

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
 Enrolled - Revised

House Bill 261

(Delegate Kerr, *et al.*)

Health and Government Operations

Budget and Taxation

Eligible Projects - Procurement of Construction Materials (Buy Clean Maryland Act)

This bill requires the Department of General Services (DGS), by January 1, 2026, and in consultation with the Maryland Department of Transportation (MDOT), to establish a maximum acceptable global warming potential (GWP) for each category of cement or concrete mixture used in the construction of an eligible project. By December 31, 2024, producers of those materials must submit specified environmental product declarations (EPDs) to DGS for analysis. Beginning July 1, 2026, State agencies must specify in each solicitation for a construction project the cement or concrete mixture that will be used in the project and the reasonable minimum usage thresholds below which the bill’s requirements do not apply; contractors may not install any cement or concrete mixture before they submit EPDs. The bill also establishes an Environmental Product Declaration Assistance Fund, administered by the Department of Commerce, to award grants to producers of eligible materials to support the development, standardization, and transparency of EPDs. **The bill generally takes effect July 1, 2023, but certain provisions take effect July 1, 2026; the grant program terminates December 31, 2024.**

Fiscal Summary

State Effect: General fund expenditures increase by \$200,000 in FY 2024 to capitalize the fund; contingent funding for this purpose is included in the FY 2024 budget as passed by the General Assembly. Special fund revenues and expenditures increase commensurately. General fund expenditures increase by \$50,000 in FY 2025 for a consultant and by \$217,900 in FY 2026 for staffing; out-years reflect annualization, inflation, and ongoing costs. No effect on total capital spending, as discussed below.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
SF Revenue	\$200,000	\$0	\$0	\$0	\$0
GF Expenditure	\$200,000	\$50,000	\$217,900	\$413,400	\$485,100
SF Expenditure	\$200,000	\$0	\$0	\$0	\$0
Net Effect	(\$200,000)	(\$50,000)	(\$217,900)	(\$413,400)	(\$485,100)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Construction costs for local community college capital projects that receive State funding likely increase. Any such increase likely does not affect total capital spending by counties, as that amount is fixed each year, but it likely results in less local funding being available for other capital projects. No effect on revenues.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “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.

An “eligible project” is a capital project described in § 3-602.1(c) of the State Finance and Procurement Article; it does not include any maintenance program for the upkeep of an eligible project. Section 3-602.1(c) relates to high-performance buildings. Specifically, under that provision, except as specified, if a capital project includes the construction or major renovation of a building that is 7,500 square feet or greater, the building must be constructed or renovated to be a high-performance building. The provision applies to capital projects that are funded solely with State funds and community college capital projects that receive State funds.

Establishing Global Warming Potential

In establishing GWPs for cement and concrete mixtures, DGS must:

- analyze EPDs submitted by producers;
- base the maximum acceptable GWP on the industry average for each material;
- determine the industry average of GWP emissions, as specified, by consulting nationally or internationally recognized databases of EPDs; and
- express the maximum acceptable GWP in a specified manner.

DGS may also (1) establish additional subcategories; (2) establish a maximum acceptable GWP for each material category in the aggregate; and (3) consult with other relevant units of State government.

By January 1, 2029, and every three years thereafter, DGS must again review the GWPs and may adjust the potential for any category to reflect industry conditions. However, DGS may not adjust the GWP upward for any category of eligible material.

In carrying out these requirements, DGS must strive to achieve a continuous reduction of greenhouse gas (GHG) emissions over time.

Capital Construction Projects

A successful bidder or offeror on a State capital contract must submit, for any cement or concrete mixture to be used in the project, (1) a current EPD that meets specified standards or (2) a similarly robust life cycle assessment method that includes uniform standards in data collection. A contractor may not install cement or concrete until the contractor submits a facility-specific EPD for each material. If an EPD is not available for a specific product, the contractor must notify the State agency and use an alternative material with an EPD.

DGS may waive these requirements if it determines that requiring the relevant cement or concrete mixture would:

- be technically infeasible;
- result in a significant increase in project cost;
- result in a significant delay in project completion; or
- result in only one source or manufacturer being able to provide the necessary materials.

By December 1, 2025, and each year thereafter, DGS must submit a report to the General Assembly with specified information regarding implementation of the bill's requirements.

Current Law: [Chapter 38 of 2022](#) (the Climate Solutions Now Act) required the Maryland Green Building Council (MGBC) to examine (1) the use of EPDs to measure the climate impact of concrete procured by the State; (2) the use of performance incentives to encourage adoption of low-carbon materials and methods by concrete manufacturers that provide concrete for State-funded projects; (3) the establishment of an expedited product evaluation, testing, and approval protocol for low-carbon concrete products; (4) the implementation of performance-based specification standards for concrete, as specified; and (5) the use of methods of compliance, including maximum cement content specifications and specifications based on maximum potential for global warming.

In examining these topics, MGBC was required to consult with (1) any relevant associations that set industry standards for the procurement of low-carbon concrete and (2) affected contractors and subcontractors to consider both environmental and health and safety impacts. MGBC was required to report its findings and recommendations to the Governor and the General Assembly by December 1, 2022.

Among the findings in the MGBC report are:

- no in-state manufacturers of concrete have developed EPDs for their mixes;
- there are many different types of EPDs;
- EPDs cost about \$15,000 to produce;
- low-carbon concrete with an EPD costs more than concrete currently being used; and
- EPDs are tracked through existing searchable life-cycle assessment databases.

The federal Inflation Reduction Act provides approximately \$6.0 billion to reduce GHG emissions at manufacturing plants that produce construction materials such as steel, asphalt, and concrete.

High-performance Buildings

Chapter 124 of 2008 requires most new or renovated State buildings to be constructed as high-performance buildings, subject to waiver processes established by the Department of Budget and Management (DBM) and DGS. Identical requirements were later added for community college projects that receive State funds.

Chapter 124 defines a high-performance building as one that:

- meets or exceeds the U.S. GBC Leadership in Energy and Environmental Design (LEED) certification criteria for a silver rating; or
- achieves a comparable numeric rating according to a nationally recognized, accepted, and appropriate standard approved by DBM and DGS. Based on a unanimous recommendation from MGBC, in 2017, DGS and DBM approved the use of the Green Globes rating system developed by the Green Building Initiative as an alternative to LEED silver.

Only new or renovated State buildings that are at least 7,500 square feet and are built or renovated entirely with State funds are subject to the high-performance requirement.

State/Local Fiscal Effect:

Department of General Services

The bill adds significant intermittent and ongoing responsibilities to DGS for which it currently does not have in-house expertise or staffing. These responsibilities include:

- establishing GWPs for each type of cement and concrete blend and updating the GWPs every three years;

- monitoring contractor compliance with EPD requirements on State construction contracts;
- processing waiver requests; and
- reporting annually on implementation of the bill.

These DGS responsibilities generally do not begin until fiscal 2025 and 2026.

Therefore, general fund expenditures increase by \$50,000 in fiscal 2025 and by \$217,876 in fiscal 2026. This estimate includes the cost of hiring a consultant in fiscal 2025 to analyze the EPDs submitted by cement and concrete producers and develop GWPs for those materials before the January 2026 deadline. It also reflects the cost of hiring a contract manager, a procurement officer, and a database specialist in fiscal 2026 for DGS to carry out the other tasks described above. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. It is assumed that new staff are hired as of January 1, 2026, to begin planning for the implementation of the bill’s construction contract provisions in fiscal 2027, including establishing a waiver process for contractors.

Positions	3.0
Salaries and Fringe Benefits	\$196,412
Operating Expenses	<u>21,464</u>
Total FY 2026 DGS Expenditures	\$217,876

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. Additional consulting services to review and adjust GWPs are not needed until fiscal 2029, which is beyond the five-year period covered by this fiscal and policy note.

It is assumed that MDOT can consult with DGS as needed using existing budgeted resources.

Department of Commerce

The new Environmental Product Declaration Assistance Fund exists only for 18 months. This analysis assumes that it awards one round of grants (in fiscal 2024) to producers of cement and concrete to develop EPDs as required by the bill. The fiscal 2024 budget as passed by the General Assembly includes \$200,000 in general funds for this purpose, contingent on the enactment of this bill or its cross file. Therefore, general fund expenditures increase by \$200,000 only in fiscal 2024 to capitalize the new fund, and special fund revenues and expenditures increase commensurately to award the grants (under the assumption that the appropriation is transferred to the new special fund by budget amendment). Commerce can administer the grant program with existing resources.

State and Local Capital Construction Costs

Low-carbon concrete is generally more expensive than concrete currently used on State construction projects and on local community college construction projects that receive State funds. Therefore, construction costs for most State construction projects and affected community college projects likely increase to the extent that low-carbon concrete is used and waivers are not granted.

However, this has no overall effect on the capital budget, MDOT's Consolidated Transportation Program, or local capital expenditures, which are all established annually in accordance with their respective capital affordability guidelines or debt capacity. To the extent that individual construction projects are more expensive, some projects may be delayed or canceled.

Small Business Effect: Small construction contractors that work on State projects or on affected community college projects must comply with the bill's requirements regarding the use of low-carbon concrete and the submission of EPDs. Although the requirements are generally procedural in nature, they may put a strain on small contractors that have limited or no support staff. Small contractors must also purchase and use low-carbon concrete on State contracts, which is generally more expensive than concrete currently in use; however, higher costs are assumed to be passed on to the State. To the extent that producers of cement and concrete are small businesses, they benefit from the available grant funding in fiscal 2024.

Additional Comments: The bill's requirement for DGS to annually report, as specified, beginning December 1, 2025, is assumed to apply initially on December 1, 2026, as that provision of the bill does not take effect until July 1, 2026.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See SB 961 of 2022.

Designated Cross File: SB 424 (Senators Elfreth and Feldman) - Budget and Taxation.

Information Source(s): Maryland Department of the Environment; Department of General Services; Department of Commerce; Department of Natural Resources; Department of Public Safety and Correctional Services; Maryland Department of Transportation; U.S. Department of Energy; Department of Legislative Services

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km/lgc

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