

[First Reprint]

SENATE, No. 3732

STATE OF NEW JERSEY
219th LEGISLATURE

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Sponsored by:

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

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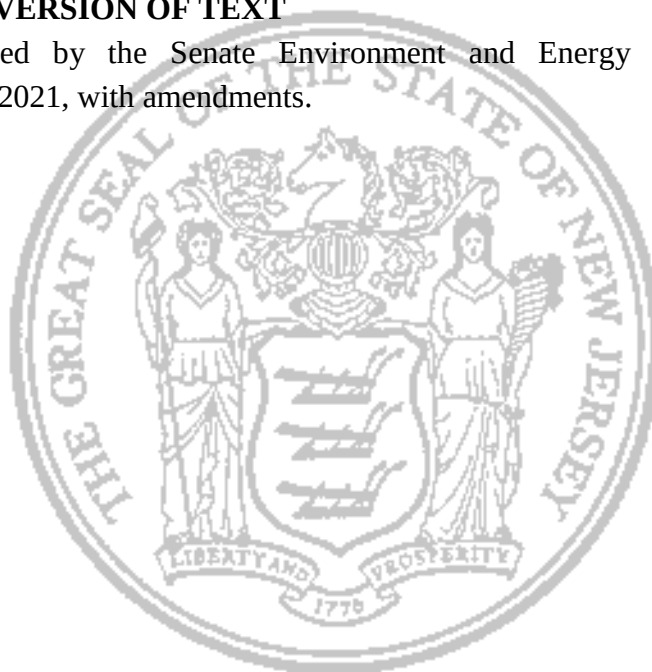
Senators Codey, Diegnan, Cunningham, Gopal and Stack

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)

1 AN ACT concerning the purchase and use of low embodied carbon
2 concrete and supplementing Titles ¹**[52]** 13¹ and 54 of the Revised
3 Statutes.

4

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

7

8 ¹**[1.a.** (1) Notwithstanding the provisions of any law, or rule or
9 regulation adopted pursuant thereto, to the contrary, the Director of
10 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,
45 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.**

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

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

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

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

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

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

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

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

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

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

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

47 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; (3) local production of the
4 concrete, resulting in reduced concrete delivery miles and reduced
5 emissions from transportation; (4) the reduction of clinker content
6 in the cement component of concrete, or the substitution of clinker
7 content with lower carbon-intensive alternative materials such as
8 ground, granulated blast furnace slag, fly ash, or recycled ground-
9 glass pozzolan; (5) the capture and storage of point source carbon
10 dioxide emissions during the cement or concrete production
11 process; or (6) the utilization and storage of carbon in concrete
12 materials.

13 “Portland cement” means hydraulic cement produced by
14 pulverizing clinkers in combination with one or more of the forms
15 of calcium sulfate.】¹

16
17 ¹1. a. For privilege periods beginning on or after January 1 next
18 following the effective date of P.L. , c. (C.) (pending before
19 the Legislature as this bill), a taxpayer that is a producer of concrete
20 and that meets the requirements of this section shall be allowed a
21 credit against the tax due pursuant to section 5 of P.L.1945, c.162
22 (C.54:10A-5), in an amount as provided in subsection c. of this
23 section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 k. As used in this section:

29 “Carbon capture, utilization, and storage technology” means
30 technologies or methods to remove carbon dioxide generated by the
31 concrete manufacturing process from the flue gas or the atmosphere,
32 and to recycle the carbon dioxide either through utilization of the
33 captured carbon dioxide in the concrete manufacturing process, or
34 through safe and permanent storage of the captured carbon dioxide.

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

37 “Department” means the Department of Environmental Protection.

38 “Director” means Director of the Division of Taxation in the
39 Department of the Treasury.

40 “Embodied carbon emissions” means carbon emissions generated
41 as a result of a material's production, including mining, refining,
42 manufacturing, and shipping.

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

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

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

21 “Portland cement” means hydraulic cement produced by
22 pulverizing clinkers in combination with one or more of the forms of
23 calcium sulfate.¹

24
25 2. a. (1) **【A】** ¹For privilege periods beginning on or after
26 January 1 next following the effective date of P.L. , c. (C.)
27 (pending before the Legislature as this bill), a¹ taxpayer that is a
28 producer of concrete, or a producer of a major component of concrete
29 including cement or aggregate, shall be allowed a credit against the tax
30 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), to be
31 calculated as provided in paragraph (2) of this subsection, to
32 compensate the taxpayer for costs incurred as a result of conducting an
33 environmental product declaration analysis to determine the product-
34 based embodied carbon emissions of concrete produced at a
35 production facility that the taxpayer owns or operates.

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

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

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

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

17 d. As used in this section:

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

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

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

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

39
40 ¹3. a. The Commissioner of Environmental Protection, in
41 consultation with the director, shall adopt, pursuant to the
42 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),
43 rules and regulations necessary to implement the provisions of P.L. ,
44 c. (C.) (pending before the Legislature as this bill). The rules
45 and regulations shall include, but need not be limited to:

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

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

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

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

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

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

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

37 c. As used in this section:

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

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

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

47
48 ¹**[3.] 4.** This act shall take effect immediately.