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STATE OF NEW JERSEY

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Sponsored by:
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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 Senate Environment and Energy Committee on December 9, 2021, with amendments.

(Sponsorship Updated As Of: 12/20/2021)

AN ACT concerning the purchase and use of low embodied carbon concrete and supplementing Titles [1]**[**52**]** 13[1] and 54 of the Revised Statutes.

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

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

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

(3) For State-funded construction projects that will be completed by a private contracting firm that has been contracted by the State, and for which concrete will be procured by the contractor for the

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:
[1]Senate SEN committee amendments adopted December 9, 2021.

project, the contractor shall comply with the selection standards and rules established pursuant to this section when subcontracting products or services from concrete providers. The State Treasurer shall establish policies and procedures for private contracting firms to comply with the requirements of this section.

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

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

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

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

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

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

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

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

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

(1) any binding contractual obligations for the purchase of goods or services entered into prior to the effective date of P.L. , c. (C.)(pending before the Legislature as this bill);

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

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

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

f. For the purposes of this section:

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

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

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

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

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

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

combination of: (1) higher energy efficiency at the level of the concrete or cement plant; (2) low carbon fuel substitution at the level of the concrete or cement plant; (3) local production of the concrete, resulting in reduced concrete delivery miles and reduced emissions from transportation; (4) the reduction of clinker content in the cement component of concrete, or the substitution of clinker content with lower carbon-intensive alternative materials such as ground, granulated blast furnace slag, fly ash, or recycled ground-glass pozzolan; (5) the capture and storage of point source carbon dioxide emissions during the cement or concrete production process; or (6) the utilization and storage of carbon in concrete materials.

"Portland cement" means hydraulic cement produced by pulverizing clinkers in combination with one or more of the forms of calcium sulfate.**]**[1]

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

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

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

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

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

(2) For the delivery of concrete that incorporates carbon capture, utilization, and storage technology, a taxpayer may claim a tax credit in an amount calculated using the formula promulgated by the department pursuant to section 3 of P.L. , c. (C.) (pending

before the Legislature as this bill), which shall not exceed three percent of the costs of the concrete delivered.

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

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

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

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

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

g. (1) In preparing the specifications for any contract for the purchase of 50 cubic yards or more of concrete, or for any construction or improvement project that requires the use 50 cubic yards or more of concrete, the Director of the Division of Purchase and Property, the Director of the Division of Property Management and Construction, and any State agency having authority to contract for the purchase of goods or services shall include in the invitation to bid, where relevant,

a statement that any response to the invitation that proposes or calls for the use low embodied carbon concrete or concrete that utilizes carbon capture, utilization, and storage technology shall be eligible for a tax credit pursuant to subsection a. of this section. If the agency makes a determination to purchase or use low embodied carbon concrete or concrete that uses carbon capture, utilization, and storage technology in the construction project, the agency shall include in the invitation to bid a predetermined bid allowance price for the concrete, which shall be used by all bidders in the public bidding process.

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

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

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

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

k. As used in this section:

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

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

"Department" means the Department of Environmental Protection.

"Director" means Director of the Division of Taxation in the Department of the Treasury.

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

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

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

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

"Portland cement" means hydraulic cement produced by pulverizing clinkers in combination with one or more of the forms of calcium sulfate.[1]

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

(2) The amount of the credit authorized pursuant to this section shall not exceed the lesser of: (a) the full cost incurred for an environmental product declaration analysis of a single concrete, cement, aggregate, or related production facility, or (b) $3,000. A taxpayer may claim the credit authorized pursuant to this section for the cost of completing environmental product declaration analyses at up to eight production facilities owned or operated by the same taxpayer in a single privilege period.

b. The order of priority of the application of the tax credit allowed pursuant to this section, and any other credits allowed against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for a privilege period, shall be as prescribed by the director. The amount of the credit applied pursuant to this section against the tax imposed

pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) shall not reduce a taxpayer's tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5). The amount of the tax credit otherwise allowable under this section which cannot be applied for the privilege period due to the limitations of this subsection or under other provisions of P.L.1945, c.162 (C.54:10A-1 et seq.) may be carried forward, if necessary, to the seven privilege periods following the privilege period for which the tax credit was allowed.

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

d. As used in this section:

"Concrete" means [1]**[**structural and non-structural masonry, and pre-cast and ready-mix concrete building products**]** the same as the term is defined in section 1 of P.L. , c. (C.) (pending before the Legislature as this bill)[1] .

"Embodied carbon emissions" means [1]**[**carbon emissions generated as a result of a material's production, including mining, refining, manufacturing, and shipping**]** the same as the term is defined in section 1 of P.L. , c. (C.) (pending before the Legislature as this bill)[1] .

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

"Global warming potential" means [1]**[**a numeric value that measures the total contribution to global warming from the emission of greenhouse gases, or the elimination of greenhouse gas sinks, that results from the production or utilization of concrete**]** the same as the term is defined in section 1 of P.L. , c. (C.) (pending before the Legislature as this bill)[1] .

[1]3. a. The Commissioner of Environmental Protection, in consultation with the director, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary to implement the provisions of P.L. , c. (C.) (pending before the Legislature as this bill). The rules and regulations shall include, but need not be limited to:

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

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

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

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

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

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

b. No later than two years after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), the Commissioner of Environmental Protection, in consultation with the State Treasurer, shall prepare and submit a report to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), the Legislature, containing a cost-benefit analysis of the tax credits established pursuant to P.L. , c. (C.) (pending before the Legislature as this bill), in order to quantify the budgetary impact of the program relative to its carbon reduction impact. The report shall recommend whether the program should be continued, modified, or repealed, and include any recommendations for legislative or regulatory action to improve the program.

c. As used in this section:

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

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

"Low embodied carbon concrete" means the same as the term is defined in section 1 of P.L. , c. (C.) (pending before the Legislature as this bill).[1]

[1]**[**3.**]** 4.[1] This act shall take effect immediately.