AND ASPHALT MIXTURES;

(II) CEMENT AND CONCRETE MIXTURES; AND

(III) STEEL.

(c) "GREENHOUSE GAS" HAS THE SAME MEANING AS SET FORTH IN SECTION 25-7-140 (6).

(d) "PUBLIC PROJECT" MEANS ALL PUBLICLY BID CONSTRUCTION PROJECTS, PROJECTS FROM WITHIN THE ASSET MANAGEMENT, OR OTHER PROJECTS AS DETERMINED BY THE DEPARTMENT.

(3) (a) By JANUARY 1, 2025, THE DEPARTMENT SHALL ESTABLISH A POLICY TO DETERMINE AND RECORD GREENHOUSE GAS EMISSIONS FROM ELIGIBLE MATERIALS USED IN A PUBLIC PROJECT WITH THE GOAL OF REDUCING GREENHOUSE GAS EMISSIONS IN ACCORDANCE WITH THE FOLLOWING REQUIREMENTS:

(I) THE DEPARTMENT SHALL USE THE NATIONALLY OR INTERNATIONALLY RECOGNIZED DATABASES OF ENVIRONMENTAL PRODUCT DECLARATIONS AND MAY INCLUDE TRANSPORTATION-RELATED EMISSIONS AS PART OF THE GLOBAL WARMING POTENTIAL EMISSIONS; AND

(II) THE DEPARTMENT SHALL DEVELOP A TRACKING AND REPORTING PROCESS IN A MANNER THAT IS CONSISTENT WITH CRITERIA IN AN ENVIRONMENTAL PRODUCT DECLARATION. THE DEPARTMENT MAY ESTABLISH ADDITIONAL SUBCATEGORIES WITHIN EACH ELIGIBLE MATERIAL WITH DISTINCT MAXIMUM GLOBAL WARMING POTENTIAL LIMITS.

(b) IN ESTABLISHING THE POLICY PURSUANT TO THIS SECTION, THE DEPARTMENT MAY CONSULT WITH ANY OTHER RELEVANT DEPARTMENT OR DIVISION OF STATE GOVERNMENT.

(c) BY JANUARY 1, 2027, AND EVERY FOUR YEARS THEREAFTER, THE DEPARTMENT OF TRANSPORTATION SHALL REVIEW THE POLICY CREATED PURSUANT TO THIS SECTION AND MAY ADJUST THE POLICY TO REFLECT INDUSTRY CONDITIONS. THE DEPARTMENT SHALL NOT ADJUST THE POLICY FOR ANY ELIGIBLE MATERIAL TO BE LESS STRINGENT.

(4) (a) FOR INVITATION FOR BIDS FOR CONTRACTS FOR PUBLIC PROJECTS ISSUED ON OR AFTER JULY 1, 2022, THE DEPARTMENT SHALL REQUIRE THE CONTRACTOR WHO IS AWARDED THE CONTRACT TO SUBMIT A CURRENT ENVIRONMENTAL PRODUCT DECLARATION, TYPE III, AS DEFINED BY THE INTERNATIONAL ORGANIZATION FOR STANDARDIZATION STANDARD 14025:2006, OR SIMILARLY ROBUST LIFE CYCLE ASSESSMENT METHODS THAT HAVE UNIFORM STANDARDS IN DATA COLLECTION, FOR EACH ELIGIBLE MATERIAL PROPOSED TO BE USED IN THE PUBLIC PROJECT.

(b) FOR INVITATION FOR BIDS FOR CONTRACTS FOR PUBLIC PROJECTS ISSUED ON OR AFTER JULY 1, 2025, THE DEPARTMENT SHALL REQUIRE THE CONTRACTOR WHO IS AWARDED THE CONTRACT TO SUBMIT A CURRENT ENVIRONMENTAL PRODUCT DECLARATION, TYPE III, AS DEFINED BY THE INTERNATIONAL ORGANIZATION FOR STANDARDIZATION STANDARD 14025:2006, OR SIMILARLY ROBUST LIFE CYCLE ASSESSMENT METHODS THAT HAVE UNIFORM STANDARDS IN DATA COLLECTION, AS SET BY POLICY BY THE DEPARTMENT FOR EACH ELIGIBLE MATERIAL PROPOSED TO BE USED IN THE PUBLIC PROJECT.

(c) FOR INVITATION FOR BIDS FOR CONTRACTS FOR PUBLICLY BID PUBLIC PROJECTS ISSUED ON OR AFTER JULY 1, 2025, THE DEPARTMENT OF TRANSPORTATION SHALL SPECIFY THE ELIGIBLE MATERIALS THAT WILL BE USED IN THE PROJECT BASED ON THE POLICY AND REASONABLE MINIMUM USAGE THRESHOLDS BELOW WHICH THE REQUIREMENTS OF THIS SECTION SHALL NOT APPLY.

(d) A CONTRACTOR THAT IS AWARDED A CONTRACT FOR A PUBLIC PROJECT SHALL NOT INSTALL ANY ELIGIBLE MATERIALS ON THE PROJECT UNTIL THE CONTRACTOR SUBMITS AN ENVIRONMENTAL PRODUCT DECLARATION FOR THAT MATERIAL PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION. THE ENVIRONMENTAL PRODUCT DECLARATION SHALL BE DEEMED APPROVED IF IT COMPLIES WITH THE POLICY ESTABLISHED BY THE DEPARTMENT PURSUANT TO THIS SECTION. IF AN ENVIRONMENTAL PRODUCT DECLARATION IS NOT AVAILABLE FOR AN ELIGIBLE MATERIAL, THE CONTRACTOR SHALL NOTIFY THE DEPARTMENT AND INSTALL AN ALTERNATIVE ELIGIBLE MATERIAL WITH AN ENVIRONMENTAL PRODUCT DECLARATION. IF A PRODUCT MEETING THE POLICY REQUIREMENTS FOR A CATEGORY OF ELIGIBLE MATERIALS IS NOT REASONABLY PRICED OR IS NOT AVAILABLE TO THE CONTRACTOR ON A REASONABLE BASIS, THE DEPARTMENT MAY WAIVE THE REQUIREMENTS OF THIS SECTION FOR THAT PRODUCT.

(5) IN ADMINISTERING THIS SECTION, THE DEPARTMENT SHALL STRIVE TO ACHIEVE A CONTINUOUS REDUCTION OF GREENHOUSE GAS EMISSIONS OVER TIME. REDUCTION OF GREENHOUSE GAS EMISSIONS ACHIEVED UNDER THIS SECTION SHALL BE CREDITED UNDER THE PROCESS CREATED IN SECTION 25-7-105 (1)(e).

(6) BEGINNING IN 2026, THE DEPARTMENT SHALL ANNUALLY PRESENT THE FOLLOWING INFORMATION TO THE TRANSPORTATION LEGISLATION REVIEW COMMITTEE, OR ANY SUCCESSOR COMMITTEE:

(a) FOR THE PRESENTATION IN 2026 ONLY, A DESCRIPTION OF THE METHOD THAT THE DEPARTMENT USED TO DEVELOP THE POLICY REQUIREMENTS FOR EACH CATEGORY OF ELIGIBLE MATERIALS;

(b) WHAT THE DEPARTMENT HAS LEARNED ABOUT HOW TO IDENTIFY AND QUANTIFY EMBODIED CARBON IN BUILDING MATERIALS, INCLUDING LIFE CYCLE COSTS; AND

(c) ANY OBSTACLES THE DEPARTMENT AS WELL AS BIDDING CONTRACTORS HAVE ENCOUNTERED IN IDENTIFYING AND QUANTIFYING EMBODIED CARBON IN BUILDING MATERIALS.

SECTION 3. Appropriation. For the 2021-22 state fiscal year, \$75,342 is appropriated to the department of personnel for use by the executive director's office. This appropriation is from the general fund and is based on an assumption that the office will require an additional 0.9 FTE. To implement this act, the office may use this appropriation for the office of the state architect.

SECTION 4. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: July 6, 2021