

# House Bill 2688

Sponsored by Representative RAYFIELD; Representative HELM (Pre-session filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires Department of Transportation to establish pilot program to assess how products that department or contractor for department procures affect emissions of carbon dioxide. Provides that pilot program must require prospective contractors to declare environmental product cost of certain products in response to invitation to bid for public improvement contract. Requires department to determine lowest responsible bidder after calculating environmental product cost for product.

Provides that local contracting agency may adopt practices of department.

Requires all state contracting agencies to adopt practices of department beginning January 1, 2025.

Requires Department of Environmental Quality to adopt and keep updated rules for calculating environmental product cost of certain products.

Becomes operative January 1, 2022.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to procurements of certain materials at the lowest carbon dioxide cost; and declaring an  
3 emergency.

4 **Be It Enacted by the People of the State of Oregon:**

### **SECTION 1. (1) As used in this section:**

6 (a) "Environmental product cost" means the cost, denominated in dollars, of a product's  
7 life cycle environmental impact, calculated in accordance with rules the Department of En-  
8 vironmental Quality adopts under subsection (5) of this section.

9 (b) "Environmental product declaration" means a product-specific measurement of the  
10 life cycle environmental impact of a product, from the point of raw material extraction to  
11 the point of manufacture, that is certified by a third party and in accordance with interna-  
12 tional standards.

13 (2) The Department of Transportation shall establish a pilot program for assessing how  
14 products that the department or a contractor for the department procures in connection  
15 with a public improvement contract affect levels of carbon dioxide in the atmosphere. The  
16 pilot program must:

17 (a) Require a prospective contractor to respond to an invitation to bid for a public im-  
18 provement contract with a disclosure of the environmental product cost of all concrete the  
19 prospective contractor expects to manufacture or purchase in the course of constructing,  
20 reconstructing or renovating the public improvement.

21 (b) Require the department to determine the lowest responsible bidder for a public im-  
22 provement contract after calculating, in accordance with the method adopted by the De-  
23 partment of Environmental Quality under subsection (5) of this section, the environmental  
24 product cost of concrete for each bidder's bid, if the public improvement will use concrete.

25 (3) Every public improvement contract that the Department of Transportation awards

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 under the pilot program must require contractors to determine the lowest responsible bidder  
 2 for subcontracts after calculating, in accordance with the method adopted by the Depart-  
 3 ment of Environmental Quality under subsection (5) of this section, the environmental  
 4 product cost of concrete in each prospective subcontractor's bid, if the work the subcon-  
 5 tractor will perform uses concrete.

6 (4) A local contracting agency may choose to adopt the requirements set forth in sub-  
 7 sections (2) and (3) of this section in awarding a public improvement contract.

8 (5) The Department of Environmental Quality by rule shall adopt and keep updated a  
 9 method for calculating the environmental product cost of products the Department of  
 10 Transportation or a contractor procures under the pilot program described in this section.  
 11 The method must:

12 (a) Specify a nationwide average for the amount of atmospheric carbon dioxide associated  
 13 with each product, based on information in applicable environmental product declarations;

14 (b) Calculate a multiplier based on the percentage by which the atmospheric carbon  
 15 emissions for a product identified in a prospective contractor's bid, as shown in the applica-  
 16 ble environmental product declaration, deviates from the nationwide average described in  
 17 paragraph (a) of this subsection, specifying that:

18 (A) For each percentage point above the nationwide average the environmental product  
 19 cost for the product increases by two percentage points; and

20 (B) For each percentage point below the nationwide average the environmental product  
 21 cost decreases by two percentage points; and

22 (c) Permit the Department of Transportation to arrive at an environmental product cost  
 23 that results from applying the multiplier described in paragraph (b) of this subsection to the  
 24 environmental product cost that a prospective contractor discloses in a bid for a public im-  
 25 provement contract.

26 **SECTION 2.** Section 1 of this 2021 Act is amended to read:

27 (1) As used in this section:

28 (a) "Environmental product cost" means the cost, denominated in dollars, of a product's life cy-  
 29 cle environmental impact, calculated in accordance with rules the Department of Environmental  
 30 Quality adopts under subsection (5) of this section.

31 (b) "Environmental product declaration" means a product-specific measurement of the life cycle  
 32 environmental impact of a product, from the point of raw material extraction to the point of manu-  
 33 facture, that is certified by a third party and in accordance with international standards.

34 (2) The Department of Transportation shall establish a pilot program for assessing how products  
 35 that the department or a contractor for the department procures in connection with a public im-  
 36 provement contract affect levels of carbon dioxide in the atmosphere. The pilot program must:

37 (a) Require a prospective contractor to respond to an invitation to bid for a public improvement  
 38 contract with a disclosure of the environmental product cost of all concrete **and asphalt** the pro-  
 39 spective contractor expects to manufacture or purchase in the course of constructing, reconstructing  
 40 or renovating the public improvement.

41 (b) Require the department to determine the lowest responsible bidder for a public improvement  
 42 contract after calculating, in accordance with the method adopted by the Department of Environ-  
 43 mental Quality under subsection (5) of this section, the environmental product cost of concrete **and**  
 44 **asphalt** for each bidder's bid, if the public improvement will use concrete **and asphalt**.

45 (3) Every public improvement contract that the Department of Transportation awards under the

1 pilot program must require contractors to determine the lowest responsible bidder for subcontracts  
 2 after calculating, in accordance with the method adopted by the Department of Environmental  
 3 Quality under subsection (5) of this section, the environmental product cost of concrete **and asphalt**  
 4 in each prospective subcontractor's bid, if the work the subcontractor will perform uses concrete  
 5 **and asphalt**.

6 (4) A local contracting agency may choose to adopt the requirements set forth in subsections (2)  
 7 and (3) of this section in awarding a public improvement contract.

8 (5) The Department of Environmental Quality by rule shall adopt and keep updated a method for  
 9 calculating the environmental product cost of products the Department of Transportation or a con-  
 10 tractor procures under the pilot program described in this section. The method must:

11 (a) Specify a nationwide average for the amount of atmospheric carbon dioxide associated with  
 12 each product, based on information in applicable environmental product declarations;

13 (b) Calculate a multiplier based on the percentage by which the atmospheric carbon emissions  
 14 for a product identified in a prospective contractor's bid, as shown in the applicable environmental  
 15 product declaration, deviates from the nationwide average described in paragraph (a) of this sub-  
 16 section, specifying that:

17 (A) For each percentage point above the nationwide average the environmental product cost for  
 18 the product increases by two percentage points; and

19 (B) For each percentage point below the nationwide average the environmental product cost  
 20 decreases by two percentage points; and

21 (c) Permit the Department of Transportation to arrive at an environmental product cost that  
 22 results from applying the multiplier described in paragraph (b) of this subsection to the environ-  
 23 mental product cost that a prospective contractor discloses in a bid for a public improvement con-  
 24 tract.

25 **SECTION 3.** Section 1 of this 2021 Act, as amended by section 2 of this 2021 Act, is amended  
 26 to read:

27 (1) As used in this section:

28 (a) "Environmental product cost" means the cost, denominated in dollars, of a product's life cy-  
 29 cle environmental impact, calculated in accordance with rules the Department of Environmental  
 30 Quality adopts under subsection (5) of this section.

31 (b) "Environmental product declaration" means a product-specific measurement of the life cycle  
 32 environmental impact of a product, from the point of raw material extraction to the point of manu-  
 33 facture, that is certified by a third party and in accordance with international standards.

34 (2) The Department of Transportation shall establish a pilot program for assessing how products  
 35 that the department or a contractor for the department procures in connection with a public im-  
 36 provement contract affect levels of carbon dioxide in the atmosphere. The pilot program must:

37 (a) Require a prospective contractor to respond to an invitation to bid for a public improvement  
 38 contract with a disclosure of the environmental product cost of all concrete, [and] asphalt **and steel**  
 39 the prospective contractor expects to manufacture or purchase in the course of constructing, re-  
 40 constructing or renovating the public improvement.

41 (b) Require the department to determine the lowest responsible bidder for a public improvement  
 42 contract after calculating, in accordance with the method adopted by the Department of Environ-  
 43 mental Quality under subsection (5) of this section, the environmental product cost of concrete,  
 44 [and] asphalt **and steel** for each bidder's bid, if the public improvement will use concrete, [and] as-  
 45 phalt **and steel**.

1 (3) Every public improvement contract that the Department of Transportation awards under the  
 2 pilot program must require contractors to determine the lowest responsible bidder for subcontracts  
 3 after calculating, in accordance with the method adopted by the Department of Environmental  
 4 Quality under subsection (5) of this section, the environmental product cost of concrete, [and] as-  
 5 phalt **and steel** in each prospective subcontractor’s bid, if the work the subcontractor will perform  
 6 uses concrete, [and] asphalt **and steel**.

7 (4) A local contracting agency may choose to adopt the requirements set forth in subsections (2)  
 8 and (3) of this section in awarding a public improvement contract.

9 (5) The Department of Environmental Quality by rule shall adopt and keep updated a method for  
 10 calculating the environmental product cost of products the Department of Transportation or a con-  
 11 tractor procures under the pilot program described in this section. The method must:

12 (a) Specify a nationwide average for the amount of atmospheric carbon dioxide associated with  
 13 each product, based on information in applicable environmental product declarations;

14 (b) Calculate a multiplier based on the percentage by which the atmospheric carbon emissions  
 15 for a product identified in a prospective contractor’s bid, as shown in the applicable environmental  
 16 product declaration, deviates from the nationwide average described in paragraph (a) of this sub-  
 17 section, specifying that:

18 (A) For each percentage point above the nationwide average the environmental product cost for  
 19 the product increases by two percentage points; and

20 (B) For each percentage point below the nationwide average the environmental product cost  
 21 decreases by two percentage points; and

22 (c) Permit the Department of Transportation to arrive at an environmental product cost that  
 23 results from applying the multiplier described in paragraph (b) of this subsection to the environ-  
 24 mental product cost that a prospective contractor discloses in a bid for a public improvement con-  
 25 tract.

26 **SECTION 4.** Section 1 of this 2021 Act, as amended by sections 2 and 3 of this 2021 Act, is  
 27 amended to read:

28 (1) As used in this section:

29 (a) “Environmental product cost” means the cost, denominated in dollars, of a product’s life cy-  
 30 cle environmental impact, calculated in accordance with rules the Department of Environmental  
 31 Quality adopts under subsection (5) of this section.

32 (b) “Environmental product declaration” means a product-specific measurement of the life cycle  
 33 environmental impact of a product, from the point of raw material extraction to the point of manu-  
 34 facture, that is certified by a third party and in accordance with international standards.

35 (2) *[The Department of Transportation shall establish a pilot program for assessing]* **A state**  
 36 **contracting agency shall assess** how products that the *[department or a contractor for the depart-*  
 37 *ment]* **state contracting agency or a contractor for the state contracting agency** procures in  
 38 connection with a public improvement contract affect levels of carbon dioxide in the atmosphere.  
 39 The *[pilot program]* **state contracting agency’s assessment** must:

40 (a) Require a prospective contractor to respond to an invitation to bid for a public improvement  
 41 contract with a disclosure of the environmental product cost of all concrete, asphalt and steel the  
 42 prospective contractor expects to manufacture or purchase in the course of constructing, recon-  
 43 structing or renovating the public improvement.

44 (b) Require the *[department]* **state contracting agency** to determine the lowest responsible  
 45 bidder for a public improvement contract after calculating, in accordance with the method adopted

1 by the Department of Environmental Quality under subsection (5) of this section, the environmental  
 2 product cost of concrete, asphalt and steel for each bidder's bid, if the public improvement will use  
 3 concrete, asphalt and steel.

4 (3) Every public improvement contract that [*the Department of Transportation awards under the*  
 5 *pilot program*] **a state contracting agency awards** must require contractors to determine the low-  
 6 est responsible bidder for subcontracts after calculating, in accordance with the method adopted by  
 7 the Department of Environmental Quality under subsection (5) of this section, the environmental  
 8 product cost of concrete, asphalt and steel in each prospective subcontractor's bid, if the work the  
 9 subcontractor will perform uses concrete, asphalt and steel.

10 (4) A local contracting agency may choose to adopt the requirements set forth in subsections (2)  
 11 and (3) of this section in awarding a public improvement contract.

12 (5) The Department of Environmental Quality by rule shall adopt and keep updated a method for  
 13 calculating the environmental product cost of products [*the Department of Transportation or a con-*  
 14 *tractor procures under the pilot program described in*] **a state contracting agency or a contractor**  
 15 **procures in accordance with** this section. The method must:

16 (a) Specify a nationwide average for the amount of atmospheric carbon dioxide associated with  
 17 each product, based on information in applicable environmental product declarations;

18 (b) Calculate a multiplier based on the percentage by which the atmospheric carbon emissions  
 19 for a product identified in a prospective contractor's bid, as shown in the applicable environmental  
 20 product declaration, deviates from the nationwide average described in paragraph (a) of this sub-  
 21 section, specifying that:

22 (A) For each percentage point above the nationwide average the environmental product cost for  
 23 the product increases by two percentage points; and

24 (B) For each percentage point below the nationwide average the environmental product cost  
 25 decreases by two percentage points; and

26 (c) Permit the [*Department of Transportation*] **state contracting agency** to arrive at an envi-  
 27 ronmental product cost that results from applying the multiplier described in paragraph (b) of this  
 28 subsection to the environmental product cost that a prospective contractor discloses in a bid for a  
 29 public improvement contract.

30 **SECTION 5. (1) Section 1 of this 2021 Act becomes operative on January 1, 2022.**

31 **(2) The amendments to section 1 of this 2021 Act by section 2 of this 2021 Act become**  
 32 **operative on January 1, 2023.**

33 **(3) The amendments to section 1 of this 2021 Act by section 3 of this 2021 Act become**  
 34 **operative on January 1, 2024.**

35 **(4) The amendments to section 1 of this 2021 Act by section 4 of this 2021 Act become**  
 36 **operative on January 1, 2025.**

37 **(5) The Department of Transportation and the Department of Environmental Quality may**  
 38 **adopt rules and take any other action before the operative date specified in subsection (1)**  
 39 **of this section that is necessary to enable the departments, on and after the operative date**  
 40 **specified in subsection (1) of this section, to undertake and exercise all of the duties, func-**  
 41 **tions and powers conferred on the departments by section 1 of this 2021 Act.**

42 **SECTION 6. This 2021 Act being necessary for the immediate preservation of the public**  
 43 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**  
 44 **on its passage.**