

STATE OF NEW YORK

S. 8174

A. 9042

SENATE - ASSEMBLY

January 31, 2022

IN SENATE -- Introduced by Sen. KAMINSKY -- read twice and ordered printed, and when printed to be committed to the Committee on Procurement and Contracts

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

AN ACT to amend the executive law and the tax law, in relation to "The Climate Forward Concrete Leadership Act"

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

Section 1. This act shall be known and may be cited as "The Climate Forward Concrete Leadership Act".

§ 2. The executive law is amended by adding a new section 204 to read as follows:

§ 204. The climate forward concrete leadership act. 1. For the purposes of this section, the following terms shall have the following meanings:

a. "Approved green procurement specifications" shall refer to the specifications approved for use by state agencies and public authorities in the procurement of commodities, services and technology by the state interagency committee, pursuant to executive order number four of two thousand eight. Approved green procurement specifications shall: (i) reduce or eliminate the health and environmental risks from the use or release of toxic substances; (ii) minimize risks of the discharge of pollutants into the environment; (iii) minimize the volume and toxicity of packaging; (iv) maximize the use of recycled content and sustainably managed renewable resources; and (v) provide other environmental and health benefits.

b. "Approved materials, equipment, methods and procedures list" or "approved materials list" shall refer to the department of transportation's index of materials, equipment, methods and procedures that have been evaluated and approved for use in state projects.

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

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1 c. "CO2e" or "carbon dioxide equivalent" shall mean a measure used to
2 compare the lows from various greenhouse gases based upon their global
3 warming potential.

4 d. "Concrete" shall mean structural and non-structural masonry,
5 precast and ready-mix concrete building products.

6 e. "Concrete mix and product" shall mean a specific combination of
7 components, including water, cement, aggregate and other materials which
8 are used to produce concrete products.

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

11 g. "EPD" or "environmental product declaration" 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 h. "GWP" or "global warming potential" shall mean a numeric value that
16 measures the total contribution to global warming from the emission of
17 greenhouse gases, or the elimination of greenhouse gas sinks, that
18 results from the production and/or utilization of a method or product.

19 i. "Lower carbon concrete" shall refer to concrete mixes and products
20 that: (i) have been verified to result in a GWP value that is equal to
21 or less than the GWP value of the present approved green procurement
22 specifications; and (ii) do not result in the elevation of hazardous
23 pollutants that have been verified to be harmful to human health and/or
24 ecosystems.

25 j. "Lower carbon concrete green procurement specification" shall refer
26 to lower carbon concrete specifications approved by the state interagen-
27 cy committee.

28 k. "Lower carbon concrete performance bonus" shall mean a monetary
29 bonus awarded to concrete producers for the manufacture of concrete that
30 results in superior GWP performance, as verified by environmental prod-
31 uct declarations.

32 l. "Maximum global warming potential threshold" shall mean the maximum
33 GWP values that are permissible for concrete mixes and products procured
34 and utilized in state construction projects, as approved and revised
35 every three years by the state interagency committee.

36 m. "OGS" shall mean the office of general services.

37 n. "Performance-based specification" shall mean a contract provision
38 that requires that a structural material achieve specified performance
39 outcomes from the use of the structural material, including, but not
40 limited to, outcomes related to the strength, durability, permeability,
41 or other attributes related to the function of the building material for
42 applied uses, as opposed to requiring that a structural material be
43 produced using a specific prescribed manufacturing process, design
44 features, technologies, or proportions of constituent materials.

45 o. "Portland cement" shall mean hydraulic cement produced by pulveriz-
46 ing clinkers in combination with one or more of the forms of calcium
47 sulfate.

48 p. "State interagency committee" means the state interagency committee
49 on sustainability and green procurement established pursuant to execu-
50 tive order number four of two thousand eight.

51 2. The office, in consultation with the state interagency committee,
52 shall:

53 a. evaluate and propose modifications to the approved green procure-
54 ment specifications for lower carbon concrete every three years follow-
55 ing initial approval of such specifications pursuant to executive order
56 number four of two thousand eight.

1 b. establish and make publicly available maximum global warming poten-
2 tial thresholds for all lower carbon concrete green procurement specifi-
3 cations approved by such state interagency committee.

4 c. develop and implement performance-based specifications for concrete
5 for use in buildings as well as horizontal roadways and infrastructure,
6 including modular units such as concrete masonry units and concrete
7 brick by no later than January first, two thousand twenty-three. Such
8 performance-based specifications shall include GWP thresholds equal to
9 the maximum GWP thresholds established for approved low carbon concrete
10 green procurement specifications.

11 d. develop and implement rules related to the procurement of lower
12 carbon concrete by agencies and departments for construction projects
13 that are funded by the state.

14 (i) Such rules shall incorporate two compliance methods for contrac-
15 tors completing state-funded construction projects involving the place-
16 ment of fifty cubic yards or more of concrete: (A) a prescriptive spec-
17 ification compliance method by which contractors may specify and use
18 approved low carbon concrete green procurement specifications; and (B) a
19 performance-based compliance method by which contractors may specify and
20 place concrete products that meet the performance-based specifications
21 established by the office pursuant to subparagraph (iii) of this para-
22 graph.

23 (ii) Any public works construction project involving the placement of
24 fifty cubic yards or more of concrete general contractors and subcon-
25 tractors shall be required to submit environmental product declarations
26 for all concrete products utilized in projects.

27 (iii) For any public works construction project involving the place-
28 ment of fifty cubic yards or more of concrete a low carbon concrete
29 performance bonus shall be made eligible to concrete manufacturers. A
30 maximum performance bonus equaling five percent of the total amount of
31 the contract between a concrete producer and the state, or between the
32 concrete producer and a general contractor retained by the state for the
33 delivery of concrete products shall be awarded to concrete producers for
34 products that are verified to attain GWP scores that are at a minimum
35 fifteen percent lower than the GWP scores established in lower carbon
36 concrete green procurement specifications. A performance bonus equaling
37 eight percent of the total amount of the contract for the delivery of
38 concrete products shall be awarded to concrete producers for concrete
39 products that are verified to achieve GWP scores that are at a minimum
40 twenty-five percent lower than the GWP scores established in lower
41 carbon concrete green procurement specifications.

42 (iv) Cement products that are manufactured at facilities where waste
43 materials, including but not limited to tire-derived fuel, ash, any
44 hazardous waste, and any solid waste, are combusted leading to emission
45 of pollutants hazardous to human health or ecosystems shall be prohibit-
46 ed from inclusion in lower carbon concrete green procurement specifica-
47 tions.

48 (v) The head of the department or agency constructing the public works
49 shall be required to notify prospective bidders of all stipulations set
50 forth in this paragraph in an advertisement or solicitation of a request
51 for proposal, invitation for bid, or solicitation of proposal, or any
52 other method provided for by law or regulation for soliciting a response
53 from offerors intending to result in a contract pursuant to this subdi-
54 vision.

1 All rules stipulated in subparagraphs (i), (ii), (iii), (iv), and (v)
2 of this paragraph shall be formulated and implemented no later than
3 January first, two thousand twenty-three.

4 3. The commissioner of transportation shall implement an expedited
5 evaluation protocol for low embodied carbon concrete products, materials
6 and methods submitted for evaluation by private manufacturers and
7 suppliers for inclusion in the department's approved materials list.
8 Applications submitted by manufacturers and suppliers shall be evalu-
9 ated, and applicants shall be notified of evaluation results, no later
10 than six months following receipt of application.

11 4. The office shall issue regulations for the implementation of this
12 act, including but not limited to: (i) establishing guidelines that will
13 assist agencies in determining which contracts meet the requirements of
14 this section; (ii) publishing such purchasing guidelines on the office's
15 website, disseminating such guidelines to agencies and training
16 contracting personnel on implementing such guidelines; and (iii) provid-
17 ing for monitoring of implementation.

18 § 3. Section 210-B of the tax law is amended by adding a new subdivi-
19 sion 58 to read as follows:

20 58. The environmental product declaration tax credit. (a) Allowance of
21 credit. Producers of concrete, as well as the producers of the major
22 concrete components, cement and aggregate, that are taxpayers shall be
23 allowed a credit, to be computed as provided in this subdivision,
24 against the tax imposed by this article, to compensate for environmental
25 product declaration technology costs at one or multiple concrete
26 production plants that such taxpayer owns and operates.

27 (b) Amount of credit. The credit authorized by this subdivision shall
28 not exceed the lesser of: (i) the full costs incurred for an environ-
29 mental product declaration analysis of a single concrete, cement,
30 supplementary cementitious materials, and/or aggregate production facil-
31 ity; or (ii) five thousand dollars, and may be claimed for the costs to
32 complete in environmental product declaration analyses at up to eight
33 facilities owned by the same producer in a single tax year by a single
34 taxpaying entity in tax years two thousand twenty-two, two thousand
35 twenty-three and two thousand twenty-four. Tax credit eligibility will
36 expire at the end of the two thousand twenty-four taxable year.

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

49 § 4. This act shall take effect immediately and section three of this
50 act shall apply to taxable years beginning on or after January 1, 2022;
51 provided, however, section three of this act shall expire and be deemed
52 repealed January 1, 2025.