

# STATE OF NEW YORK

8506

2019-2020 Regular Sessions

## IN ASSEMBLY

August 7, 2019

Introduced by M. of A. CARROLL -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law and the tax law, in relation to requiring direct air capture products in cement and concrete used in state projects; creates a tax credit for using direct air capture

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

Section 1. Section 165 of the state finance law is amended by adding a new subdivision 9 to read as follows:

9. Special provisions for purchase of cement and concrete. a. For the purposes of this section, "direct air capture" shall mean a capture method of carbon capture and storage that separates carbon dioxide from air.

b. When letting contracts for the purchase of cement or concrete on behalf of facilities and institutions of the state, solicitation specifications of the office of general services and any other agency, department, office, board or commission shall require provisions that mandate that all cement and concrete used contains, by weight of dry ingredients:

(i) at least two percent the product of direct air capture between January first, two thousand twenty-two and December thirty-first, two thousand twenty-two;

(ii) at least three percent the product of direct air capture between January first, two thousand twenty-three and December thirty-first, two thousand twenty-three;

(iii) at least four percent the product of direct air capture between January first, two thousand twenty-four and December thirty-first, two thousand twenty-four; and

(iv) at least five percent the product of direct air capture on and after January first, two thousand twenty-five.

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

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1 c. The commissioner shall issue regulations for the implementation of  
2 this subdivision, including but not limited to:

3 (i) establishing guidelines that will assist agencies in determining  
4 which contracts meet the requirements in paragraph b of this subdivi-  
5 sion;

6 (ii) publishing such purchasing guidelines on the office of general  
7 services' website, disseminating such guidelines to agencies and train-  
8 ing contracting personnel on implementing such guidelines; and

9 (iii) providing for monitoring of implementation.

10 d. (i) With each offer, the offerer shall certify that the cement  
11 and/or concrete provided pursuant to that solicitation will be in  
12 conformity with the provisions of the percentage required to meet or  
13 exceed the requirements in the solicitation specifying the amount by  
14 weight of dry ingredients is from direct carbon capture.

15 (ii) Any successful offerer who fails to comply with the provisions of  
16 this subdivision, at the discretion of such agency, board, office or  
17 commission, shall forfeit the right to bid on contracts let under the  
18 provisions of this subdivision for a period of time to be determined by  
19 the commissioner.

20 e. No later than December first of each year the commissioner shall  
21 annually report to the governor and legislature on the implementation of  
22 this subdivision. Such report shall include, at minimum:

23 (i) a description of the office's efforts to improve and increase the  
24 tracking of information relating to products of direct air capture; and

25 (ii) the total amount of carbon dioxide removed from the air as a  
26 result of this subdivision.

27 f. The commissioner shall advise and assist the chancellor of the  
28 state university of New York in extending the benefits of the provisions  
29 of this subdivision to the university and shall modify any regulations  
30 or procedures heretofore established pursuant to this subdivision, in  
31 order to facilitate such participation.

32 § 2. Section 210-B of the tax law is amended by adding a new subdivi-  
33 sion 53 to read as follows:

34 53. Direct air capture tax credit. (a) Allowance of credit. A taxpayer  
35 shall be allowed a credit, to be computed as provided in this subdivi-  
36 sion, against the tax imposed by this article, if it produces cement,  
37 concrete, or both with direct air capture product.

38 (b) Amount of credit. A credit authorized by this subdivision shall  
39 equal the sum of the capital costs to begin production of and the  
40 increase in production costs of cement, concrete, or both with direct  
41 air capture product. The increase in production costs shall be calcu-  
42 lated as the difference between the operating costs of such production  
43 before the implementation of direct air capture and the operating costs  
44 of such production after the implementation of direct air capture.

45 (c) Application of credit. The credit allowed under this subdivision  
46 for any taxable year shall not reduce the tax due for such year to less  
47 than the fixed dollar minimum amount prescribed in paragraph (d) of  
48 subdivision one of section two hundred ten of this article. However, if  
49 the amount of credit allowed under this subdivision for any taxable year  
50 reduces the tax to such amount or if the taxpayer otherwise pays tax  
51 based on the fixed dollar minimum amount, any amount of credit thus not  
52 deductible in such taxable year shall be treated as an overpayment of  
53 tax to be credited or refunded in accordance with the provisions of  
54 section one thousand eighty-six of this chapter. Provided, however, the  
55 provisions of subsection (c) of section one thousand eighty-eight of  
56 this chapter notwithstanding, no interest shall be paid thereon.

1 (d) Definition. For the purposes of this section, "direct air capture"  
2 shall mean a capture method of carbon capture and storage that separates  
3 carbon dioxide from air.

4 § 3. Section 606 of the tax law is amended by adding a new subsection  
5 (jjj) to read as follows:

6 (jjj) Direct air capture tax credit. (1) Allowance of credit. A  
7 taxpayer shall be allowed a credit, to be computed as provided in this  
8 subsection, against the tax imposed by this article, if it produces  
9 cement, concrete, or both with direct air capture product.

10 (2) Amount of credit. A credit authorized by this subsection shall  
11 equal the sum of the capital costs to begin production of and the  
12 increase in production costs of cement, concrete, or both with direct  
13 air capture product. The increase in production costs shall be calcu-  
14 lated as the difference between the operating costs of such production  
15 before the implementation of direct air capture and the operating costs  
16 of such production after the implementation of direct air capture.

17 (3) Application of credit. If the amount of the credit allowable under  
18 this subsection for any taxable year exceeds the taxpayer's tax for such  
19 year, the excess shall be treated as an overpayment of tax to be credit-  
20 ed or refunded as provided in section six hundred eighty-six of this  
21 article, provided, however, that no interest shall be paid thereon.

22 § 4. Subparagraph (B) of paragraph 1 of subsection (i) of section 606  
23 of the tax law is amended by adding a new clause (xliv) to read as  
24 follows:

25 <u>(xliv) Direct air capture</u>	<u>Amount of credit under</u>
26 <u>credit under</u>	<u>subdivision fifty-three of</u>
27 <u>subsection (jjj)</u>	<u>section two hundred ten-B</u>

28 § 5. This act shall take effect immediately and sections two, three,  
29 and four of this act shall apply to taxable years commencing on and  
30 after such date.