SENATE BILL 961

P2  2lr3222
CF 2lr1724

By: Senator Elfreth
Introduced and read first time: February 14, 2022
Assigned to: Rules

A BILL ENTITLED

AN ACT concerning

Public Projects – Global Warming Potential of Materials
(Buy Clean Maryland Act)

FOR the purpose of requiring the Department of General Services to establish a maximum acceptable global warming potential for certain categories of eligible materials used in certain eligible projects; requiring the Department to review the maximum acceptable global warming potential for each category of eligible materials and authorizing the Department to make certain adjustments according to a certain schedule; prohibiting the Department from increasing the maximum acceptable global warming potential for a category of eligible materials; requiring a unit of State government to specify the eligible materials that will be used in an eligible project in the solicitation for an eligible project; requiring a successful bidder or offeror of an eligible project to submit certain information about each eligible material proposed to be used in an eligible project; prohibiting a contractor from installing any eligible materials on an eligible project until the contractor submits the required information for the eligible material; authorizing the Department to waive certain requirements concerning the use of eligible materials on eligible projects under certain circumstances; providing that the Department shall strive to achieve a continuous reduction of greenhouse gas emissions over time; and generally relating to the global warming potential of materials in public projects.

BY adding to

Article – State Finance and Procurement
Section 4–901 through 4–905 to be under the new subtitle “Subtitle 9. Buy Clean Maryland Act”
Annotated Code of Maryland
(2021 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
(A) In this subtitle the following words have the meanings indicated.

(B) "Eligible material" means any of the following materials used in the construction of a public project:

(1) Cement and concrete mixtures;
(2) Glass;
(3) Posttension steel;
(4) Reinforcing steel;
(5) Structural steel; and
(6) Wood structural elements.

(C) (1) "Eligible project" means a public project as defined in § 3–602 of this article.

(2) "Eligible project" does not include:

(I) Any maintenance program for the upkeep of a public project;
(II) Any road or highway project; or
(III) A public project at a public school, as defined in § 1–101 of the Education Article.

(D) "Global warming potential" means the degree that a given mass of a chemical contributes to global warming over a given time period when compared to the same mass of carbon dioxide.

(E) "Greenhouse gas" has the meaning stated in § 2–1202 of the Environment Article.
IN ADMINISTERING THIS SUBTITLE, THE DEPARTMENT SHALL STRIVE TO ACHIEVE A CONTINUOUS REDUCTION OF GREENHOUSE GAS EMISSIONS OVER TIME.

(A) ON OR BEFORE JANUARY 1, 2024, THE DEPARTMENT SHALL ESTABLISH A MAXIMUM ACCEPTABLE GLOBAL WARMING POTENTIAL FOR EACH CATEGORY OF ELIGIBLE MATERIALS USED IN AN ELIGIBLE PROJECT IN ACCORDANCE WITH THIS SECTION.

(B) THE DEPARTMENT SHALL:

(1) BASE THE MAXIMUM ACCEPTABLE GLOBAL WARMING POTENTIAL ON THE INDUSTRY AVERAGE OF GLOBAL WARMING POTENTIAL EMISSIONS FOR THAT MATERIAL;

(2) DETERMINE THE INDUSTRY AVERAGE OF GLOBAL WARMING POTENTIAL EMISSIONS, WHICH MAY INCLUDE TRANSPORTATION–RELATED EMISSIONS, BY CONSULTING NATIONALLY OR INTERNATIONALLY RECOGNIZED DATABASES OF ENVIRONMENTAL PRODUCT DECLARATIONS; AND

(3) EXPRESS THE MAXIMUM ACCEPTABLE GLOBAL WARMING POTENTIAL AS A NUMBER THAT STATES THE MAXIMUM ACCEPTABLE GLOBAL WARMING POTENTIAL FOR EACH CATEGORY OF ELIGIBLE MATERIALS, CONSISTENT WITH CRITERIA IN AN ENVIRONMENTAL PRODUCT DECLARATION.

(C) THE DEPARTMENT MAY:

(1) ESTABLISH ADDITIONAL SUBCATEGORIES WITHIN EACH CATEGORY OF ELIGIBLE MATERIAL WITH DISTINCT MAXIMUM ACCEPTABLE GLOBAL WARMING POTENTIAL LIMITS;

(2) ESTABLISH A MAXIMUM ACCEPTABLE GLOBAL WARMING POTENTIAL FOR EACH MATERIAL CATEGORY IN THE AGGREGATE; AND

(3) CONSULT WITH ANY OTHER RELEVANT UNIT OF STATE GOVERNMENT WHEN ESTABLISHING A MAXIMUM ACCEPTABLE GLOBAL WARMING POTENTIAL FOR EACH CATEGORY OF ELIGIBLE MATERIALS USED IN AN ELIGIBLE PROJECT.
(D) (1) Subject to paragraph (2) of this subsection, by January 1, 2027, and every 3 years thereafter, the Department shall review the maximum acceptable global warming potential for each category of eligible materials and may adjust the potential for any category to reflect industry conditions.

(2) The Department may not adjust the global warming potential upward for any category of eligible material.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – State Finance and Procurement

4–904.

(A) (1) For any solicitation for a contract for an eligible project, a unit of State government shall specify the eligible materials that will be used in the project and the reasonable minimum usage thresholds below which the requirements of this section do not apply.

(2) A unit of State government may include in a solicitation 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 under § 4–903 of this subtitle.

(B) The Department shall require a successful bidder or offeror of an eligible project to submit, for each eligible material proposed to be used in the eligible project:

(1) A current environmental product declaration, type III, as defined by the International Organization for Standardization Standard 14025; or

(2) A similarly robust life cycle assessment method that includes uniform standards in data collection.

(C) A contractor may not install any eligible materials on the eligible project until the contractor submits a facility–specific environmental product declaration for that eligible material as required under subsection (b) of this section.
(D) IF AN ENVIRONMENTAL PRODUCT DECLARATION IS NOT AVAILABLE FOR AN ELIGIBLE MATERIAL, THE CONTRACTOR SHALL NOTIFY THE UNIT AND USE AN ALTERNATIVE ELIGIBLE MATERIAL WITH AN ENVIRONMENTAL PRODUCT DECLARATION.

(E) THE DEPARTMENT MAY WAIVE THE REQUIREMENTS OF THIS SECTION IF IT DETERMINES THAT REQUIRING THE RELEVANT ELIGIBLE MATERIALS WOULD:

(1) BE TECHNICALLY INFEASIBLE;

(2) RESULT IN A SIGNIFICANT INCREASE IN PROJECT COST;

(3) RESULT IN A SIGNIFICANT DELAY IN PROJECT COMPLETION; OR

(4) RESULT IN ONLY ONE SOURCE OR MANUFACTURER BEING ABLE TO PROVIDE THE NECESSARY MATERIALS.

4–905.

(A) ON OR BEFORE DECEMBER 1, 2024, AND EACH YEAR THEREAFTER, THE DEPARTMENT SHALL SUBMIT AN ANNUAL REPORT, IN ACCORDANCE WITH § 2–1257 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY THAT INCLUDES:

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

(2) ANY OBSTACLES THE DEPARTMENT, BIDDERS, OR OFFERORS HAVE ENCOUNTERED IN IDENTIFYING AND QUANTIFYING EMBODIED CARBON IN BUILDING MATERIALS.

(B) THE REPORT SUBMITTED ON OR BEFORE DECEMBER 1, 2024, SHALL INCLUDE A DESCRIPTION OF THE METHOD THAT THE DEPARTMENT USED TO DEVELOP THE MAXIMUM ACCEPTABLE GLOBAL WARMING POTENTIAL FOR EACH CATEGORY OF ELIGIBLE MATERIALS.

SECTION 3. AND BE IT FURTHER ENACTED, That, on or before December 1, 2022, the Maryland Green Building Council shall:

(1) seek input from community and industry stakeholders on recommendations to implement the provisions of Sections 1 and 2 of this Act, including:

(i) architects;
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(ii) civil engineers;

(iii) environmental scientists;

(iv) institutions of higher education in the State;

(v) materials manufacturers; and

(vi) State contractors; and

(2) report the recommendations to the General Assembly, in accordance with § 2–1257 of the State Government Article.

SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect July 1, 2024.

SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in Section 4 of this Act, this Act shall take effect July 1, 2022.