

[Second Reprint]

ASSEMBLY, No. 5223

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JANUARY 7, 2021

Sponsored by:

Assemblyman ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblywoman BRITNEE N. TIMBERLAKE

District 34 (Essex and Passaic)

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

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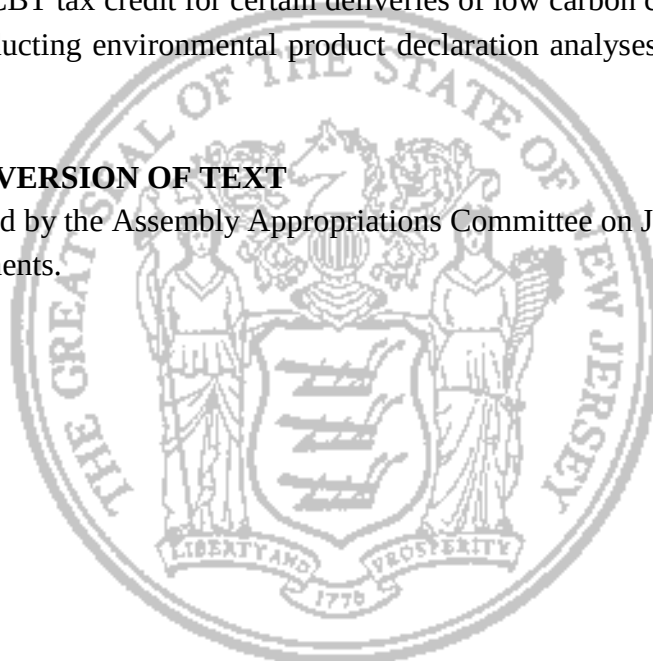
**Assemblywomen Vainieri Huttel, Chaparro, Assemblyman Holley,
Assemblywoman McKnight, Assemblyman Conaway, Assemblywoman
Jasey, Assemblyman Mukherji and Assemblywoman Speight**

SYNOPSIS

Provides CBT tax credit for certain deliveries of low carbon concrete and for costs of conducting environmental product declaration analyses of low carbon concrete.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on January 6, 2022, with amendments.



(Sponsorship Updated As Of: 6/1/2021)

1 AN ACT concerning the purchase and use of low embodied carbon
2 concrete and supplementing Titles ²**[52]** 13² and 54 of the
3 Revised Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 ²**[1.** a. (1) Notwithstanding the provisions of any law, or rule
9 or regulation adopted pursuant thereto, to the contrary, the Director
10 of the Division of Purchase and Property and the Director of the
11 Division of Property Management and Construction in the
12 Department of the Treasury, and any State agency having authority
13 to contract for the purchase of goods or services, shall, when
14 entering into a contract for the purchase of 50 cubic yards or more
15 of concrete, or for any construction or improvement project that
16 requires the use of concrete, apply a low embodied carbon discount
17 rate to the price of bids for the purpose of bid assessment and
18 selection. The low embodied carbon discount rate shall be
19 established by the State Treasurer in consultation with the
20 Commissioner of Environmental Protection and shall be applied to
21 bid prices on the basis of the global warming potential values for
22 the concrete specified in the bids, and shall not exceed five percent
23 of the total bid price. Bidders shall submit global warming
24 potential values for the concrete specified in their bids in the form
25 of certified environmental product declarations. The State
26 Treasurer shall establish the specific price discount rates to be
27 applied to bids based on global warming potential values.

28 (2) For bids that are certified to use concrete that incorporates
29 carbon capture, utilization, and storage technology, the Director of
30 the Division of Purchase and Property, the Director of the Division
31 of Property Management and Construction, and any State agency
32 having authority to contract for the purchase of goods or services
33 shall apply a supplemental discount rate to the price of bids for the
34 purpose of bid assessment and selection. The carbon capture,
35 utilization, and storage discount rate, to be established by the State
36 Treasurer in consultation with the Commissioner of Environmental
37 Protection, shall be added to the low embodied carbon discount rate
38 applied pursuant to paragraph (1) of this subsection and shall not
39 exceed three percent of the total bid price. The State Treasurer
40 shall establish the specific price discount rates to be applied to bids
41 based on the amount of carbon dioxide captured and stored by the
42 concrete.

43 (3) For State-funded construction projects that will be completed
44 by a private contracting firm that has been contracted by the State,

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AEN committee amendments adopted May 12, 2021.

²Assembly AAP committee amendments adopted January 6, 2022.

1 and for which concrete will be procured by the contractor for the
2 project, the contractor shall comply with the selection standards and
3 rules established pursuant to this section when subcontracting
4 products or services from concrete providers. The State Treasurer
5 shall establish policies and procedures for private contracting firms
6 to comply with the requirements of this section.

7 (4) For bids that include multiple concrete mixes, the global
8 warming potential of all the mixes shall be proportionally weighted
9 into a single global warming potential score that will serve as the
10 basis for assessment and selection of the bid.

11 b. The State Treasurer, in consultation with the Commissioner
12 of Environmental Protection, shall adopt, pursuant to the
13 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
14 seq.), rules and regulations necessary to implement the price
15 discount rates established pursuant to subsection a. of this section.
16 The rules and regulations shall include, but need not be limited to:

17 (1) a uniform process for contractors to certify that concrete is
18 low embodied carbon concrete, or that it utilizes carbon capture,
19 utilization, and storage technology, and for determining the global
20 warming potential value of concrete;

21 (2) guidelines to assist State agencies in determining which
22 contracts meet the requirements of this section, and the rules and
23 regulations adopted pursuant thereto;

24 (3) guidelines for training contracting personnel to implement
25 the requirements of this section; and

26 (4) a mechanism for monitoring contractor compliance with the
27 requirements of this section, and penalties for noncompliance.

28 Whenever any agency or department of State government
29 purchases concrete, or undertakes any construction or improvement
30 project that requires the use of concrete, the agency or department
31 shall follow the rules, regulations, and guidelines therefor
32 established by State Treasurer.

33 c. In preparing the specifications for any contract for the
34 purchase of 50 cubic yards or more of concrete, or for any
35 construction or improvement project that requires the use of
36 concrete, the Director of the Division of Purchase and Property, the
37 Director of the Division of Property Management and Construction,
38 and any State agency having authority to contract for the purchase
39 of goods or services shall include in the invitation to bid, where
40 relevant, a statement that any response to the invitation that
41 proposes or calls for the use low embodied carbon concrete or that
42 utilizes carbon capture, utilization, and storage technology shall
43 receive the price discount rate established pursuant to subsection a.
44 of this section.

45 d. The provisions of this section shall not apply to:

46 (1) any binding contractual obligations for the purchase of
47 goods or services entered into prior to the effective date of P.L. ,

48 c. (C.)(pending before the Legislature as this bill);

1 (2) bid packages advertised and made available to the public, or
2 to any competitive and sealed bids received by the State, prior to
3 the effective date of P.L. , c. (C.)(pending before the
4 Legislature as this bill); or

5 (3) any amendment, modification, or renewal of a contract
6 entered into prior to the effective date of P.L. ,
7 c. (C.)(pending before the Legislature as this bill) where the
8 application would delay timely completion of a project or involve
9 an increase in the total moneys to be paid by the State under that
10 contract.

11 e. No later than two years after the effective date of this act,
12 the State Treasurer, in consultation with the Commissioner of
13 Environmental Protection, shall prepare and submit a report to the
14 Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
15 19.1), the Legislature, containing a cost-benefit analysis of the low
16 embodied carbon concrete procurement preference established
17 pursuant to this section, in order to quantify the budgetary impact of
18 the program relative to the preference's carbon reduction impact.
19 The report shall recommend whether the preference should be
20 continued, modified, or repealed, and include any recommendations
21 for legislative or regulatory action to improve the preference.

22 f. For the purposes of this section:

23 "Carbon capture, utilization, and storage technology" means
24 technologies or methods to remove carbon dioxide generated by the
25 concrete manufacturing process from the flue gas or the
26 atmosphere, and to recycle the carbon dioxide either through
27 utilization of the captured carbon dioxide in the concrete
28 manufacturing process, or through safe and permanent storage of
29 the captured carbon dioxide.

30 "Concrete" means structural and non-structural masonry, and
31 pre-cast and ready-mix concrete building products.

32 "Embodied carbon emissions" means carbon emissions generated
33 as a result of a material's production, including mining, refining,
34 manufacturing, and shipping.

35 "Environmental product declaration" means a product-specific
36 Type III environmental product declaration that conforms to ISO
37 Standard 14025, assesses the numeric global warming potential of
38 the product, and allows for environmental impact comparisons
39 between concrete mixes fulfilling the same functions.

40 "Global warming potential" means a numeric value that
41 measures the total contribution to global warming from the
42 emission of greenhouse gases, or the elimination of greenhouse gas
43 sinks, that results from the production or utilization of concrete.

44 "Low embodied carbon concrete" means concrete that has been
45 certified to embody lower carbon emissions, as measured by a
46 global warming potential metric, than the baseline embodied carbon
47 emissions of conventional concrete made with Portland cement.
48 Low embodied carbon emissions may be achieved through any

1 combination of: (1) higher energy efficiency at the level of the
2 concrete or cement plant; (2) low carbon fuel substitution at the
3 level of the concrete or cement plant ¹, excluding the incineration of
4 tire-derived fuel, incinerator ash, and other solid waste materials
5 that generate pollutants hazardous to human health and
6 ecosystems¹; (3) local production of ¹, and use of locally sourced
7 material in,¹ the concrete, resulting in reduced concrete delivery
8 miles and reduced emissions from transportation; (4) the reduction
9 of clinker content in the cement component of concrete, or the
10 substitution of clinker content with lower carbon-intensive
11 alternative materials such as ground, granulated blast furnace slag,
12 fly ash, or recycled ground-glass pozzolan; (5) the capture and
13 storage of point source carbon dioxide emissions during the cement
14 or concrete production process; or (6) the utilization and storage of
15 carbon in concrete materials.

16 “Portland cement” means hydraulic cement produced by
17 pulverizing clinkers in combination with one or more of the forms
18 of calcium sulfate. ¹²

19

20 ²1. a. For privilege periods beginning on or after January 1 next
21 following the effective date of P.L. , c. (C.) (pending
22 before the Legislature as this bill), a taxpayer that is a producer of
23 concrete and that meets the requirements of this section shall be
24 allowed a credit against the tax due pursuant to section 5 of
25 P.L.1945, c.162 (C.54:10A-5), in an amount as provided in
26 subsection c. of this section.

27 b. In order to qualify for a tax credit pursuant to subsection a.
28 of this section, a concrete producer shall:

29 (1) deliver, pursuant to a contract with a State agency or with a
30 private contracting firm that has been contracted by the State, low
31 embodied carbon concrete or concrete that incorporates carbon
32 capture, utilization, and storage technology, which concrete is used
33 by a construction or improvement project that requires the purchase
34 of 50 cubic yards or more of concrete; and

35 (2) submit to the department a global warming potential value
36 for the delivered concrete in the form of a certified environmental
37 product declaration. For contracts that include multiple concrete
38 mixes, the global warming potential of all the mixes shall be
39 proportionally weighted into a single global warming potential
40 score that will serve as the basis for the amount of the tax credit.

41 c. (1) For the delivery of low embodied carbon concrete, a
42 taxpayer may claim a tax credit in an amount calculated using the
43 formula promulgated by the department pursuant to section 3 of
44 P.L. , c. (C.) (pending before the Legislature as this bill),
45 which shall not exceed five percent of the costs of the concrete
46 delivered.

1 (2) For the delivery of concrete that incorporates carbon capture,
2 utilization, and storage technology, a taxpayer may claim a tax
3 credit in an amount calculated using the formula promulgated by the
4 department pursuant to section 3 of P.L. , c. (C.) (pending
5 before the Legislature as this bill), which shall not exceed three
6 percent of the costs of the concrete delivered.

7 (3) Concrete that is low embodied carbon concrete and concrete
8 that incorporates carbon capture, utilization, and storage technology
9 may qualify for both tax credits authorized pursuant to paragraphs
10 (1) and (2) of this subsection, in which case the amount of the tax
11 credits shall not exceed eight percent of the costs of the concrete
12 delivered.

13 d. (1) In order to receive the tax credit allowed pursuant to this
14 section, a taxpayer shall apply to the department for a certification
15 that provides: (a) that each claimed concrete delivery meets the
16 requirements of this section; (b) approval of the certified
17 environmental product declaration submitted pursuant to paragraph
18 (2) of subsection b. of this section; and (c) the amount of the tax
19 credit calculated pursuant to subsection c. of this section. The
20 application shall include a copy of the contract pursuant to which
21 concrete was delivered, and any other information as determined
22 relevant by the department. Upon certification, the department
23 shall submit a copy thereof to the taxpayer and the director. The
24 department may approve an application and issue a certification to a
25 taxpayer that has previously been allowed a tax credit under this
26 section. When filing a tax return that includes a claim for a credit
27 pursuant to this section, the taxpayer shall include a copy of the
28 certification issued by the department.

29 (2) The department shall not approve an application or issue a
30 certification to a taxpayer for a tax credit in excess of \$1 million.

31 e. The order of priority of the application of the credit allowed
32 pursuant to this section and any other credits allowed against the tax
33 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for
34 a privilege period shall be as prescribed by the director. The
35 amount of the credit applied pursuant to this section against the tax
36 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),
37 shall not reduce a taxpayer's tax liability for a privilege period to an
38 amount less than the statutory minimum provided in subsection (e)
39 of section 5 of P.L.1945, c.162 (C.54:10A-5). Any credit shall be
40 valid in the privilege period in which the certification is approved
41 and any unused portion thereof may be carried forward into the next
42 seven privilege periods or until depleted, whichever is earlier.

43 f. The amount of tax credits that may be issued pursuant to this
44 section shall not in the aggregate exceed \$10 million in any year.
45 The department shall issue certifications for the tax credit pursuant
46 to this section on a first-come, first-serve basis.

47 g. (1) In preparing the specifications for any contract for the
48 purchase of 50 cubic yards or more of concrete, or for any

1 construction or improvement project that requires the use 50 cubic
2 yards or more of concrete, the Director of the Division of Purchase
3 and Property, the Director of the Division of Property Management
4 and Construction, and any State agency having authority to contract
5 for the purchase of goods or services shall include in the invitation
6 to bid, where relevant, a statement that any response to the
7 invitation that proposes or calls for the use low embodied carbon
8 concrete or concrete that utilizes carbon capture, utilization, and
9 storage technology shall be eligible for a tax credit pursuant to
10 subsection a. of this section. If the agency makes a determination to
11 purchase or use low embodied carbon concrete or concrete that uses
12 carbon capture, utilization, and storage technology in the
13 construction project, the agency shall include in the invitation to bid
14 a predetermined bid allowance price for the concrete, which shall be
15 used by all bidders in the public bidding process.

16 (2) Whenever any agency or department of State government
17 purchases 50 cubic yards or more of concrete, or undertakes any
18 construction or improvement project that requires the use 50 cubic
19 yards or more of concrete, the agency or department shall follow
20 the rules, regulations, and guidelines established by department
21 pursuant to section 3 of P.L. , c. (C.) (pending before the
22 Legislature as this bill).

23 h. Nothing in this section shall be construed to impose any
24 liability upon, or to give rise to a cause of action against, a concrete
25 producer.

26 i. Nothing in this section shall be construed to exempt any entity
27 from complying with any applicable law, rule, standard, or
28 specification, including, but not limited to, those regarding the use
29 of concrete in construction projects.

30 j. The director, in consultation with the Department of
31 Environmental Protection, may adopt, pursuant to the
32 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
33 seq.), rules and regulations necessary to carry out the provisions of
34 this section.

35 k. As used in this section:

36 “Carbon capture, utilization, and storage technology” means
37 technologies or methods to remove carbon dioxide generated by the
38 concrete manufacturing process from the flue gas or the
39 atmosphere, and to recycle the carbon dioxide either through
40 utilization of the captured carbon dioxide in the concrete
41 manufacturing process, or through safe and permanent storage of
42 the captured carbon dioxide.

43 “Concrete” means structural and non-structural masonry, and
44 pre-cast and ready-mix concrete building products.

45 “Department” means the Department of Environmental
46 Protection.

47 “Director” means Director of the Division of Taxation in the
48 Department of the Treasury.

1 “Embodied carbon emissions” means carbon emissions generated
2 as a result of a material's production, including mining, refining,
3 manufacturing, and shipping.

4 “Environmental product declaration” means a product-specific
5 Type III environmental product declaration that conforms to ISO
6 Standard 14025, assesses the numeric global warming potential of
7 the product, and allows for environmental impact comparisons
8 between concrete mixes fulfilling the same functions.

9 “Global warming potential” means a numeric value that
10 measures the total contribution to global warming from the
11 emission of greenhouse gases, or the elimination of greenhouse gas
12 sinks, that results from the production or utilization of concrete.

13 “Low embodied carbon concrete” means concrete that has been
14 certified to embody lower carbon emissions, as measured by a
15 global warming potential metric, than the baseline embodied carbon
16 emissions of conventional concrete made with Portland cement.
17 Low embodied carbon emissions may be achieved through any
18 combination of: (1) higher energy efficiency at the level of the
19 concrete or cement plant; (2) low carbon fuel substitution at the
20 level of the concrete or cement plant; (3) local production of, and
21 use of locally sourced material in, the concrete, resulting in reduced
22 concrete delivery miles and reduced emissions from transportation;
23 (4) the reduction of clinker content in the cement component of
24 concrete, or the substitution of clinker content with lower carbon-
25 intensive alternative materials such as ground, granulated blast
26 furnace slag, fly ash, or recycled ground-glass pozzolan; (5) the
27 capture and storage of point source carbon dioxide emissions during
28 the cement or concrete production process; or (6) the utilization and
29 storage of carbon in concrete materials.

30 “Portland cement” means hydraulic cement produced by
31 pulverizing clinkers in combination with one or more of the forms
32 of calcium sulfate.²

33

34 2. a. (1) **【A】** ²For privilege periods beginning on or after
35 January 1 next following the effective date of P.L. ,
36 c. (C.) (pending before the Legislature as this bill), a²
37 taxpayer that is a producer of concrete, or a producer of a major
38 component of concrete including cement or aggregate, shall be
39 allowed a credit against the tax imposed pursuant to section 5 of
40 P.L.1945, c.162 (C.54:10A-5), to be calculated as provided in
41 paragraph (2) of this subsection, to compensate the taxpayer for
42 costs incurred as a result of conducting an environmental product
43 declaration analysis to determine the product-based embodied
44 carbon emissions of concrete produced at a production facility that
45 the taxpayer owns or operates.

46 (2) The amount of the credit authorized pursuant to this section
47 shall not exceed the lesser of: (a) the full cost incurred for an
48 environmental product declaration analysis of a single concrete,

1 cement, aggregate, or related production facility, or (b) \$3,000. A
2 taxpayer may claim the credit authorized pursuant to this section for
3 the cost of completing environmental product declaration analyses
4 at up to eight production facilities owned or operated by the same
5 taxpayer in a single privilege period.

6 b. The order of priority of the application of the tax credit
7 allowed pursuant to this section, and any other credits allowed
8 against the tax imposed pursuant to section 5 of P.L.1945, c.162
9 (C.54:10A-5) for a privilege period, shall be as prescribed by the
10 director. The amount of the credit applied pursuant to this section
11 against the tax imposed pursuant to section 5 of P.L.1945, c.162
12 (C.54:10A-5) shall not reduce a taxpayer's tax liability to an amount
13 less than the statutory minimum provided in subsection (e) of
14 section 5 of P.L.1945, c.162 (C.54:10A-5). The amount of the tax
15 credit otherwise allowable under this section which cannot be
16 applied for the privilege period due to the limitations of this
17 subsection or under other provisions of P.L.1945, c.162 (C.54:10A-
18 1 et seq.) may be carried forward, if necessary, to the seven
19 privilege periods following the privilege period for which the tax
20 credit was allowed.

21 c. The director, in consultation with the Department of
22 Environmental Protection, shall adopt, pursuant to the
23 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
24 seq.), rules and regulations as are necessary to implement the
25 provisions of this section. The director may require the
26 submission of any information the director deems necessary to
27 award a tax credit pursuant to this section.

28 d. As used in this section:

29 "Concrete" means ²【structural and non-structural masonry, and
30 pre-cast and ready-mix concrete building products】 the same as the
31 term is defined in section 1 of P.L. , c. (C.) (pending
32 before the Legislature as this bill)² .

33 "Embodied carbon emissions" means ²【carbon emissions
34 generated as a result of a material's production, including mining,
35 refining, manufacturing, and shipping】 the same as the term is
36 defined in section 1 of P.L. , c. (C.) (pending before the
37 Legislature as this bill)² .

38 "Environmental product declaration" means ²【a product-specific
39 Type III environmental product declaration that conforms to ISO
40 Standard 14025 and enables the numeric global warming potential
41 and environmental impact comparisons between concrete mixes
42 fulfilling the same functions】 the same as the term is defined in
43 section 1 of P.L. , c. (C.) (pending before the Legislature
44 as this bill)² .

45 "Global warming potential" means ²【a numeric value that
46 measures the total contribution to global warming from the
47 emission of greenhouse gases, or the elimination of greenhouse gas

1 sinks, that results from the production or utilization of concrete **1** the
2 same as the term is defined in section 1 of P.L. , c. (C.)
3 (pending before the Legislature as this bill)² .

4
5 ²3. a. The Commissioner of Environmental Protection, in
6 consultation with the director, shall adopt, pursuant to the
7 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
8 seq.), rules and regulations necessary to implement the provisions
9 of P.L. , c. (C.) (pending before the Legislature as this
10 bill). The rules and regulations shall include, but need not be
11 limited to:

12 (1) global warming potential baselines for concrete mixes
13 supplied pursuant to contracts with State agencies;

14 (2) thresholds for low embodied carbon concrete and concrete
15 that incorporates carbon capture, utilization, and storage technology
16 to qualify for a tax credit pursuant to P.L. , c. (C.)
17 (pending before the Legislature as this bill), which the
18 commissioner may review and modify pursuant to advancements in
19 low carbon concrete technology or future State laws, regulations,
20 and orders pertaining to the reduction of greenhouse gas emissions;

21 (3) formulae for the tax credits issued pursuant to P.L. , c.
22 (C.) (pending before the Legislature as this bill) for (1) low
23 embodied carbon concrete and (2) concrete that incorporates carbon
24 capture, utilization, and storage technology. The formulae shall
25 provide that the amount of each tax credit is proportional to the
26 reduction in greenhouse gas emissions below the baseline that is
27 achieved by the concrete;

28 (4) a uniform process for concrete producers to certify that
29 concrete is low embodied carbon concrete, or that it utilizes carbon
30 capture, utilization, and storage technology, and for determining the
31 global warming potential value of concrete;

32 (5) guidelines for training State contracting personnel to
33 implement the requirements of P.L. , c. (C.) (pending
34 before the Legislature as this bill); and

35 (6) a mechanism for monitoring contractor compliance with the
36 requirements of P.L. , c. (C.) (pending before the
37 Legislature as this bill).

38 b. No later than two years after the effective date of P.L. ,
39 c. (C.) (pending before the Legislature as this bill), the
40 Commissioner of Environmental Protection, in consultation with the
41 State Treasurer, shall prepare and submit a report to the Governor
42 and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), the
43 Legislature, containing a cost-benefit analysis of the tax credits
44 established pursuant to P.L. , c. (C.) (pending before the
45 Legislature as this bill), in order to quantify the budgetary impact of
46 the program relative to its carbon reduction impact. The report
47 shall recommend whether the program should be continued,

1 modified, or repealed, and include any recommendations for
2 legislative or regulatory action to improve the program.

3 c. As used in this section:

4 “Carbon capture, utilization, and storage technology” means the
5 same as the term is defined in section 1 of P.L. , c. (C.)
6 (pending before the Legislature as this bill).

7 “Global warming potential” means the same as the term is
8 defined in section 1 of P.L. , c. (C.) (pending before the
9 Legislature as this bill).

10 “Low embodied carbon concrete” means the same as the term is
11 defined in section 1 of P.L. , c. (C.) (pending before the
12 Legislature as this bill).²

13

14 ²**[3.] 4.²** This act shall take effect immediately.