

Chapter 202

(House Bill 261)

AN ACT concerning

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

FOR the purpose of requiring producers of eligible materials to submit certain declarations to the Department of General Services by a certain date; requiring the Department to assess and 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; establishing an Environmental Product Declaration Assistance Fund for a certain purpose; and generally relating to the global warming potential of materials in ~~public~~ eligible 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 and 2022 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 That the Laws of Maryland read as follows:

Article – State Finance and Procurement

SUBTITLE 9. BUY CLEAN MARYLAND ACT.

4–901.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “ELIGIBLE MATERIAL” MEANS ANY CEMENT OR CONCRETE MIXTURE USED IN THE CONSTRUCTION OF ~~A PUBLIC~~ AN ELIGIBLE PROJECT.

(C) (1) “ELIGIBLE PROJECT” ~~MEANS A PUBLIC PROJECT AS DEFINED INCLUDES MEANS A~~ CAPITAL PROJECT DESCRIBED IN § ~~3-602~~ 3-602.1(C) OF THIS ARTICLE.

(2) “ELIGIBLE PROJECT” DOES NOT INCLUDE ANY MAINTENANCE PROGRAM FOR THE UPKEEP OF ~~A PUBLIC~~ AN ELIGIBLE PROJECT.

(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.

4-902.

IN ADMINISTERING THIS SUBTITLE, THE DEPARTMENT SHALL STRIVE TO ACHIEVE A CONTINUOUS REDUCTION OF GREENHOUSE GAS EMISSIONS OVER TIME.

4-903.

(A) (1) ON OR BEFORE DECEMBER 31, 2024, PRODUCERS OF ELIGIBLE MATERIALS SHALL SUBMIT ENVIRONMENTAL PRODUCT DECLARATIONS TO THE DEPARTMENT.

(2) THE DEPARTMENT SHALL ANALYZE ENVIRONMENTAL PRODUCT DECLARATIONS AND ASSESS GLOBAL WARMING POTENTIAL FOR ELIGIBLE MATERIALS USED IN AN ELIGIBLE PROJECT IN ACCORDANCE WITH THIS SECTION.

(B) ON OR BEFORE JANUARY 1, ~~2025~~ 2026, THE DEPARTMENT SHALL, *IN CONSULTATION WITH THE DEPARTMENT OF TRANSPORTATION*, ESTABLISH A MAXIMUM ACCEPTABLE GLOBAL WARMING POTENTIAL FOR EACH CATEGORY OF ELIGIBLE MATERIALS USED IN AN ELIGIBLE PROJECT IN ACCORDANCE WITH THIS SECTION.

~~(B)~~ (C) 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)~~ (D) 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)~~ (E) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, BY JANUARY 1, ~~2028~~ 2029, 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, 2025, 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, 2025, 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:

(a) (1) There is an **Environmental Product Declaration Assistance Fund**.

(2) The purpose of the Fund is to award grants to producers of eligible materials to support the development, standardization, and transparency of environmental product declarations for construction materials and products.

(b) The Department of Commerce shall administer the Fund.

(c) The Fund shall consist of money appropriated in the State budget to the Fund.

~~SECTION 4. AND BE IT FURTHER ENACTED, That:~~

~~(a) The Maryland Green Building Council shall examine:~~

~~(1) the use of environmental product declarations to measure the climate impact of construction materials produced by the State, including glass, steel, and wood;~~

~~(2) the use of performance incentives to encourage adoption of low carbon materials and methods by manufacturers that provide construction materials for State-funded projects;~~

~~(3) the establishment of an expedited product evaluation, testing, and approval protocol for low carbon products;~~

~~(4) the implementation of performance-based specification standards for construction materials, including requirements that a structural material achieve specified performance-based outcomes from the use of structural material, including outcomes related to strength, durability, permeability, or other attributes related to the function of building material for applied uses; and~~

~~(5) the use of methods of compliance, including specifications based on maximum potential for global warming.~~

~~(b) In examining the items under subsection (a) of this section, the Maryland Green Building Council shall consult with:~~

~~(1) any relevant associations that set industry standards for the procurement of low carbon construction products; and~~

~~(2) affected contractors and subcontractors to consider both environmental and health and safety impacts.~~

~~(c) On or before September 1, 2024, the Maryland Green Building Council shall report its findings and recommendations to the Governor and, in accordance with § 2-1257 of the State Government Article, the General Assembly.~~

SECTION ~~3~~ 5. 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect July 1, ~~2025~~ 2026.

SECTION ~~6~~ 5. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall take effect July 1, 2023. It shall remain effective for a period of 1 year and 6 months and, at the end of December 31, 2024, Section 3 of this Act shall be abrogated and of no further force and effect.

SECTION ~~4~~ 7. 6. AND BE IT FURTHER ENACTED, That, except as provided in ~~Section 3~~ Sections 5 and 6 4 and 5 of this Act, this Act shall take effect July 1, 2023.

Approved by the Governor, April 24, 2023.