House Bill 2688

Sponsored by Representative RAYFIELD; Representative HELM (Presession 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

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

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

SECTION 1. (1) As used in this section:
(a) “Environmental product cost” means the cost, denominated in dollars, of a product’s life cycle environmental impact, calculated in accordance with rules the Department of Environmental Quality adopts under subsection (5) of this section.
(b) “Environmental product declaration” means a product-specific measurement of the life cycle environmental impact of a product, from the point of raw material extraction to the point of manufacture, that is certified by a third party and in accordance with international standards.

(2) The Department of Transportation shall establish a pilot program for assessing how products that the department or a contractor for the department procures in connection with a public improvement contract affect levels of carbon dioxide in the atmosphere. The pilot program must:
(a) Require a prospective contractor to respond to an invitation to bid for a public improvement contract with a disclosure of the environmental product cost of all concrete the prospective contractor expects to manufacture or purchase in the course of constructing, reconstructing or renovating the public improvement.
(b) Require the department to determine the lowest responsible bidder for a public improvement contract after calculating, in accordance with the method adopted by the Department of Environmental Quality under subsection (5) of this section, the environmental product cost of concrete for each bidder’s bid, if the public improvement will use concrete.

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

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

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

(b) Require the [department] state contracting agency to determine the lowest responsible bidder for a public improvement contract after calculating, in accordance with the method adopted
by the Department of Environmental Quality under subsection (5) of this section, the environmental
product cost of concrete, asphalt and steel for each bidder’s bid, if the public improvement will use
concrete, asphalt and steel.

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

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

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

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

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

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

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

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

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

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

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

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

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

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