

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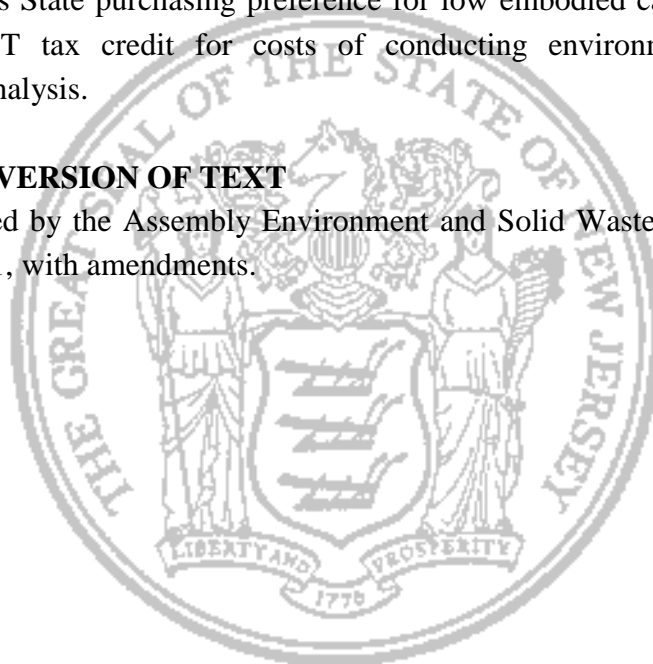
**Assemblywomen Vainieri Huttel, Chaparro, Assemblyman Holley,  
Assemblywoman McKnight, Assemblyman Conaway, Assemblywoman  
Jasey, Assemblyman Mukherji and Assemblywoman Speight**

**SYNOPSIS**

Establishes State purchasing preference for low embodied carbon concrete; provides CBT tax credit for costs of conducting environmental product declaration analysis.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Environment and Solid Waste Committee on May 12, 2021, 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 52 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. 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:

<sup>1</sup>Assembly AEN committee amendments adopted May 12, 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 <sup>1</sup>, 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 ecosystems<sup>1</sup>; (3) local production of <sup>1</sup>, and use of locally sourced  
7 material in,<sup>1</sup> 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.

19

20 2. a. (1) A taxpayer that is a producer of concrete, or a  
21 producer of a major component of concrete including cement or  
22 aggregate, shall be allowed a credit against the tax imposed  
23 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), to be  
24 calculated as provided in paragraph (2) of this subsection, to  
25 compensate the taxpayer for costs incurred as a result of conducting  
26 an environmental product declaration analysis to determine the  
27 product-based embodied carbon emissions of concrete produced at a  
28 production facility that the taxpayer owns or operates.

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

37 b. The order of priority of the application of the tax credit  
38 allowed pursuant to this section, and any other credits allowed  
39 against the tax imposed pursuant to section 5 of P.L.1945, c.162  
40 (C.54:10A-5) for a privilege period, shall be as prescribed by the  
41 director. The amount of the credit applied pursuant to this section  
42 against the tax imposed pursuant to section 5 of P.L.1945, c.162  
43 (C.54:10A-5) shall not reduce a taxpayer's tax liability to an amount  
44 less than the statutory minimum provided in subsection (e) of  
45 section 5 of P.L.1945, c.162 (C.54:10A-5). The amount of the tax  
46 credit otherwise allowable under this section which cannot be  
47 applied for the privilege period due to the limitations of this  
48 subsection or under other provisions of P.L.1945, c.162 (C.54:10A-

- 1 1 et seq.) may be carried forward, if necessary, to the seven  
2 privilege periods following the privilege period for which the tax  
3 credit was allowed.
- 4 c. The director, in consultation with the Department of  
5 Environmental Protection, shall adopt, pursuant to the  
6 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
7 seq.), rules and regulations as are necessary to implement the  
8 provisions of this section. The director may require the  
9 submission of any information the director deems necessary to  
10 award a tax credit pursuant to this section.
- 11 d. As used in this section:
- 12 "Concrete" means structural and non-structural masonry, and  
13 pre-cast and ready-mix concrete building products.
- 14 "Embodied carbon emissions" means carbon emissions generated  
15 as a result of a material's production, including mining, refining,  
16 manufacturing, and shipping.
- 17 "Environmental product declaration" means a product-specific  
18 Type III environmental product declaration that conforms to ISO  
19 Standard 14025 and enables the numeric global warming potential  
20 and environmental impact comparisons between concrete mixes  
21 fulfilling the same functions.
- 22 "Global warming potential" means a numeric value that  
23 measures the total contribution to global warming from the  
24 emission of greenhouse gases, or the elimination of greenhouse gas  
25 sinks, that results from the production or utilization of concrete.
- 26
- 27 3. This act shall take effect immediately.