

STATE OF NEW YORK

8617

2019-2020 Regular Sessions

IN ASSEMBLY

October 2, 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, in relation to requiring low embodied carbon concrete be used in state projects and creating a preferential standard for concrete implementing CO2 capture and utilization technologies; and to amend the tax law, in relation to establishing the environmental product declaration tax credit

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

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

3 9. Special provisions for purchase of concrete.

4 a. For the purposes of this section, the following terms shall have
5 the following meanings:

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

8 (ii) "Embodied carbon emissions" shall mean carbon emissions generated
9 as a result of a material's production, including mining, refining, and
10 shipping.

11 (iii) "Low embodied carbon concrete" shall mean concrete that has been
12 verified to embody lower carbon emissions, as measured by a global warm-
13 ing potential metric, compared to the baseline embodied carbon emissions
14 of conventional concrete made with Portland cement. Low embodied carbon
15 emissions can be achieved through diverse methods and processes includ-
16 ing, but not limited to: (A) higher energy efficiency at the level of
17 the concrete and/or cement plant; (B) low carbon fuel substitution at
18 the level of the concrete and/or cement plant; (C) the reduction of
19 clinker content in the cement component of concrete, or the substitution
20 of clinker content with lower carbon-intensive alternative materials;
21 (D) the capture and storage of point source CO2 emissions during the

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

LBD13765-03-9

1 cement and concrete production process; or (E) the utilization and
2 mineralization of carbon in concrete materials.

3 (iv) "Environmental product declaration (EPD)" shall mean product
4 specific Type III EPDs that conform to ISO Standard 14025 and enable
5 global warming potential and environmental impact comparisons between
6 products fulfilling the same functions.

7 (v) "CO2 capture" shall mean a capture method that separates post-in-
8 dustrial and/or direct air captured carbon dioxide from the air or emis-
9 sion point sources.

10 (vi) "CO2 utilization" shall mean a method of permanently mineralizing
11 CO2 in products.

12 (vii) "Net zero CO2 emissions" shall mean a state whereby the total
13 amount of CO2 utilized and/or captured during the concrete production
14 process and/or mineralized in concrete materials are equal to the amount
15 of CO2 emissions released during the production and utilization of that
16 concrete.

17 (viii) "Net negative CO2 emissions" shall mean a state whereby the
18 amount of CO2 utilized and/or captured during the concrete production
19 process and/or mineralized in concrete materials are greater than the
20 amount of CO2 emissions released during the production and utilization
21 of that concrete.

22 b. When letting contracts for the purchase of concrete on behalf of
23 facilities, transportation authorities and institutions of the state,
24 solicitation specifications of the office of general services and any
25 other agency, department, office, board or commission shall require
26 provisions that mandate the incorporation of low embodied carbon emis-
27 sions selection standards that are governed by a review of the EPD for
28 each product. In addition to meeting targeted CO2 reductions, low
29 embodied carbon concrete must meet or exceed engineering performance
30 standards approved by the state and must not result in cost escalation
31 for concrete procurement compared to the current market price of conven-
32 tional concrete.

33 c. For concrete technologies that involve the measurable capture
34 and/or utilization and mineralization of carbon, and thus theoretically
35 possess the potential to attain net zero or net negative embodied CO2
36 emissions in a future scenario, the state shall establish supplemental
37 selection criteria intended to incentivize the technical innovation and
38 accelerate the market entry of those technologies. Carbon capture and/or
39 utilization-based offerings will be granted preferential selection in
40 competitive solicitations if such offerings: (i) match or exceed all
41 competing low embodied carbon alternatives offered in bids on the basis
42 of their global warming potential; and (ii) can be procured at costs no
43 greater than: (A) fifteen per cent of the current market price of
44 conventional concrete in the first year of the procurement standard's
45 implementation; (B) ten per cent in the second year of implementation;
46 and (C) no greater than five per cent in the third and subsequent years
47 of implementation. To the maximum extent determined to be feasible by
48 the commissioner, analyses of cost impact will measure both material
49 unit costs as well as projected negative or positive cost impacts during
50 concrete transportation and construction, or through the increase or
51 displacement of other cost-bearing building materials as a result of
52 utilization.

53 d. The commissioner shall issue regulations for the implementation of
54 this subdivision, including but not limited to: (i) establishing guide-
55 lines that will assist agencies in determining which contracts meet the
56 requirements in paragraph b of this subdivision; (ii) publishing such

purchasing guidelines on the office of general services' website, disseminating such guidelines to agencies and training contracting personnel on implementing such guidelines; and (iii) providing for monitoring of implementation.

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

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

(kkk) The environmental product declaration tax credit. (a) Definitions. For the purposes of this section:

(i) "low embodied carbon concrete" shall mean concrete that has been verified by environmental product declaration to embody lower carbon emissions, as measured by a global warming potential metric, compared to the baseline embodied carbon emissions of conventional concrete.

(ii) "environmental product declaration analysis" shall mean product specific Type III environmental product declarations (EPDs) that conform to ISO Standard 14025 and enable global warming potential and environmental impact comparisons between products fulfilling the same functions.

(b) Allowance of credit. A producer of concrete that is a taxpayer shall be allowed a credit, to be computed as provided in this subsection, against the tax imposed by this article, to compensate for financial burdens incurred as a result of EPD analyses undertaken to determine the product-based embodied carbon emissions of one or multiple concrete products produced at one or multiple plants that such taxpayer owns and operates.

(c) Amount of credit. The credit authorized by this subsection shall not exceed the costs incurred for an EPD analysis of a single concrete and/or cement product, and may not be claimed for the costs of EPD attainment for multiple concrete products at up to eight plants in a single tax year by a single taxpaying entity in tax years two thousand twenty and two thousand twenty-one. The credit authorized by this subsection shall not exceed fifty percent of incurred costs for EPD attainment for multiple concrete products, at up to eight plants in a single tax year by a single taxpaying entity in tax years two thousand twenty-two and two thousand twenty-three. Tax credit eligibility will expire at the end of two thousand twenty-three.

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

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