

STATE OF NEW YORK

8617--A

2019-2020 Regular Sessions

IN ASSEMBLY

October 2, 2019

Introduced by M. of A. CARROLL, MOSLEY -- read once and referred to the Committee on Governmental Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the state finance law and the tax law, in relation to implementing "The New York State Low Embodied Carbon Concrete Leadership Act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as "The New York
2 State Low Embodied Carbon Concrete Leadership Act".

3 § 2. Section 165 of the state finance law is amended by adding a new
4 subdivision 9 to read as follows:

5 9. Special provisions for purchase of concrete.

6 a. For the purposes of this section, the following terms shall have
7 the following meanings:

8 (i) "Concrete" shall mean structural and non-structural masonry and
9 ready mix concrete building products.

10 (ii) "Concrete mix" shall mean a specific combination of components,
11 including water, cement, aggregate and other materials which are used to
12 produce concrete products. The structural properties of concrete mixes
13 vary by strength, durability, curing time and other performance charac-
14 teristics as a result of the defined proportions of their components and
15 the methods used in their production.

16 (iii) "Embodied carbon emissions" shall mean carbon emissions gener-
17 ated as a result of a material's production, including mining, refining,
18 and shipping.

19 (iv) "Low embodied carbon concrete" shall mean concrete that has been
20 verified to embody lower carbon emissions, as measured by a Global Warm-
21 ing Potential (GWP) metric, compared to the baseline embodied carbon
22 emissions of conventional concrete made with Portland cement. Low

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD13765-05-9

1 embodied carbon emissions can be achieved through diverse methods and
2 processes including, but not limited to: (A) higher energy efficiency at
3 the level of the concrete and/or cement plant; (B) low carbon fuel
4 substitution at the level of the concrete and/or cement plant; (C) local
5 production resulting in reduced emissions from transportation; (D) the
6 reduction of clinker content in the cement component of concrete, or the
7 substitution of clinker content with lower carbon-intensive alternative
8 materials; (E) the capture and storage of point source CO2 emissions
9 during the cement and concrete production process; or (F) the utiliza-
10 tion and mineralization of carbon in concrete materials.

11 (v) "Environmental product declaration (EPD)" shall mean product
12 specific Type III EPDs that conform to ISO Standard 14025 and enable the
13 numeric GWP and environmental impact comparisons between concrete mixes
14 fulfilling the same functions.

15 (vi) "CO2 capture" shall mean methods that separate and capture carbon
16 dioxide from the air and/or industrial emissions point sources.

17 (vii) "CO2 utilization" shall mean a method of permanently mineraliz-
18 ing CO2 in products.

19 (viii) "Net zero CO2 emissions" shall mean a state whereby the total
20 amount of CO2 utilized and/or captured during the concrete production
21 process and/or mineralized in concrete materials are equal to the amount
22 of CO2 emissions released during the production and utilization of that
23 concrete.

24 (ix) "Net negative CO2 emissions" shall mean a state whereby the
25 amount of CO2 utilized and/or captured during the concrete production
26 process and/or mineralized in concrete materials are greater than the
27 amount of CO2 emissions released during the production and utilization
28 of that concrete.

29 b. When letting contracts for the purchase of concrete on behalf of
30 facilities, transportation authorities and institutions of the state,
31 solicitation specifications of the office of general services and any
32 other agency, department, office, board or commission shall require
33 provisions that mandate the incorporation of low embodied carbon emis-
34 sions selection standards that are governed by the GWP, quantified
35 through certified EPD analysis for each concrete mix proposed in bids by
36 offerers. For bid opportunities that include multiple concrete mixes the
37 GWP of all mixes will be aggregated into a single GWP score that will
38 serve as the basis of comparison and selection. Low embodied carbon
39 concrete mixes must meet or exceed engineering performance standards
40 approved by the state and must not result in cost escalation for
41 concrete procurement compared to the current market price of conven-
42 tional concrete.

43 c. For concrete technologies that involve the capture and/or utiliza-
44 tion and storage of carbon, and thus theoretically possess the potential
45 to attain net zero or net negative embodied CO2 emissions in a future
46 scenario, the state shall establish supplemental selection criteria
47 intended to accelerate the market entry of those technologies at pres-
48 ent, and incentivize technological innovation and commercialization of
49 new carbon utilization technologies in the future. Carbon capture and/or
50 utilization-based concrete mixes will be granted preferential selection
51 in competitive solicitations if such offerings: (i) match or exceed all
52 competing low embodied carbon alternatives offered in bids on the basis
53 of their GWP; (ii) match or exceed structural performance standards
54 specified by the state; and (iii) can be procured at costs no greater
55 than: (A) fifteen per cent of the current market price of conventional
56 concrete in the first three years of the procurement standard's imple-

1 mentation; (B) ten per cent of the current market price during years
2 four through six of the procurement standard's implementation; and (C)
3 five per cent of the current market price starting in year seven of
4 implementation. To the maximum extent determined to be feasible by the
5 commissioner, analyses of cost impact will measure both material unit
6 costs as well as projected negative or positive cost impacts during
7 concrete transportation and construction, or through the increase or
8 displacement of other cost-bearing building materials as a result of
9 utilization.

10 d. The commissioner shall issue regulations for the implementation of
11 this subdivision, including but not limited to: (i) establishing guide-
12 lines that will assist agencies in determining which contracts meet the
13 requirements in paragraph b of this subdivision; (ii) publishing such
14 purchasing guidelines on the office of general services' website,
15 disseminating such guidelines to agencies and training contracting
16 personnel on implementing such guidelines; and (iii) providing for moni-
17 toring of implementation.

18 e. (i) With each offer, offerers incorporating low embodied carbon
19 emissions concrete shall submit product-specific GWP data derived from
20 an EPD analysis or comparable methodology. (ii) Any successful offerer
21 who fails to comply with the provisions of this subdivision, at the
22 discretion of such agency, board, office or commission, shall forfeit
23 the right to bid on contracts let under the provisions of this subdivi-
24 sion for a period of time to be determined by the commissioner.

25 § 3. Section 606 of the tax law is amended by adding a new subsection
26 (kkk) to read as follows:

27 (kkk) The environmental product declaration tax credit. (a) Defi-
28 nitions. For the purposes of this section:

29 (i) "low embodied carbon concrete" shall mean concrete that has been
30 verified by environmental product declaration to embody lower carbon
31 emissions, as measured by a Global Warming Potential (GWP) metric,
32 compared to the baseline embodied carbon emissions of conventional
33 concrete.

34 (ii) "environmental product declaration (EPD) analysis" shall mean
35 product specific Type III EPDs that conform to ISO Standard 14025 and
36 enable global warming potential (GWP) and environmental impact compar-
37 isons between products fulfilling the same functions.

38 (b) Allowance of credit. Producers of concrete, as well as the produc-
39 ers of the major concrete components, cement and aggregate, that are
40 taxpayers shall be allowed a credit, to be computed as provided in this
41 subsection, against the tax imposed by this article, to compensate for
42 financial burdens incurred as a result of EPD analyses undertaken to
43 determine the product-based embodied carbon emissions of one or multiple
44 concrete products produced at one or multiple plants that such taxpayer
45 owns and operates.

46 (c) Amount of credit. The credit authorized by this subsection shall
47 not exceed the full costs incurred for an EPD analysis of a single
48 concrete, cement and/or aggregate production facility, and may be
49 claimed for the costs of completing EPD analyses at up to eight facili-
50 ties owned by the same producer in a single tax year by a single taxpay-
51 ing entity in tax years two thousand twenty, two thousand twenty-one and
52 two thousand twenty-two. The credit authorized by this subsection shall
53 not exceed fifty percent of incurred costs for EPD analysis at up to
54 eight concrete, cement or aggregate facilities owned by the same produc-
55 er in a single tax year by a single taxpaying entity in tax years two

1 thousand twenty-three and two thousand twenty-four. Tax credit eligibil-
2 ity will expire at the end of two thousand twenty-four.

3 (d) Application of credit. The credit allowed under this subsection
4 for any taxable year shall not reduce the tax due for such year to less
5 than the fixed dollar minimum amount prescribed in paragraph (d) of
6 subdivision one of section two hundred ten of this article. However, if
7 the amount of the credit allowed under this subsection for any taxable
8 year reduces the tax to such amount or if the taxpayer otherwise pays
9 tax based on the fixed dollar minimum amount, any amount of credit thus
10 not deductible in such taxable year shall be treated as an overpayment
11 of tax to be credited or refunded in accordance with the provisions of
12 section one thousand eighty-six of this chapter. Provided, however, the
13 provisions of subsection (c) of section one thousand eighty-eight of
14 this chapter notwithstanding, no interest shall be paid thereon.

15 § 4. This act shall take effect on the first of January next succeed-
16 ing the date on which it shall have become a law and shall apply to
17 taxable years commencing on and after such date. Effective immediately,
18 the addition, amendment and/or repeal of any rule or regulation neces-
19 sary for the implementation of this act on its effective date are
20 authorized to be made and completed on or before such effective date.