

# STATE OF NEW YORK

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## IN ASSEMBLY

October 2, 2019

Introduced by M. of A. CARROLL, MOSLEY, JAFFEE, DICKENS, RODRIGUEZ, ORTIZ, GOTTFRIED, ABINANTI, GLICK, STIRPE, BARRON, FAHY, DAVILA, NIOU, L. ROSENTHAL -- 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 -- 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, pre-  
9 cast and 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-

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

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1 teristics as a result of the defined proportions of their components and  
2 the methods used in their production.

3 (iii) "Portland cement" shall mean hydraulic cement produced by  
4 pulverizing clinkers in combination with one or more of the forms of  
5 calcium sulfate.

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

9 (v) "Global warming potential" (GWP) shall mean a numeric value that  
10 measures the total contribution to global warming from the emission of  
11 greenhouse gases, or the elimination of greenhouse gas sinks, that  
12 results from the production and/or utilization of a specific product or  
13 service.

14 (vi) "Carbon dioxide equivalent" (CO2e) shall mean a measure used to  
15 compare the emissions from various greenhouse gases based upon their  
16 global warming potential.

17 (vii) "Low embodied carbon concrete" shall mean concrete that has been  
18 verified to embody lower carbon emissions, as measured by a GWP metric,  
19 compared to the baseline embodied carbon emissions of conventional  
20 concrete made with portland cement. Low embodied carbon emissions can be  
21 achieved through diverse methods and processes including, but not limit-  
22 ed to: (A) higher energy efficiency at the level of the concrete and/or  
23 cement plant; (B) low carbon fuel substitution at the level of the  
24 concrete and/or cement plant; (C) local production resulting in reduced  
25 emissions from transportation; (D) the reduction of clinker content in  
26 the cement component of concrete, or the substitution of clinker content  
27 with lower carbon-intensive alternative materials like supplementary  
28 cementitious materials (SCMs) such as ground granulated blast furnace  
29 slag, fly ash, and recycled ground-glass pozzolan; (E) the capture and  
30 storage of point source CO2 emissions during the cement and concrete  
31 production process; or (F) the utilization and mineralization of carbon  
32 in concrete materials.

33 (viii) "Environmental product declaration" (EPD) shall mean product  
34 specific Type III EPDs that conform to ISO Standard 14025 and enable the  
35 numeric GWP and environmental impact comparisons between concrete mixes  
36 fulfilling the same functions.

37 (ix) "Carbon capture, utilization and/or storage" (CCUS) shall mean  
38 methods and technologies to remove CO2 from the flue gas and from the  
39 atmosphere, followed by recycling the CO2 for utilization and/or deter-  
40 mining safe and permanent storage options for captured CO2.

41 (x) "Concrete delivery miles" (CDM) shall mean the distance in miles  
42 concrete mixer trucks travel from the production facility to the job  
43 site plus return travel.

44 (xi) "Low embodied carbon discount rate" shall mean a rate, set by the  
45 commissioner, applied to one or more of the bids for supply of concrete  
46 and based on the GWP derived from certified EPD analysis of each bid  
47 relative to all competitive bids. Estimated CO2e resulting from project  
48 CDM shall be assessed in addition to GWP derived from EPD analysis and  
49 factored into the discount rate.

50 (xii) "CCUS discount rate" shall mean a discount, set by the commis-  
51 sioner, applied to one or more of the bids for supply of concrete and  
52 based on CO2 capture and CO2 utilization methods employed by each  
53 respective bid.

54 (xiii) "Net zero CO2 emissions" shall mean a state whereby the total  
55 amount of CO2 utilized and/or captured during the concrete production  
56 process and/or mineralized in concrete materials are equal to the amount

1 of CO2 emissions released during the production and utilization of that  
2 concrete.

3 (xiv) "Net negative CO2 emissions" shall mean a state whereby the  
4 amount of CO2 utilized and/or captured during the concrete production  
5 process and/or mineralized in concrete materials are greater than the  
6 amount of CO2 emissions released during the production and utilization  
7 of that concrete.

8 b. When letting contracts for the purchase of fifty cubic yards or  
9 more of concrete on behalf of facilities, transportation authorities and  
10 institutions of the state, solicitation specifications of the office of  
11 general services and any other agency, department, office, board or  
12 commission shall apply a low embodied carbon concrete price discount  
13 rate to offerer bids for the purposes of bid assessment and selection.  
14 Discount rates will be applied to offerer bid prices on the basis of the  
15 GWP values for concrete products specified in offerer bids. GWP values  
16 shall be submitted by offerers in the form of certified EPDs. In addi-  
17 tion to GWP values quantified in EPD submissions, the effect of CDM and  
18 the fuel usage/emissions factor thereof shall be considered. The CO2e  
19 emissions quantified for CDM shall be incorporated into the GWP values  
20 quantified in EPD. A price discount not exceeding five percent shall be  
21 applied to top performing bids that certify the lowest GWP values via  
22 EPD submission. The commissioner shall establish rules and guidelines  
23 whereby specific price discount rates shall be determined and applied to  
24 bids based on GWP performance.

25 c. For bids that have been certified by the commissioner to incorpo-  
26 rate products and technologies that involve CCUS, the commissioner shall  
27 establish a supplemental price discount rate to be applied in addition  
28 to the low embodied carbon concrete discount rate defined in paragraph b  
29 of this subdivision. Bids that receive price discounts based on GWP  
30 performance and which incorporate certified CCUS products and technolo-  
31 gies will be granted a supplemental price discount for bid assessment  
32 and selection purposes that shall not exceed three percent. The CCUS  
33 discount rate shall be added to the low embodied carbon discount rate  
34 and applied to the base bid price.

35 d. For bid opportunities that include multiple concrete mixes the GWP  
36 of all mixes will be proportionally weighted into a single GWP score  
37 that will serve as the basis for assessment and selection.

38 e. For state-funded construction projects that will be completed by  
39 private contracting firms that have been contracted by the state, and  
40 for which concrete will be procured for the project, such contractors  
41 shall comply with the selection standards and rules stipulated in this  
42 paragraph when subcontracting services from concrete providers. Such  
43 contractors shall report EPD documentation included in subcontract bids  
44 that demonstrate compliance with the standards and rules. The commis-  
45 sioner shall institute and issue guidelines pertaining to penalties for  
46 non-compliance by such contractors.

47 f. The commissioner shall issue regulations for the implementation of  
48 this subdivision, including but not limited to: (i) establishing guide-  
49 lines that will assist agencies in determining which contracts meet the  
50 requirements in paragraph b of this subdivision; (ii) publishing such  
51 purchasing guidelines on the office of general services' website,  
52 disseminating such guidelines to agencies and training contracting  
53 personnel on implementing such guidelines; and (iii) providing for moni-  
54 toring of implementation.

55 g. The commissioner shall complete and submit to the legislature an  
56 annual cost-benefit analysis of the low embodied carbon concrete

procurement standard, once implemented, in order to quantify the budgetary impact of the program relative to the latter's carbon reduction impact.

§ 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 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 lesser of: (i) the full costs incurred for an EPD analysis of a single concrete, cement, supplementary cementitious materials, and/or aggregate production facility; or (ii) three thousand dollars, and may be claimed for the costs of completing EPD analyses at up to eight facilities owned by the same producer in a single tax year by a single taxpaying entity in tax years two thousand twenty-one and two thousand twenty-two. Tax credit eligibility will expire at the end of two thousand twenty-two.

(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 chapter. 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.

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