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Introduced by M. of A. CARROLL, MOSLEY, JAFFEE, DICKENS, RODRIGUEZ, ORTIZ, GOTTFRIED, ABINANTI, GLICK, STIRPE, BARRON, FAHY, DAVILA -- Multi-Sponsored by -- M. of A. COOK, SIMON -- read once and referred to the Committee on Governmental Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- 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.

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

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

4 (iv) "Low embodied carbon concrete" shall mean concrete that has been
5 verified to embody lower carbon emissions, as measured by a Global Warm-
6 ing Potential (GWP) metric, compared to the baseline embodied carbon
7 emissions of conventional concrete made with Portland cement. Low
8 embodied carbon emissions can be achieved through diverse methods and
9 processes including, but not limited to: (A) higher energy efficiency at
10 the level of the concrete and/or cement plant; (B) low carbon fuel
11 substitution at the level of the concrete and/or cement plant; (C) local
12 production resulting in reduced emissions from transportation; (D) the
13 reduction of clinker content in the cement component of concrete, or the
14 substitution of clinker content with lower carbon-intensive alternative
15 materials; (E) the capture and storage of point source CO2 emissions
16 during the cement and concrete production process; or (F) the utiliza-
17 tion and mineralization of carbon in concrete materials.

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

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

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

26 (viii) "Net zero CO2 emissions" shall mean a state whereby the total
27 amount of CO2 utilized and/or captured during the concrete production
28 process and/or mineralized in concrete materials are equal to the amount
29 of CO2 emissions released during the production and utilization of that
30 concrete.

31 (ix) "Net negative CO2 emissions" shall mean a state whereby the
32 amount of CO2 utilized and/or captured during the concrete production
33 process and/or mineralized in concrete materials are greater than the
34 amount of CO2 emissions released during the production and utilization
35 of that concrete.

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

50 c. For concrete technologies that involve the capture and/or utiliza-
51 tion and storage of carbon, and thus theoretically possess the potential
52 to attain net zero or net negative embodied CO2 emissions in a future
53 scenario, the state shall establish supplemental selection criteria
54 intended to accelerate the market entry of those technologies at pres-
55 ent, and incentivize technological innovation and commercialization of
56 new carbon utilization technologies in the future. Carbon capture and/or

utilization-based concrete mixes will be granted preferential selection in competitive solicitations if such offerings: (i) match or exceed all competing low embodied carbon alternatives offered in bids on the basis of their GWP; (ii) match or exceed structural performance standards specified by the state; and (iii) can be procured at costs no greater than: (A) fifteen percent greater than the current average market price of conventional concrete in the first three years of the procurement standard's implementation; (B) ten percent greater than the current average market price during years four through six of the procurement standard's implementation; and (C) five percent greater than the current average market price starting in year seven of implementation. To the maximum extent determined to be feasible by the commissioner, analyses of cost impact will measure both material unit costs as well as projected negative or positive cost impacts during concrete transportation and construction, or through the increase or displacement of other cost-bearing building materials as a result of utilization. For state-funded construction projects that will be completed by private contracting firms that have been contracted by the state, and for which concrete will be procured for the project, such contractors shall comply with the selection standards and rules stipulated in this paragraph when subcontracting services from concrete providers. Such contractors shall report EPD documentation included in subcontract bids that demonstrate compliance with the standards and rules. The commissioner shall institute and issue guidelines pertaining to penalties for non-compliance by such contractors.

d. The commissioner shall issue regulations for the implementation of this subdivision, including but not limited to: (i) establishing guidelines that will assist agencies in determining which contracts meet the 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 GWP 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.

§ 3. 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 (GWP) metric, compared to the baseline embodied carbon emissions of conventional concrete.

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

(b) Allowance of credit. Producers of concrete, as well as the producers of the major concrete components, cement and aggregate, that are taxpayers shall be allowed a credit, to be computed as provided in this

1 subsection, against the tax imposed by this article, to compensate for
2 financial burdens incurred as a result of EPD analyses undertaken to
3 determine the product-based embodied carbon emissions of one or multiple
4 concrete products produced at one or multiple plants that such taxpayer
5 owns and operates.

6 (c) Amount of credit. The credit authorized by this subsection shall
7 not exceed the full costs incurred for an EPD analysis of a single
8 concrete, cement and/or aggregate production facility, and may be
9 claimed for the costs of completing EPD analyses at up to eight facili-
10 ties owned by the same producer in a single tax year by a single taxpay-
11 ing entity in tax years two thousand twenty, two thousand twenty-one and
12 two thousand twenty-two. The credit authorized by this subsection shall
13 not exceed fifty percent of incurred costs for EPD analysis at up to
14 eight concrete, cement or aggregate facilities owned by the same produc-
15 er in a single tax year by a single taxpaying entity in tax years two
16 thousand twenty-three and two thousand twenty-four. Tax credit eligibil-
17 ity will expire at the end of two thousand twenty-four.

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

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