

# STATE OF NEW YORK

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3351--B

2023-2024 Regular Sessions

## IN ASSEMBLY

February 2, 2023

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Introduced by M. of A. DINOWITZ, PAULIN, L. ROSENTHAL, GLICK, BENEDETTO, SIMON, BURGOS, TAPIA, EPSTEIN, DARLING, DICKENS, ZINERMAN, STECK, THIELE, KELLES, REYES, LEVENBERG, HEVESI, GONZALEZ-ROJAS, FAHY, ARDILA, CARROLL, RAGA, DE LOS SANTOS, RAMOS, TAYLOR, COLTON, LEE, BORES, CUNNINGHAM, GIBBS, OTIS, SILLITTI, SIMONE, BURDICK, KIM, SOLAGES, ZACCARO, CLARK, CRUZ, EACHUS, SEAWRIGHT, WEPRIN, BURKE, SHIMSKY, LUNSFORD, STIRPE, DAVILA, BICHOTTE HERMELYN, LAVINE, K. BROWN, BARRETT, WALKER, SEPTIMO, STERN, PEOPLES-STOKES, AUBRY, CHANDLER-WATERMAN, SAYEGH, ALVAREZ, JACKSON, PRETLOW, BUTTENSCHON, SANTABARBARA, GUNTHER, BRONSON, MEEKS, COOK, JEAN-PIERRE, ANDERSON, JACOBSON, DAIS, McDONALD, ROZIC, PHEFFER AMATO, LUCAS, RAJKUMAR -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to establishing the climate change adaptation cost recovery program; and to amend the state finance law, in relation to establishing the climate change adaptation fund

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. This act shall be known and may be cited as the "climate
- 2 change superfund act".
- 3 § 2. Legislative findings. The legislature finds and declares the
- 4 following:
- 5 1. Climate change, resulting primarily from the combustion of fossil
- 6 fuels, is an immediate, grave threat to the state's communities, envi-
- 7 ronment, and economy. In addition to mitigating the further buildup of
- 8 greenhouse gases, the state must take action to adapt to certain conse-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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quences of climate change that are irreversible, including rising sea levels, increasing temperatures, extreme weather events, flooding, heat waves, toxic algal blooms and other climate-change-driven threats. Maintaining New York's quality of life into the future, particularly for young people, who will experience greater impacts from climate change over their lifetimes, will be one of the state's greatest challenges over the next three decades. Meeting that challenge will require a shared commitment of purpose, huge investments in new or upgraded infrastructure, and new revenue sources to pay for those investments.

2. New York has previously adopted programs now in place - the inactive hazardous waste disposal site (state superfund) program and the oil spill fund - to remediate environmental damage to lands and waters based on the principle that, where possible, the entities responsible for environmental damage should pay for its cleanup. No similar program exists yet for the pollution of the atmosphere by greenhouse gas buildup as a result of burning fossil fuels.

3. Based on decades of research it is now possible to determine with great accuracy the share of greenhouse gases released into the atmosphere by specific fossil fuel companies over the last 70 years or more, making it possible to assign liability to and require compensation from companies commensurate with their emissions during a given time period.

4. It is the intent of the legislature to establish a climate change adaptation cost recovery program that will require companies that have contributed significantly to the buildup of climate change-driving greenhouse gases in the atmosphere to bear a proportionate share of the cost of infrastructure investments and other expenses necessary for comprehensive adaptation to the impacts of climate change in New York state.

5. The obligation to pay under the program is based on the fossil fuel companies' historic contribution to the buildup of greenhouse gases that is largely responsible for climate change. The program operates under a standard of strict liability; companies are required to pay into the fund because the use of their products caused the pollution. No finding of wrongdoing is required.

6. a. Payments by historical polluters into the climate change adaptation cost recovery program would be used for new or upgraded infrastructure needs such as coastal wetlands restoration, storm water drainage system upgrades, energy efficient cooling systems in public and private buildings, including schools and public housing, support for programs addressing climate-driven public health challenges, and responses to extreme weather events, all of which are necessary to protect the public safety and welfare in the face of the growing impacts of climate change.

b. The cost to the state of climate adaptation investments through 2050 will easily reach several hundred billion dollars, based on an array of estimates for projects impacting different regions across the state, far more than the \$75 billion being assessed on the fossil fuel industry. For example, upgrading New York City's sewer system to deal with regularly-occurring large rain events is estimated to cost around \$100 billion; a single project proposed by the Army Corps of Engineers to protect New York City from storm-driven flooding is estimated to cost \$52 billion; protecting Long Island from extreme weather is estimated to cost at least \$75-\$100 billion; a recent study from the State Comptroller found that from 2018 to 2028, 55 percent of New York State localities' municipal spending outside of New York City was or will be related to climate change and that in fiscal year 2023-2024 alone, New

1 York City planned to spend \$829 million on projects dedicated exclusive-  
2 ly to adaptation and resilience, with an additional \$1.3 billion on  
3 projects that are partially for these purposes. These are only a few  
4 examples of the numerous projects that are now or will soon be needed  
5 across the state.

6 c. The total assessment rate of \$3 billion dollars per year represents  
7 a small percentage of the extraordinary cost to New York State for  
8 repairing from and preparing for climate change-driven extreme events  
9 over the next 25 years, and is designed to have a meaningful impact on  
10 the burden borne by New York State taxpayers for climate adaptation  
11 while being sufficiently limited so as to not impose a punitive negative  
12 impact on an industry in which just the three largest domestic oil and  
13 gas producers made a combined \$85.6 billion in profits in 2023. Recent  
14 science has determined that the largest one hundred fossil fuel produc-  
15 ing companies are responsible for more than 70% of global greenhouse gas  
16 emissions since 1988, and therefore bear a much higher share of respon-  
17 sibility for climate damage to New York State than is represented by the  
18 \$75 billion being assessed them.

19 d. At least 35 percent, with a goal of 40 percent or more of the over-  
20 all benefits of program spending would go to climate change adaptive  
21 infrastructure projects that directly benefit disadvantaged communities.

22 7. A covered period of 2000-2018 has been selected. Over 70 percent  
23 of the total increase in greenhouse gas concentrations since the Indus-  
24 trial Revolution has occurred since 1950, with a marked increase in the  
25 rate of emissions after the year 2000. By 2000 the science of climate  
26 change was well established, and no reasonable corporate actor could  
27 have failed to anticipate regulatory action to address its impacts. In  
28 addition, the data necessary to attribute proportional responsibility is  
29 very robust in the covered period.

30 8. This act is not intended to intrude on the authority of the feder-  
31 al government in areas where it has preempted the right of the states to  
32 legislate. This act is remedial in nature, seeking compensation for  
33 damages resulting from the past actions of polluters.

34 § 3. The environmental conservation law is amended by adding a new  
35 article 76 to read as follows:

#### 36 ARTICLE 76

#### 37 CLIMATE CHANGE ADAPTATION COST RECOVERY PROGRAM

#### 38 Section 76-0101. Definitions.

#### 39 76-0103. The climate change adaptation cost recovery program.

#### 40 76-0105. Labor and job standards and worker protection.

#### 41 § 76-0101. Definitions.

42 For the purposes of this article the following terms shall have the  
43 following meanings:

44 1. "Applicable payment date" means September thirtieth of the second  
45 calendar year following the year in which this article is enacted into  
46 law.

47 2. "Climate change adaptive infrastructure project" means an infras-  
48 tructure project designed to avoid, moderate, repair, or adapt to nega-  
49 tive impacts caused by climate change, and to assist communities, house-  
50 holds, and businesses in preparing for future climate change-driven  
51 disruptions. Such projects include but are not limited to restoring  
52 coastal wetlands and developing other nature-based solutions and coastal  
53 protections; upgrading storm water drainage systems; making defensive  
54 upgrades to roads, bridges, subways, and transit systems; preparing for  
55 and recovering from hurricanes and other extreme weather events; under-  
56 taking preventive health care programs and providing medical care to

1 treat illness or injury caused by the effects of climate change; relo-  
2 cating, elevating, or retrofitting sewage treatment plants vulnerable to  
3 flooding; installing energy efficient cooling systems and other weather-  
4 ization and energy efficiency upgrades and retrofits in public and  
5 private buildings, including schools and public housing; upgrading parts  
6 of the electrical grid to increase stability and resilience, including  
7 supporting the creation of self-sufficient clean energy microgrids;  
8 addressing urban heat island effects through green spaces, urban fores-  
9 try, and other interventions; and responding to toxic algae blooms, loss  
10 of agricultural topsoil, and other climate-driven ecosystem threats to  
11 forests, farms, fisheries, and food systems.

12 3. "Coal" shall have the same definition as in section 1-103 of the  
13 energy law.

14 4. "Controlled group" means two or more entities treated as a single  
15 employer under section 52(a) or (b) or section 414(m) or (o) of the  
16 Internal Revenue Code. In applying subsections (a) and (b) of section  
17 52, section 1563 of the Internal Revenue Code shall be applied without  
18 regard to subsection(b)(2)(C). For purposes of this article, entities in  
19 a controlled group are treated as a single entity for purposes of meet-  
20 ing the definition of responsible party and are jointly and severally  
21 liable for payment of any cost recovery demand owed by any entity in the  
22 controlled group.

23 5. "Cost recovery demand" means a charge asserted against a responsi-  
24 ble party for cost recovery payments under the program for payment to  
25 the fund.

26 6. "Covered greenhouse gas emissions" means, with respect to any enti-  
27 ty, the total quantity of greenhouse gases released into the atmosphere  
28 during the covered period, expressed in metric tons of carbon dioxide  
29 equivalent, as defined in section 75-0101 of this chapter, including but  
30 not limited to releases of greenhouse gases resulting from the  
31 extraction, storage, production, refinement, transport, manufacture,  
32 distribution, sale, and use of fossil fuels or petroleum products  
33 extracted, produced, refined, or sold by such entity.

34 7. "Covered period" means the period that began January first, two  
35 thousand and ended on December thirty-first, two thousand eighteen.

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

40 9. "Entity" means any individual, trustee, agent, partnership, associ-  
41 ation, corporation, company, municipality, political subdivision, or  
42 other legal organization, including a foreign nation, that holds or held  
43 an ownership interest in a fossil fuel business during the covered peri-  
44 od.

45 10. "Fossil fuel" shall have the same definition as in section 1-103  
46 of the energy law.

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

49 12. "Fuel gases" shall have the same definition as in section 1-103 of  
50 the energy law.

51 13. "Fund" means the climate change adaptation fund established pursu-  
52 ant to section ninety-seven-m of the state finance law.

53 14. "Greenhouse gas" shall have the same definition as in section  
54 75-0101 of this chapter.

55 15. "Nature-based solutions" shall mean projects that utilize or mimic  
56 nature or natural processes and functions and that may also offer envi-

ronmental, economic, and social benefits, while increasing resilience.  
Nature-based solutions include both green and natural infrastructure.

16. "Notice of cost recovery demand" means the written communication  
informing a responsible party of the amount of the cost recovery demand  
payable to the fund.

17. "Petroleum products" shall have the same definition as in section  
1-103 of the energy law.

18. "Program" means the climate change adaptation cost recovery  
program established under section 76-0103 of this article.

19. "Qualifying expenditure" means an authorized payment from the fund  
in support of a climate change adaptive infrastructure project, includ-  
ing its operation and maintenance, as defined by the department.

20. "Responsible party" means any entity (or a successor in interest  
to such entity described herein), which, 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 respon-  
sible for more than one billion tons of covered greenhouse gas emis-  
sions. The term responsible party shall not include any person who lacks  
sufficient connection with the state to satisfy the nexus requirements  
of the United States Constitution.

§ 76-0103. The climate change adaptation cost recovery program.

1. There is hereby established a climate change adaptation cost recov-  
ery program administered by the department.

2. The purposes of the program shall be the following:

a. To secure compensatory payments from responsible parties based on a  
standard of strict liability to provide a source of revenue for climate  
change adaptive infrastructure projects within the state.

b. To determine proportional liability of responsible parties pursuant  
to subdivision three of this section;

c. To impose cost recovery demands on responsible parties and issue  
notices of cost recovery demands;

d. To accept and collect payment from responsible parties;

e. To identify climate change adaptive infrastructure projects;

f. To disperse funds to climate change adaptive infrastructure  
projects; and

g. To allocate funds in such a way as to achieve a goal that at least  
forty percent of the qualified expenditures from the program, but not  
less than thirty-five percent of such expenditures, shall go to climate  
change adaptive infrastructure projects that benefit disadvantaged  
communities as defined in section 75-0101 of this chapter.

3. a. A responsible party shall be strictly liable, without regard to  
fault, for a share of the costs of climate change adaptive infrastruc-  
ture projects, including their operation and maintenance, supported by  
the fund.

b. With respect to each responsible party, the cost recovery demand  
shall be equal to an amount that bears the same ratio to seventy-five  
billion dollars as the responsible party's applicable share of covered  
greenhouse gas emissions bears to the aggregate applicable shares of  
covered greenhouse gas emissions of all responsible parties.

c. The applicable share of covered greenhouse gas emissions taken into  
account under this section for any responsible party shall be the amount  
by which the covered greenhouse gas emissions attributable to such  
responsible party exceeds one billion metric tons.

d. Where an entity owns a minority interest in another entity of ten  
percent or more, the calculation of the entity's applicable share of  
greenhouse gas emissions taken into account under this section shall

1 include the applicable share of greenhouse gas emissions taken into  
2 account under this section by the entity in which the responsible party  
3 holds a minority interest, multiplied by the percentage of the minority  
4 interest held.

5 e. In determining the amount of greenhouse gas emissions attributable  
6 to any entity, an amount equivalent to nine hundred forty-two and one-  
7 half metric tons of carbon dioxide equivalent shall be treated as  
8 released for every million pounds of coal attributable to such entity;  
9 an amount equivalent to four hundred thirty-two thousand one hundred  
10 eighty metric tons of carbon dioxide equivalent shall be treated as  
11 released for every million barrels of crude oil attributable to such  
12 entity; and an amount equivalent to fifty-three thousand four hundred  
13 forty metric tons of carbon dioxide equivalent shall be treated as  
14 released for every million cubic feet of fuel gases attributable to such  
15 entity.

16 f. The commissioner may adjust the cost recovery demand amount of a  
17 responsible party refining petroleum products (or who is a successor in  
18 interest to such an entity) if such responsible party establishes to the  
19 satisfaction of the commissioner that a portion of the cost recovery  
20 demand amount was attributable to the refining of crude oil extracted by  
21 another responsible party (or who is a successor in interest to such an  
22 entity) that accounted for such crude oil in determining its cost recov-  
23 ery demand amount.

24 g. Payment of a cost recovery demand shall be made in full on the  
25 applicable payment date unless a responsible party elects to pay in  
26 installments pursuant to paragraph h of this subdivision.

27 h. A responsible party may elect to pay the cost recovery demand  
28 amount in twenty-four annual installments, eight percent of the total  
29 due in the first installment and four percent of the total due in each  
30 of the following twenty-three installments. If an election is made under  
31 this paragraph, the first installment shall be paid on the applicable  
32 payment date and each subsequent installment shall be paid on the same  
33 date as the applicable payment date in each succeeding year.

34 i. If there is any addition to the original amount of the cost recov-  
35 ery demand for failure to timely pay any installment required under this  
36 subdivision, a liquidation or sale of substantially all the assets of  
37 the responsible party (including in a proceeding under U.S. Code: Title  
38 11 or similar case), a cessation of business by the responsible party,  
39 or any similar circumstance, then the unpaid balance of all remaining  
40 installments shall be due on the date of such event (or in the case of a  
41 proceeding under U.S. Code: Title 11 or similar case, on the day before  
42 the petition is filed). The preceding sentence shall not apply to the  
43 sale of substantially all of the assets of a responsible party to a  
44 buyer if such buyer enters into an agreement with the department under  
45 which such buyer is liable for the remaining installments due under this  
46 subdivision in the same manner as if such buyer were the responsible  
47 party.

48 4. a. Within one year of the effective date of this article, the  
49 department shall promulgate such regulations as are necessary to carry  
50 out this article, including but not limited to:

51 i. adopting methodologies using the best available science to deter-  
52 mine responsible parties and their applicable share of covered green-  
53 house gas emissions consistent with the provisions of this article;

54 ii. registering entities that are responsible parties under the  
55 program;



1 iii. issuing notices of cost recovery demand to responsible parties  
2 informing them of the cost recovery demand amount; how and where cost  
3 recovery demands can be paid; the potential consequences of nonpayment  
4 and late payment; and information regarding their rights to contest an  
5 assessment;

6 iv. accepting payments from, pursuing collection efforts against, and  
7 negotiating settlements with responsible parties; and

8 v. adopting procedures for identifying and selecting climate change  
9 adaptive infrastructure projects eligible to receive qualifying expendi-  
10 tures, including legislative budget appropriations, issuance of requests  
11 for proposals from localities and not-for-profit and community organiza-  
12 tions, grants to private individuals, or other methods as determined by  
13 the department, and for dispersing moneys from the fund for qualifying  
14 expenditures. When considering projects intended to stabilize tidal  
15 shorelines, the department shall encourage the use of nature-based  
16 solutions. Total qualifying expenditures shall be allocated in such a  
17 way as to achieve a goal that at least forty percent of the qualified  
18 expenditures from the program, but not less than thirty-five percent of  
19 such expenditures, shall go to climate change adaptive infrastructure  
20 projects that benefit disadvantaged communities as defined in section  
21 75-0101 of this chapter.

22 b. The department shall hold at least two public hearings, one in-per-  
23 son and one virtual, on proposed regulations, with a minimum of thirty  
24 days' public notice in compliance with the provisions of article seven  
25 of the public officers law.

26 5. Within two years of the effective date of this article, the depart-  
27 ment shall complete a statewide climate change adaptation master plan  
28 for the purpose of guiding the dispersal of funds in a timely, effi-  
29 cient, and equitable manner to all regions of the state in accordance  
30 with the provisions of this chapter. In completing such plan, the  
31 department shall:

32 a. collaborate with the department of state, empire state development,  
33 the department of agriculture and markets, the New York state energy  
34 research and development authority, the department of public service,  
35 and the New York independent systems operator;

36 b. assess the adaptation needs and vulnerabilities of various areas  
37 vital to the state's economy, normal functioning, and the health and  
38 well-being of New Yorkers, including but not limited to: agriculture,  
39 biodiversity, ecosystem services, education, finance, healthcare, manu-  
40 facturing, housing and real estate, retail, tourism (including state and  
41 municipal parks), transportation, and municipal and local government.

42 c. identify major potential, proposed, and ongoing climate change  
43 adaptive infrastructure projects throughout the state;

44 d. identify opportunities for alignment with existing federal, state,  
45 and local funding streams;

46 e. consult with stakeholders, including local governments, businesses,  
47 environmental advocates, relevant subject area experts, and represen-  
48 tatives of disadvantaged communities; and

49 f. provide opportunities for public engagement in all regions of the  
50 state.

51 6. The department, the department of taxation and finance, and the  
52 attorney general are hereby authorized to implement and enforce the  
53 provisions of this article.

54 7. The department or the department of taxation and finance shall  
55 provide an opportunity to be heard to any responsible parties that seek  
56 to contest a cost recovery demand. Determinations made in favor of a

petitioner after such hearing shall be final and conclusive. A determination in favor of the state may be appealed under article seventy-eight of the civil practice law and rules.

8. Moneys received from cost recovery demands shall be deposited in the climate change adaptation fund established pursuant to section ninety-seven-m of the state finance law.

9. a. The department shall conduct an independent evaluation of the climate change adaptation cost recovery program. The purpose of this evaluation is to determine the effectiveness of the program in achieving its purposes as defined in subdivision two of this section.

b. Such evaluation shall be provided to the governor, the temporary president of the senate and the speaker of the assembly on or before January first of the second calendar year following the year in which this article is enacted into law, and annually on or before September thirtieth thereafter.

c. Any entity contracted by the department to conduct such evaluation shall receive prompt payment of all moneys due upon completion of such evaluation.

§ 76-0105. Labor and job standards and worker protection.

1. All public entities involved in implementing projects funded through the climate change adaptation cost recovery program shall assess and implement strategies to increase employment opportunities and improve job quality. Within one hundred twenty days of the effective date of this section, the governor shall publish a report, accessible on the state's website, which provides:

a. steps that will be taken to ensure compliance with this section, including the department or office, or combination thereof, charged with implementation of the provisions of this section;

b. regulations necessary to ensure the prioritization of the statewide goal of creating good jobs and increasing employment opportunities; and

c. steps that will be taken with all public entities, including local and county level governments, to implement a system to track compliance, accept reports of non-compliance for enforcement action, and report annually on the adoption of these standards to the legislature starting one year from the effective date of this section.

2. For purposes of this section, "public entity" shall include the state and all of its political subdivisions, including but not limited to counties, municipalities, agencies, authorities, public benefit corporations, public trusts, and local development corporations as defined in subdivision eight of section eighteen hundred one of the public authorities law or section fourteen hundred eleven of the not-for-profit corporation law, a municipal corporation as defined in section one hundred nineteen-n of the general municipal law, an industrial development agency formed pursuant to article eighteen-A of the general municipal law or industrial development authorities formed pursuant to article eight of the public authorities law, and any state, local or interstate or international authorities as defined in section two of the public authorities law; and shall include any trust created by any such entities.

3. In considering and issuing permits, licenses, regulations, contracts and other administrative approvals and decisions necessary for implementation of projects funded in whole, or in part, through the climate change adaptation cost recovery program, all public entities shall apply the following standards:

a. For any construction work, the payment of no less than prevailing wages for all employees of any contractors and subcontractors, consist-



ent with sections two hundred twenty, two hundred twenty-a, two hundred twenty-b, two hundred twenty-i, two hundred twenty-three, and two hundred twenty-four-b of the labor law, and building services, consistent with article nine of the labor law; where a recipient of financial assistance contracts building service work or operations and maintenance work to a building service contractor, the contractor is held to the same obligations with respect to prevailing wages as the recipient. The recipient must include terms establishing this obligation within any contract signed with a contractor.

b. (i) Any public entity receiving at least five million dollars from funds allocated pursuant to the climate change adaptation cost recovery program for a project which involves the construction, reconstruction, alteration, maintenance, moving, demolition, excavation, development or other improvement of any building, structure or land, shall be subject to section two hundred twenty-two of the labor law.

(ii) Any privately owned project receiving funds allocated pursuant to the climate change adaptation cost recovery program which utilizes a project labor agreement on such project shall not be subject to article eight of the labor law.

c. The inclusion of contract language requiring contractors to establish labor harmony policies. The public entity may require a private owner, or a third party acting on such owner's behalf, as a condition of receiving funds pursuant to the climate change adaptation cost recovery program, to stipulate to the public entity that it will enter into a labor peace agreement with at least one bona fide labor organization either where such bona fide labor organization is actively representing employees in such job-type or, upon notice, by a bona fide labor organization that is attempting to represent employees in such job-type. For purposes of this section "labor peace agreement" means an agreement between an entity and labor organization that, at a minimum, protects the state's proprietary interests by prohibiting labor organizations and members from engaging in work stoppages, boycotts, and any other economic interference with the relevant project or program.

d. (i) The inclusion of contract language with a provision that the iron, steel, aluminum, glass, copper, manufactured products, and construction products, including without limitation, vehicles, omnibuses, school buses, trucks, construction equipment, earth moving equipment, cranes, drilling equipment, rolling stock, train control equipment, communication equipment, traction power equipment, rolling stock prototypes, rolling stock frames, rolling stock car shells, batteries, charging equipment, fuel cells, fueling equipment, turbines, nacelles, blades, rotors, generators, motors, hubs, cable, conduit, controllers, towers, photovoltaic cells, solar panels, meters, inverters, pipe, tubing, fittings, tanks, flanges, valves, concrete, rebar, brick, aggregate, concrete block, cement, timber, lumber, tile, and drywall used or supplied in the performance of the contract or any subcontract thereto, shall be produced or made in whole or substantial part in the United States, its territories or possessions. In the case of an iron, steel, or aluminum product, all manufacturing must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving the refinement of steel additives.

(ii) The provisions of subparagraph (i) of this paragraph shall not apply in any case or category of cases in which the head of the contracting public entity finds that: (1) applying subparagraph (i) of this paragraph would be inconsistent with the public interest; (2)

1 products are not produced in the United States in sufficient and reason-  
2 ably available quantities and of a satisfactory quality; or (3) inclu-  
3 sion of products produced in the United States will increase the cost of  
4 the overall project by more than twenty-five percent. If the head of the  
5 contracting public entity receives a request for a waiver under this  
6 subdivision, such person shall make available to the public on an  
7 informal basis a copy of the request and information available to such  
8 person concerning the request, and shall allow for informal public input  
9 on the request for at least fifteen days prior to making a finding based  
10 on the request. The head of the contracting public entity shall make the  
11 request and accompanying information available by electronic means,  
12 including on the official public website of the public entity. The  
13 provisions of subparagraph (i) of this paragraph shall not apply for  
14 products purchased prior to the effective date of this article.

15 (iii) The head of the contracting public entity may, at the contract-  
16 ing entity's sole discretion, provide for a solicitation of a request  
17 for proposal, invitation for bid, or solicitation of proposal, or any  
18 other method provided for by law or regulation for soliciting a response  
19 from offerors intending to result in a contract pursuant to this para-  
20 graph involving a competitive process in which the evaluation of compet-  
21 ing bids gives significant consideration in the evaluation process to  
22 the procurement of equipment and supplies from businesses located in New  
23 York state.

24 e. Apprenticeship and workforce development utilization: (i) wherever  
25 possible, contractors and subcontractors should be required to partic-  
26 ipate in apprenticeship programs, registered in accordance with article  
27 twenty-three of the labor law, in the trades in which they are perform-  
28 ing work; (ii) for industries without apprenticeship programs, the use  
29 of workforce training, preferably in conjunction with a bona fide labor  
30 organization, shall be required; and (iii) encouragement of registered  
31 pre-apprenticeship direct entry programs for the recruitment of local  
32 and/or disadvantaged workers.

33 f. Notwithstanding any provision of law to the contrary, all rights or  
34 benefits, including terms and conditions of employment, and protection  
35 of civil service and collective bargaining status of all existing public  
36 employees shall be preserved and protected. Nothing in this section  
37 shall result in the: (i) displacement of any currently employed worker  
38 or loss of position (including partial displacement such as a reduction  
39 in the hours of non-overtime work, wages, or employment benefits) or  
40 result in the impairment of existing collective bargaining agreements;  
41 (ii) transfer of existing duties and functions related to maintenance  
42 and operations currently performed by existing employees of authorized  
43 entities to a contracting entity; or (iii) transfer of future duties and  
44 functions ordinarily performed by employees of authorized entities to a  
45 contracting entity.

46 4. a. Any public entity requesting bids or awarding contracts for  
47 renewable energy projects, energy efficiency projects, or other projects  
48 funded by the climate change adaptation cost recovery program, except  
49 for construction projects, shall require any applicant, bidder, or  
50 responder to submit a New York jobs plan as part of its application, bid  
51 or response. The department of environmental conservation, in consulta-  
52 tion with the department of labor, shall develop all forms, procedures,  
53 evaluation and scoring criteria, and guidance, necessary for the imple-  
54 mentation of the New York jobs plan. To the extent feasible, the depart-  
55 ment of environmental conservation, in consultation with the department

1 of labor, shall consider the input and recommendations of relevant  
2 public entities on the development of the New York jobs plan.

3 b. The New York jobs plan shall require applicants, bidders, and  
4 responders to provide information on jobs that would result from being  
5 awarded the bid or contract for such projects. At a minimum, this shall  
6 include the following information for nonsupervisory positions, broken  
7 down by classification:

8 (i) The number of full-time non-temporary jobs retained, and the  
9 number to be created.

10 (ii) The number of positions classified as employees, as defined in  
11 section seven hundred forty of the labor law, and positions classified  
12 as independent contractors.

13 (iii) The number of jobs to be specifically reserved for individuals  
14 facing barriers to employment and the number to be reserved for individ-  
15 uals from disadvantaged communities.

16 (iv) The minimum wages and fringe benefits amounts to be paid.

17 (v) The proposed amounts for worker training and information about any  
18 existing apprenticeship program registered with the department or a  
19 federally recognized state apprenticeship agency that complies with the  
20 requirements under Parts 29 and 30 of title 29, code of federal regu-  
21 lations.

22 (vi) In the event that a federal authority specifically authorizes use  
23 of a geographic preference or when covered public contracts are funded  
24 exclusively through state or local funds, the New York jobs plan shall  
25 require information on the number of local jobs to be created.

26 c. Awarding public entities shall require the same New York jobs plan  
27 information to be submitted from all known subcontractors at the time of  
28 the solicitation or bid for the project is released.

29 d. New York jobs plan commitments shall be included in the contract  
30 awarded by the public entity or its contractors as a material term.

31 e. For non-competitive public contracts awarded under this article,  
32 applicants, bidders, or responders shall create a New York jobs plan as  
33 set forth in this section. For competitive public contracts, public  
34 entities shall award contracts using a competitive best-value bid  
35 procurement process. The applicants', bidders', or responders' New York  
36 jobs plan shall be scored as a part of the overall application for the  
37 public contract, awarding additional consideration to applicants,  
38 bidders, or responders who do any of the following:

39 (i) Have the greatest beneficial economic impact on the state and  
40 local economies as a result of receiving the public contract, based on  
41 the priority criteria outlined in its New York jobs plan.

42 (ii) Enhance the state's commitment to energy conservation, pollution  
43 and greenhouse gas emissions reduction, and transportation efficiency.

44 (iii) Retain the greatest number of full-time, non-temporary employees  
45 compensated at a wage rate for the project jurisdiction as established  
46 in the living wage calculator published by the Massachusetts Institute  
47 of Technology, using the living wage rate for a household of two working  
48 adults with two children in the jurisdiction of the project.

49 (iv) Make concrete commitments to creating the greatest number of  
50 full-time, non-temporary jobs compensating employees at a wage rate at  
51 or above the living wage rate for the project jurisdiction as estab-  
52 lished in the living wage calculator published by the Massachusetts  
53 Institute of Technology, using the living wage rate for a household of  
54 two working adults with two children in the jurisdiction of the project.

55 (v) Commit to at least ninety percent of the labor on the contract  
56 being performed by workers classified as employees.

1 (vi) Offer targeted training and opportunities for individuals facing  
2 barriers to employment and workers from disadvantaged communities.

3 f. The department, in consultation with the department of labor, shall  
4 develop a web-based portal to track New York jobs plan commitments and  
5 compliance.

6 (i) All New York jobs plan commitments and compliance reporting shall  
7 be viewable by the public, through the web-based portal.

8 (ii) Recipients of public contracts shall, on an annual basis, be  
9 required to upload progress reports on each of the commitments included  
10 in their New York jobs plan application, for the duration of the covered  
11 public contract.

12 g. Noncompliance with New York jobs plan commitments would violate the  
13 terms of the public contract. At a minimum these commitments would be  
14 enforceable through standard breach of contract remedies, including but  
15 not limited to, termination of the public contract.

16 5. Nothing set forth in this section shall be construed to impede,  
17 infringe, or diminish the rights and benefits which accrue to employees  
18 through bona fide collective bargaining agreements, or otherwise dimin-  
19 ish the integrity of the existing collective bargaining relationship.

20 6. Nothing set forth in this section shall preclude a public entity  
21 from setting additional requirements or standards in addition to those  
22 set forth in this article.

23 § 4. The state finance law is amended by adding a new section 97-m to  
24 read as follows:

25 § 97-m. Climate change adaptation fund. 1. There is hereby established  
26 in the custody of the comptroller and the commissioner of taxation and  
27 finance a special revolving fund to be known as the "climate change  
28 adaptation fund" for the purpose of receiving moneys through cost recov-  
29 ery demands and issuing funds for qualifying expenditures pursuant to  
30 the climate change adaptation cost recovery program established in arti-  
31 cle seventy-six of the environmental conservation law.

32 2. No monies shall be expended from the fund for any project except  
33 qualifying expenditures pursuant to the program, including their opera-  
34 tion and maintenance.

35 3. Revenues in the fund shall be kept separate and shall not be  
36 commingled with any other moneys in the custody of the comptroller or  
37 the commissioner of taxation and finance. All deposits of such revenues  
38 shall, if required by the comptroller, be secured by obligations of the  
39 United States or of the state having a market value equal at all times  
40 to the amount of such deposits and all banks and trust companies are  
41 authorized to give security for such deposits. Any such revenues in such  
42 fund may, upon the discretion of the comptroller, be invested in obli-  
43 gations in which the comptroller is authorized to invest pursuant to  
44 section ninety-eight-a of this article.

45 4. All payments of moneys from the fund shall be made on the audit and  
46 warrant of the comptroller.

47 § 5. Availability of additional remedies. Nothing in this act shall be  
48 deemed to preclude the pursuit of a civil action or other remedy by any  
49 person. The remedies provided in this act are in addition to those  
50 provided by existing statutory or common law.

51 § 6. Severability. If any word, phrase, clause, sentence, paragraph,  
52 section, or part of this act shall be adjudged by any court of competent  
53 jurisdiction to be invalid, such judgment shall not affect, impair, or  
54 invalidate the remainder thereof, but shall be confined in its operation  
55 to the word, phrase, clause, sentence, paragraph, section, or part ther-

1 eof directly involved in the controversy in which such judgment shall  
2 have been rendered.

3 § 7. Construction. This act, being necessary for the general health,  
4 safety, and welfare of the people of this state, shall be liberally  
5 construed to effect its purpose.

6 § 8. This act shall take effect immediately.