

CHAPTER 4

AN ACT concerning the purchase and use of low embodied carbon concrete and supplementing Titles 13 and 54 of the Revised Statutes and Title 54A of the New Jersey Statutes.

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

C.13:1D-70 Tax credits, low embodied carbon concrete, Department of Environmental Protection, Division of Taxation, Department of the Treasury; report to Governor, Legislature; definitions.

1. a. The Department of Environmental Protection, in consultation with the Director of the Division of Taxation in the Department of the Treasury, shall provide:

(1) for the purpose of calculating tax credits to be issued pursuant to P.L.2023, c.4 (C.13:1D-70 et al.), 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.2023, c.4 (C.13:1D-70 et al.), which the department may review and modify pursuant to advancements in low carbon concrete technology or future State laws, regulations, or orders pertaining to the reduction of greenhouse gas emissions;

(3) formulae for the tax credits issued pursuant to P.L.2023, c.4 (C.13:1D-70 et al.) 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 of the global warming potential value below the baseline;

(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; and

(5) any forms and guidance that the department determines are necessary for the submissions required to receive the tax credits allowed pursuant to P.L.2023, c.4 (C.13:1D-70 et al.) or to otherwise implement the provisions of P.L.2023, c.4 (C.13:1D-70 et al.).

b. No later than three years after the effective date of P.L.2023, c.4 (C.13:1D-70 et al.), 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.2023, c.4 (C.13:1D-70 et al.), 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 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.

"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.

C.54:10A-5.49 Tax credit, producer, low embodied carbon concrete, carbon capture, utilization, storage technology; requirements, qualifications.

2. a. For privilege periods beginning on or after January 1 next following the effective date of P.L.2023, c.4 (C.13:1D-70 et al.), a taxpayer that is a producer of low embodied carbon concrete or concrete that utilizes carbon capture, utilization, and storage technology 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 procuring agency or with a private contracting firm that has contracted with 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 for review and approval a certified environmental product declaration that provides a global warming potential value for the delivered concrete.

c. (1) For the delivery of low embodied carbon concrete, a taxpayer may be eligible for a tax credit calculated using the formula provided by the department pursuant to section 3 of P.L.2023, c.4 (C.54:10A-5.50), not to exceed five percent of the costs of the low embodied concrete delivered.

(2) For the delivery of concrete that incorporates carbon capture, utilization, and storage technology, a taxpayer may be eligible for a tax credit calculated using the formula provided by the department pursuant to section 3 of P.L.2023, c.4 (C.54:10A-5.50), not to exceed three percent of the costs of the concrete delivered that incorporates carbon capture, utilization, and storage technology.

(3) A taxpayer delivering concrete that is both 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, not to exceed eight

percent of the costs of the concrete delivered that is low embodied carbon concrete that incorporates carbon capture, utilization, and storage technology.

d. In order to receive the tax credit allowed pursuant to this section, a taxpayer shall submit to the using agency a certification, in a form provided by the department, that includes: (a) a statement of the amount and cost of the low embodied carbon concrete or concrete that incorporates carbon capture, utilization and storage technology that was delivered in accordance with paragraph (1) of subsection b. of this section, with appropriate supporting documentation; (b) the environmental product declaration approved by the department pursuant to paragraph (2) of subsection b. of this section; (c) the amount of the tax credit calculated pursuant to subsection c. of this section; (d) a copy of the contract pursuant to which concrete was delivered; and (e) any other information as determined relevant by the department or requested by the using agency.

e. Upon approval of the certification, the using agency shall notify the director as to the eligibility of the taxpayer for a tax credit in the amount approved by the department and using agency. The director, prior to issuing a tax credit certificate pursuant to this section, may require the submission by the taxpayer of any information the director deems necessary.

f. When filing a tax return that includes a claim for a credit pursuant to this section, the taxpayer who received the credit shall include a copy of the tax credit certificate issued by the director.

g. 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 tax credit certificate is approved and any unused portion thereof may be carried forward into the next seven privilege periods or until depleted, whichever is earlier, after which the tax credit shall expire.

h. The total value of tax credits approved pursuant to P.L.2023, c.4 (C.13:1D-70 et al.) shall not in the aggregate exceed \$10 million in any year. The director shall issue tax credit certificates pursuant to this section on a first-come, first-serve basis, except that the director shall not issue tax credit certificates to a single taxpayer pursuant to this section and section 4 of P.L.2023, c.4 (C.54A:4-23) in excess of \$1 million in any privilege period. The director may issue a tax credit certificate to a taxpayer that has previously been allowed a tax credit under this section.

i. A using agency shall, in its sole discretion, determine whether to purchase or use low embodied concrete or concrete that uses carbon capture, utilization, and storage technology in a construction or improvement project. 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 50 cubic yards or more of concrete, the procuring agency 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. For invitations to bid issued in the first five years after the effective date of P.L.2023, c.4 (C.13:1D-70 et al.), if a using 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 procuring 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.

j. 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.

k. 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.2023, c.4 (C.13:1D-70).

"Department" means the Department of Environmental Protection.

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

"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 the same as the term is defined in section 1 of P.L.2023, c.4 (C.13:1D-70).

"Low embodied carbon concrete" means the same as the term is defined in section 1 of P.L.2023, c.4 (C.13:1D-70).

"Procuring agency" means any State department, authority, or commission having authority to contract for goods or services.

"Using agency" means any State department, authority, or commission that makes a purchase, pursuant to a State contract, of 50 cubic yards or more of concrete or that enters into a contract for a construction or improvement project that requires the use of 50 cubic yards or more of concrete.

C.54:10A-5.50 Tax credit, cost incurred, environmental product declaration analysis, producer, low embodied carbon concrete, carbon capture, utilization, storage technology; requirements, qualifications.

3. a. (1) For privilege periods beginning on or after January 1 next following the effective date of P.L.2023, c.4 (C.13:1D-70 et al.), a 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 compensate the taxpayer for costs incurred as a result of conducting an environmental product declaration analysis to determine the global warming potential of the concrete or concrete component 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. In order to receive the tax credit allowed pursuant to this section, the taxpayer shall submit to the department for approval a certification, in the form required by the department, that includes: (1) the costs incurred to complete the environmental product declaration; (2) the amount of the tax credit calculated pursuant to subsection (2) of subsection a. of this section; (3) a copy of the environmental product declaration; and (4) any other information determined to be relevant by the department.

c. Upon approval of the certification, the department shall notify the director as to the eligibility of the taxpayer for a tax credit in the amount approved by the department. The director, prior to issuing a tax credit certificate pursuant to this section, may require the submission by the taxpayer of any information the director deems necessary.

d. When filing a return that includes a claim for a credit pursuant to this section, the taxpayer who received the credit shall include a copy of the tax credit certificate.

e. 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 for seven privilege periods following the privilege period for which the tax credit certificate was issued, after which the tax credit shall expire.

f. The total value of tax credits approved by the department, in consultation with the director, pursuant to P.L.2023, c.4 (C.13:1D-70 et al.) shall not in the aggregate exceed \$10 million in any year. The director shall issue tax credits pursuant to this section on a first-come, first-serve basis. The director may issue a tax credit certificate to a taxpayer that has previously been allowed a tax credit under this section. The director, prior to issuing a tax credit certificate pursuant to this section, may require the submission by the taxpayer of any information the director deems necessary.

g. As used in this section:

"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.

"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 the same as the term is defined in section 1 of P.L.2023, c.4 (C.13:1D-70).

C.54A:4-23 Tax credit, "New Jersey Gross Income Tax Act", producer, low embodied carbon concrete, carbon capture, utilization, storage technology; requirements, qualifications.

4. a. For taxable years beginning on or after January 1 next following the effective date of P.L.2023, c.4 (C.13:1D-70 et al.), a taxpayer that is a producer of low embodied carbon concrete or concrete that utilizes carbon capture, utilization, and storage technology and that meets the requirements of this section shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., 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 procuring agency or with a private contracting firm that has contracted with 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 for review and approval a certified environmental product declaration that provides a global warming potential value for the delivered concrete.

c. (1) For the delivery of low embodied carbon concrete, a taxpayer may be eligible for a tax credit calculated using the formula provided by the department pursuant to section 3 of P.L.2023, c.4 (C.54:10A-5.50), not to exceed five percent of the costs of the low embodied concrete delivered.

(2) For the delivery of concrete that incorporates carbon capture, utilization, and storage technology, a taxpayer may be eligible for a tax credit calculated using the formula provided by the department pursuant to section 3 of P.L.2023, c.4 (C.54:10A-5.50), not to exceed three percent of the costs of the concrete delivered that incorporates carbon capture, utilization, and storage technology.

(3) A taxpayer delivering concrete that is both 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, not to exceed eight percent of the costs of the concrete delivered that is low embodied carbon concrete that incorporates carbon capture, utilization, and storage technology.

d. In order to receive the tax credit allowed pursuant to this section, a taxpayer shall submit to the using agency a certification, in a form provided by the department, that includes: (a) a statement of the amount and cost of the low embodied carbon concrete or concrete that incorporates carbon capture, utilization and storage technology that was delivered in accordance with paragraph (1) of subsection b. of this section, with appropriate supporting documentation; (b) the environmental product declaration approved by the department pursuant to paragraph (2) of subsection b. of this section; (c) the amount of the tax credit calculated pursuant to subsection c. of this section; (d) a copy of the contract pursuant to which concrete was delivered; and (e) any other information as determined relevant by the department or requested by the using agency.

e. Upon approval of the certification, the using agency shall notify the director as to the eligibility of the taxpayer for a tax credit in the amount approved by the department and using agency. The director, prior to issuing a tax credit certificate pursuant to this section, may require the submission by the taxpayer of any information the director deems necessary.

f. When filing a tax return that includes a claim for a credit pursuant to this section, the taxpayer who received the credit shall include a copy of the tax credit certificate issued by the director.

g. 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 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., for a taxable year shall be as prescribed by the director. The amount of the credit applied under this section against the New Jersey gross income tax imposed pursuant to N.J.S.54A:1-1 et seq. for a taxable year, when taken together with any other payments, credits, deductions, and adjustments allowed by law, shall not reduce a taxpayer's tax liability to an amount less than zero. Any credit shall be valid in the taxable year in which the tax credit certificate is approved and any unused portion thereof may be carried forward into the next seven taxable years or until depleted, whichever is earlier, after which the tax credit shall expire.

h. The total value of tax credits approved pursuant to P.L.2023, c.4 (C.13:1D-70 et al.) shall not in the aggregate exceed \$10 million in any year. The director shall issue tax credit

certificates pursuant to this section on a first-come, first-serve basis, except that the director shall not issue tax credit certificates to a single taxpayer pursuant to this section and section 2 of P.L.2023, c.4 (C.54:10A-5.49) in excess of \$1 million in any taxable year. The director may issue a tax credit certificate to a taxpayer that has previously been allowed a tax credit under this section.

i. A using agency shall, in its sole discretion, determine whether to purchase or use low embodied concrete or concrete that uses carbon capture, utilization, and storage technology in a construction or improvement project. 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 50 cubic yards or more of concrete, the procuring agency 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. For invitations to bid issued in the first five years after the effective date of P.L.2023, c.4 (C.13:1D-70 et al.), if a using 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 procuring 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.

j. 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.

k. 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.2023, c.4 (C.13:1D-70).

"Department" means the Department of Environmental Protection.

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

"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 the same as the term is defined in section 1 of P.L.2023, c.4 (C.13:1D-70).

"Low embodied carbon concrete" means the same as the term is defined in section 1 of P.L.2023, c.4 (C.13:1D-70).

"Procuring agency" means any State department, authority, or commission having authority to contract for goods or services.

"Using agency" means any State department, authority, or commission that makes a purchase, pursuant to a State contract, of 50 cubic yards or more of concrete or that enters into a contract for a construction or improvement project that requires the use of 50 cubic yards or more of concrete.

C.54A:4-24 Tax credit, "New Jersey Gross Income Tax Act, costs incurred, environmental product declaration analysis; requirements, qualifications.

5. a. (1) For taxable years beginning on or after January 1 next following the effective date of P.L.2023, c.4 (C.13:1D-70 et al.), a 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 otherwise due for the taxable year under the "New Jersey Gross Income Tax Act,"

N.J.S.54A:1-1 et seq., to compensate the taxpayer for costs incurred as a result of conducting an environmental product declaration analysis to determine the global warming potential of concrete or concrete component 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 taxable year.

b. In order to receive the tax credit allowed pursuant to this section, the taxpayer shall submit to the department for approval a certification, in the form required by the department, that includes: (1) the costs incurred to complete the environmental product declaration; (2) the amount of the tax credit calculated pursuant to subsection (2) of subsection a. of this section; (3) a copy of the environmental product declaration; and (4) any other information determined to be relevant by the department.

c. Upon approval of the certification, the department shall notify the director as to the eligibility of the taxpayer for a tax credit in the amount approved by the department. The director, prior to issuing a tax credit certificate pursuant to this section, may require the submission by the taxpayer of any information the director deems necessary.

d. When filing a return that includes a claim for a credit pursuant to this section, the taxpayer who received the credit shall include a copy of the tax credit certificate.

e. 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 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., for a taxable year, shall be as prescribed by the director. The amount of the credit applied under this section against the New Jersey gross income tax imposed pursuant to N.J.S.54A:1-1 et seq. for a taxable year, when taken together with any other payments, credits, deductions, and adjustments allowed by law, shall not reduce a taxpayer's tax liability to an amount less than zero. The amount of the tax credit otherwise allowable under this section which cannot be applied for the taxable year due to the limitations of this subsection or under other provisions of N.J.S.54A:1-1 et seq. may be carried forward for seven taxable years following the taxable year for which the tax credit certificate was issued, after which the tax credit shall expire.

f. The total value of tax credits approved by the department, in consultation with the director, pursuant to P.L.2023, c.4 (C.13:1D-70 et al.) shall not in the aggregate exceed \$10 million in any year. The director shall issue tax credits pursuant to this section on a first-come, first-serve basis. The director may issue a tax credit certificate to a taxpayer that has previously been allowed a tax credit under this section. The director, prior to issuing a tax credit certificate pursuant to this section, may require the submission by the taxpayer of any information the director deems necessary.

g. As used in this section:

"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.

"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 the same as the term is defined in section 1 of P.L.2023, c.4 (C.13:1D-70).

6. The Director of the Division of Taxation in the Department of the Treasury and the Department of Environmental Protection, in consultation with each other, may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as may be necessary to implement the provisions of P.L.2023, c.4 (C.13:1D-70 et al.).

7. This act shall take effect six months after the date of enactment, and shall apply to privilege periods beginning on or after the January 1 next following the effective date of the bill.

Approved January 30, 2023.