ASSEMBLY, No. 4696

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED SEPTEMBER 12, 2024

Sponsored by:
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District 32 (Hudson)
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District 28 (Essex and Union)
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District 27 (Essex and Passaic)

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Assemblywomen Ramirez, Reynolds-Jackson, Sumter, Assemblyman Calabrese, Assemblywoman Park, Assemblyman Danielsen, Assemblywomen Haider, Tucker, Assemblymen Kennedy, Karabinchak and Assemblywoman Peterpaul

SYNOPSIS

"Climate Superfund Act"; imposes liability on certain fossil fuel companies for certain damages caused by climate change and establishes program in DEP to collect and distribute compensatory payments.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 3/6/2025)

AN ACT concerning damages caused by climate change and supplementing Title 26 of the Revised Statues.

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

1. This act shall be known and may be cited as the "Climate Superfund Act."

2. As used in this act:

"Climate change adaptation project" means a project designed to respond to, avoid, moderate, repair, or adapt to negative impacts caused by climate change and to assist human and natural communities, households, and businesses to prepare for future climate-change-driven disruptions. "Climate change adaptation projects" include, but are not limited to: flood protection projects; home buyouts; upgrades of storm water drainage systems; defensive upgrades to roads, bridges, railroads, and transit systems; preparation for, and recovery from, extreme weather events; preventive health care programs and providing medical care to treat illness or injury caused by the effects of climate change; relocation, elevation, or retrofits of sewage treatment plants and other infrastructure vulnerable to flooding; installation of energy efficient cooling systems and other weatherization and energy efficiency upgrades and retrofits in public and private buildings, including schools and public housing, designed to reduce the public health effects of more frequent heat waves and forest fire smoke; upgrades to the electrical grid to increase stability and resilience, including the creation of self-sufficient micro grids; and response to toxic algae blooms, loss of agricultural topsoil, crop loss, and other climate-driven ecosystem threats to forests, farms, fisheries, and food systems.

"Coal" means bituminous coal, anthracite coal, and lignite.

"Commissioner" means the Commissioner of Environmental Protection.

"Controlled group" means two or more entities treated as a single employer pursuant to:

(1) 26 U.S.C. s.52(a) or (b), without regard to 26 U.S.C. s.1563(b)(2)(C); or

(2) 26 U.S.C. s.414(m) or (o).

"Cost recovery demand" means a charge imposed upon a responsible party for cost recovery payments under the Climate Superfund Cost Recovery Program established pursuant to section 5 of this act for payment into the Climate Superfund Cost Recovery Program Fund established pursuant to section 6 of this act.

"Covered greenhouse gas emissions" means the total quantity of greenhouse gases released into the atmosphere during the covered period, expressed in metric tons of carbon dioxide equivalent,

resulting from the use of fossil fuels extracted or refined by an entity.

"Covered period" means the time period beginning on January 1, 1995 and ending on the last day of the calendar year during which this act takes effect.

"Crude oil" means oil or petroleum of any kind and in any form, including bitumen, oil sands, heavy oil, conventional and unconventional oil, shale oil, natural gas liquids, condensates, and related fossil fuels.

"Department" means the Department of Environmental Protection.

"Entity" means any individual, trustee, agent, partnership, association, corporation, company, municipality, political subdivision, or other legal organization, including a foreign nation, that holds or held an ownership interest in a fossil fuel business during the covered period.

"Fossil fuel" means coal, petroleum products, and fuel gases.

"Fossil fuel business" means a business engaging in the extraction of fossil fuels or the refining of petroleum products.

"Fuel gas" means methane, natural gas, liquefied natural gas, and any manufactured fuel gas.

"Greenhouse gas" means the same as the term is defined in section 3 of P.L.2007, c.112 (C.26:2C-39).

"Notice of cost recovery demand" means the written communication from the department informing a responsible party of the amount of the cost recovery demand payable into the Climate Superfund Cost Recovery Program Fund established pursuant to section 6 of this act.

"Overburdened community" means the same as the term is defined in section 2 of P.L.2020, c.92 (C.13:1D-158).

"Petroleum product" means any product refined or re-refined from: (1) synthetic or crude oil; or (2) crude oil extracted from natural gas liquids or other sources.

"Qualifying expenditure" means an authorized payment from the Climate Superfund Cost Recovery Program Fund established pursuant to section 6 of this act to pay for: (1) a climate change adaptation project, including its operation, monitoring, and maintenance; or (2) reasonable expenses associated with the administration of the Climate Superfund Cost Recovery Program established pursuant to section 5 of this act.

"Responsible party" means an entity or a successor in interest to an entity that during any part of the covered period was engaged in the trade or business of extracting fossil fuel or refining crude oil and is determined by the department to be responsible more than one billion metric tons of covered greenhouse gas emissions, except that "responsible party" does not include any entity that is not required to pay New Jersey sales tax.

3. a. No later than two years after the effective date of this act, the State Treasurer, in consultation with the department, and with any other person or entity whom the State Treasurer decides to consult for the purpose of obtaining and utilizing credible data or methodologies that the State Treasurer determines may aid the State Treasurer in making the assessments and estimates required by this section, shall submit to the Senate Environment and Energy Committee and the Assembly Environment, Natural Resources and Solid Waste Committee, or their successor committees, an assessment of the damages to the State and its residents that have resulted from covered greenhouse gas emissions.

b. The assessment shall include:

(1) a summary of the various cost-driving effects of covered greenhouse gas emissions on the State, including effects on public health, natural resources, biodiversity, agriculture, economic development, flood preparedness and safety, housing, and any other effect that the State Treasurer determines is relevant;

(2) a categorized calculation of the costs that have been incurred within the State of each of the effects identified in paragraph (1) of this subsection; and

(3) a categorized calculation of the costs that have been incurred to abate the effects of covered greenhouse gas emissions on the State and its residents.

4. a. Each responsible party shall be strictly liable to the State for damages that resulted from covered greenhouse gas emissions, as determined by the State Treasurer pursuant to section 3 of this act. Each responsible party shall make compensatory payments to the State according to its proportional liability, as determined by the department pursuant to section 5 of this act.

b. Responsible parties that are entities in a controlled group shall be treated as a single entity for identification purposes, but shall be jointly and severally liable for the payment of any cost recovery demand owed by any entity in the controlled group.

5. a. There is established the Climate Superfund Cost Recovery Program in the Department of Environmental Protection. The purposes of the program shall be to:

(1) secure compensatory payments from responsible parties based on a standard of strict liability;

(2) determine the proportional liability of responsible parties;

(3) impose cost recovery demands on responsible parties and issue
notices of cost recovery demands;

(4) accept and collect payment from responsible parties; and

(5) disperse funds to implement climate change adaptation projects.

b. With respect to each responsible party, the cost recovery demand shall be equal to an amount that bears the same ratio to the cost to the State and its residents, as calculated by the State Treasurer pursuant to section 3 of this act, from the emission of covered greenhouse gases as the responsible party's applicable share of covered greenhouse gas emissions bears to the aggregate applicable shares of covered greenhouse gas emissions resulting from the use of fossil fuels extracted or refined during the covered period.

c. If a responsible party owns a minority interest of 10 percent or more in another entity, the responsible party's applicable share of covered greenhouse gas emissions shall be increased by the applicable share of covered greenhouse gas emissions for the entity in which the responsible party holds a minority interest multiplied by the percentage of the minority interest held by the responsible party.

d. The department shall use the United States Environmental Protection Agency's Emissions Factors for Greenhouse Gas Inventories, as applied to the best publicly available fossil fuel volume data for the purpose of determining the amount of covered greenhouse gas emissions attributable to any entity from the fossil fuels attributable to the entity.

e. The department may adjust the cost recovery demand amount of a responsible party who refined petroleum products or who is a successor in interest to an entity that refines petroleum products if the responsible party establishes to the satisfaction of the department that:

(1) a portion of the cost recovery demand amount was attributable to the refining of crude oil extracted by another responsible party; and

(2) the crude oil extracted by the other entity was accounted for when the department determined the cost recovery demand amount for the other responsible party or a successor in interest of the other responsible party.

f. The department shall issue the cost recovery demands required under this section no later than six months following the adoption of the rules and regulations required under section 8 of this act.

g. (1) Except as provided in paragraph (2) of this subsection, a responsible party shall pay the cost recovery demand amount in full no later than six months following the department's issuance of the cost recovery demand.

(2) A responsible party may elect to pay the cost recovery demand amount in nine annual installments, provided that:

(a) the first installment shall be paid no later than six months following the department's issuance of the cost recovery demand and shall be equal to 20 percent of the total cost recovery demand amount;

(b) each subsequent installment shall be paid one year from the initial payment each subsequent year and shall be equal to 10 percent of the total cost recovery demand amount. The commissioner, at the commissioner's discretion, may adjust the amount of a subsequent installment payment to reflect increases or decreases in the Consumer Price Index;

(c) the unpaid balance of all remaining installments shall become due immediately if the responsible party fails to pay any installment in a timely manner, if there is a liquidation or sale of all, or substantially all, the assets of the responsible party, or if the responsible party ceases to do business; and

(d) in the case of a sale of all, or substantially all, the assets of a responsible party, the remaining installments shall not become due immediately if the buyer enters into an agreement with the department under which the buyer assumes liability for the remaining installments due under this section in the same manner as if the buyer were the responsible party.

h. The department shall deposit cost recovery payments into the Climate Superfund Cost Recovery Program Fund established by section 6 of this act.

i. A responsible party aggrieved by the issuance of a notice of cost recovery demand shall exhaust administrative remedies by filing a request for reconsideration with the department within 15 days following issuance of the notice of cost recovery demand. A request for reconsideration shall state the grounds for the request and include supporting documentation. The department shall issue a subsequent notice of cost recovery demand or a retraction, which shall be considered final agency action on the matter for the purposes of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and shall be subject only to review by a court of competent jurisdiction.

j. Nothing in this section shall be construed to supersede or diminish in any way existing remedies available to a person or the State at common law or under statute.

6. a. There is established in the Department of Environmental Protection a special, nonlapsing fund to be known as the "Climate Superfund Cost Recovery Program Fund." Monies in the fund shall be held separately and be dedicated solely for the purpose of making qualifying expenditures.

b. The fund shall be credited with:

(1) cost recovery payments distributed to the fund pursuant to section 1 of this act;

(2) any other moneys appropriated by the Legislature or otherwise made available to the fund for the purposes of this act;

(3) other gifts, donations, or other monies received from any source, public or private, dedicated for deposit into the fund and approved by the State Treasurer; and

(4) any interest earnings or other investment income earned or received on the moneys in the fund.

c. All moneys appropriated or otherwise made available to the fund shall be dedicated for the purposes of the fund. Pending use, moneys in the fund may be invested and reinvested in the same manner as other moneys of the department in the manner provided by law. All earnings received from the investment or deposit of such moneys shall be paid into and become a part of the fund and be available for use pursuant to this act.

d. The department shall establish a grant program to disperse funds from the Climate Superfund Cost Recovery Program Fund to project sponsors of climate change adaptation and resilience projects. In order to effectuate the grant program, the department shall:

(1) establish eligibility criteria for a program grant award;

(2) adopt guidelines and procedures for the submission of grant applications, including, but not limited to, guidelines and procedures addressing the form and manner in which such applications are to be submitted;

(3) establish criteria, in consultation with the Department of Environmental Protection, for the evaluation and prioritization of program grant applications;

(4) identify the project costs that are eligible for financing through the use of program grant funding, and identify the specific factors that will be considered, by the department, in determining the appropriate dollar amount of each grant award issued under the program; and

(5) identify the terms and conditions for the awarding of a program grant, and for the use of program grant funds awarded, pursuant to this section, including, at a minimum, conditions requiring the recipient of a grant award to report relevant information, to the department, regarding the recipient's expenditure of grant funds awarded thereto under the program.

7. No later than five years after the effective date of this act, and annually thereafter, the commissioner shall issue a written report to the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), summarizing the activities of the Climate Superfund Cost Recovery Program.

8. No later than two years after the State Treasurer completes the report required by section 3 of this act, the Department of Environmental Protection shall, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). adopt rules and regulations to implement this act.

9. This act shall take effect immediately.

STATEMENT

This bill, to be known as the "Climate Superfund Act," would establish that certain fossil fuel companies are liable for certain damages caused to the State and its residents by the harmful effects of climate change. The bill would also establish a program in the Department of Environmental Protection (DEP) to collect compensatory payments from the fossil fuel companies and distribute them, in the form of grants, to climate change adaptation and resilience projects.

Specifically, the bill would apply to fossil fuel companies that fall under the definition of "responsible party" established in the bill, namely an entity or a successor in interest to an entity that was engaged in the trade or business of extracting fossil fuel or refining crude oil and is determined by the DEP to be responsible for more than one billion metric tons of greenhouse gas emissions between January 1, 1995 (the year on which the first United Nations Conference of Parties climate change conference was held) and the last day of the calendar year on which the bill takes effect.

The bill would require the State Treasurer to prepare and submit to the Legislature, within two years of the bill's enactment, an assessment of the damages to the State and its residents that have resulted from greenhouse gas emissions since 1995. The bill would establish that each responsible party is strictly liable for the damages, and would require each responsible party to make compensatory damages to the State. In addition, responsible parties that are in a "controlled group" under certain federal laws specified in the bill (e.g. a parent corporation with one or more subsidiary corporations) would be jointly and severally liable for the damages. The DEP would then be required to calculate the proportional share of damages attributable to each responsible party, based on the proportion of total greenhouse gas emissions for which the party is responsible. The DEP would be required to collect compensatory payments from each responsible party that are equal to the party's proportional share of the damages. The bill would establish various provisions regarding the collection and payment of these compensatory payments, as enumerated in section 5 of the bill.

The bill would require the DEP to deposit the compensatory payments into the "Climate Superfund Cost Recovery Program Fund," established under section 6 of the bill. The DEP would also be required to develop and implement a grant program to distribute the funds collected to climate change adaptation and resilience projects. The DEP would also be permitted to use moneys in the fund to administer the Climate Superfund Cost Recovery Program, which is established by the bill. The bill would require the DEP to issue annual reports on the program beginning five years after the bill's enactment. Finally, the bill would require the DEP to adopt

rules and regulations to implement the bill's provisions no later than two years after the State Treasurer produces the assessment of damages required by the bill.