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## **Preliminary Cost-Benefit Analysis**

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### **Clean Energy: Labor Standards Certification for Tax Incentives**

#### **Chapter 296-140 WAC, Clean Energy Labor Standards Certification**

*February 2023*

# I. Introduction

## Administrative Procedure Act Requirements

The Administrative Procedure Act (APA) requires that, before adopting a significant legislative rule, the Department of Labor & Industries (L&I) must analyze the probable costs and benefits of the rule, and determine that the benefits are greater than its costs, taking into account both the qualitative and quantitative benefits and costs.” [RCW 34.05.328(1)(d)]

RCW 34.05.328(5)(c)(iii) defines a "significant legislative rule" as a rule, other than a procedural or interpretive rule, that:

- Adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction;
- Establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or
- Adopts a new, or makes significant amendments to, a policy or regulatory program.

Under certain circumstances, a rule or rule component is exempt from this requirement.

## Proposed Rules

During the 2022 legislative session, the Washington State Legislature passed Second Substitute House Bill 1988 (2SHB 1988) and Engrossed Substitute Senate Bill 5714 (ESSB 5714). 2SHB 1988 allows for tax deferrals on investment projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage when the project meets certain labor standards and is certified by L&I. ESSB 5714 allows for tax deferrals on large-scale commercial parking lots and other similar areas when the project meets certain labor standards and is certified by L&I. L&I is required to adopt rules to define and set minimum requirements for all labor standards associated with the certification for tax deferral; set requirements for all good faith efforts; and set other requirements regarding documentation and the certification process. The proposed rules address:

- Standards for certification for:
  - Procurement from and contracts with women-owned, minority-owned, and veteran-owned businesses, which will include a requirement that the recipient of the deferral consult with the Office of Minority and Women’s Business Enterprises (OMWBE) and the Department of Veterans Affairs (DVA) to develop a plan to meet the standards or good faith efforts. Procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations;

- Apprenticeship utilization;
- Preferred entry for workers living in the area where the project is being constructed;
- Payment of prevailing wages; and
- Project Labor Agreements and Community Workforce Agreements.
- Requirements and processes related to application, records and documentation, and certification.

## **II. Probable Costs and Benefits of the Proposed Rule**

The proposed rules are significant legislative rules as they “adopt a new, or make significant amendments to, a policy or regulatory program”. The proposed rules do not set requirements that subject a violator to a penalty or sanction nor do they establish, alter or revoke any qualification or standard for the issuance, suspension, or revocation of a license or permit.

The labor standards certification requirement in the proposed rule are voluntary standards for those clean energy project developers who choose to comply with them for the purposes of qualifying for a tax refund. As such, the proposed rules set the criteria for the labor standards and good faith efforts as directed by the statute but do not have any associated costs of compliance.

The benefits of the proposed rules include the benefits afforded by the statute: tax rebates for clean energy project developers who meet the certification standards, and the benefits associated with the labor standards such as benefits to women, minority, and veteran owned businesses, local hires, and apprenticeships.

## **III. Cost-Benefit Determination**

As described above, the proposed rules set voluntary labor standard criteria as directed by the Legislature and as such, there is no associated cost of compliance associated with the proposed rule. In total, the probable benefits of this rule are likely much greater than the probable costs.