

STATE OF NEW YORK

8469

2023-2024 Regular Sessions

IN ASSEMBLY

December 29, 2023

Introduced by M. of A. KELLES -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law and the public authorities law, in relation to establishing an economy-wide cap and invest program to support greenhouse gas emissions reductions in the state

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

1 Section 1. Legislative findings and declaration. 1. Pursuant to arti-
2 cle 75 of the environmental conservation law, as added by the Climate
3 Leadership and Community Protection Act, the department of environmental
4 conservation must promulgate regulations, by January 1, 2024, to ensure
5 achievement of the statewide greenhouse gas emission limits, as defined
6 and established therein. Among other requirements, the regulations
7 promulgated by such department pursuant to section 75-0109 of the envi-
8 ronmental conservation law must ensure that the aggregate emissions of
9 greenhouse gases from greenhouse gas emission sources will not exceed
10 the statewide greenhouse gas emissions limits established in section
11 75-0107 of the environmental conservation law; include legally enforcea-
12 ble emissions limits, performance standards, or measures or other
13 requirements to control emissions from greenhouse gas emission sources;
14 prioritize emissions and co-pollutant reductions in disadvantaged commu-
15 nities; do not result in a net increase in co-pollutant emissions or
16 otherwise disproportionately burden disadvantaged communities; and
17 reflect, in substantial part, the findings of the scoping plan prepared
18 by the Climate Action Council pursuant to section 75-0103 of the envi-
19 ronmental conservation law.

20 2. The scoping plan prepared by the Climate Action Council pursuant to
21 section 75-0103 of the environmental conservation law recommends that
22 the department of environmental conservation and the New York state
23 energy research and development authority adopt an economy-wide cap and

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

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1 invest program to, among other purposes, ensure achievement of the
2 statewide greenhouse gas limits, as defined and established in article
3 75 of the environmental conservation law.

4 3. An economy-wide cap and invest program, established through regu-
5 lation by the department of environmental conservation and the New York
6 state energy research and development authority, would meet the require-
7 ments of section 75-0109 of the environmental conservation law.

8 § 2. Subdivision 1 of section 75-0101 of the environmental conserva-
9 tion law, as added by chapter 106 of the laws of 2019, is amended and
10 fourteen new subdivisions 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26,
11 27, 28 and 29 are added to read as follows:

12 1. "Allowance" means an authorization to emit, during a specified
13 year, up to [~~one-ton~~] a fixed amount of carbon dioxide equivalent, as
14 determined and issued by the department.

15 16. "Authority" means the New York state energy research and develop-
16 ment authority.

17 17. "Cap and invest program" means an economy-wide program, as estab-
18 lished through regulations adopted by the department and the authority,
19 including, but not limited to, the following parameters: an annually
20 declining "cap" or limit for the maximum amount of greenhouse gas emis-
21 sions from all regulated sources in aggregate; an annual emissions cap
22 that ensures that overall statewide greenhouse gas emissions are lower
23 than the limits set forth in section 75-0107 of this article; a market-
24 based, allowance-based system which creates and issues a certain number
25 of allowances to persons, companies, organizations or other entities for
26 sale by auction or by direct allocation; a requirement that the total
27 number of allowances made available in a compliance period shall be less
28 than the annual emissions cap; a design to prioritize emissions
29 reductions in disadvantaged communities, as defined in section 75-0111
30 of this article, and setting a lower cap for emissions within such
31 communities and within a five-mile radius of such communities to achieve
32 such priority.

33 18. "Commission" means the New York public service commission.

34 19. "Compliance obligation" means the requirement of a covered entity
35 to submit allowances sufficient for all emissions with respect to a
36 compliance period to the authority.

37 20. "Compliance period" means a one-year period during which a covered
38 entity's carbon dioxide equivalent emissions shall not exceed the allow-
39 ances obtained and submitted by such covered entity to the authority for
40 such period.

41 21. "Covered source" means a greenhouse gas emissions source which is
42 regulated to the cap and invest program, and subject to paragraph b of
43 subdivision two of section 75-0109 of this article.

44 22. "Energy-intensive and trade-exposed facilities" or "EITEs" means
45 businesses identified by the department pursuant to subdivision three of
46 section 75-0121 of this article; provided that the department shall not
47 include facilities that participate in and support proof-of-work cryp-
48 to-mining operations as energy-intensive and trade-exposed facilities or
49 EITEs.

50 23. "First compliance period" means the compliance period beginning
51 June first, two thousand twenty-four.

52 24. "Greenhouse gas emissions reduction account" means a general
53 account to be established by the authority, into which the department
54 shall allocate allowances.

55 25. "Link" or "linkage" means the establishment of a bilateral or
56 multilateral non-binding agreement that connects two or more market-

1 based programs designed to reduce carbon-dioxide equivalent emissions
2 and which:

3 a. articulates a mutual understanding of how participating jurisdic-
4 tions will collaborate to facilitate reductions of carbon-dioxide equiv-
5 alent emissions;

6 b. authorizes processes for ensuring that the satisfaction of compli-
7 ance obligations in one participating jurisdiction partially or fully
8 satisfies, as appropriate, compliance obligations of regulated entities
9 in other participating jurisdictions; and

10 c. otherwise provides for the coordination of activities to facilitate
11 the operation of a joint market.

12 26. "Participating jurisdictions" means jurisdictions which are
13 linked.

14 27. "Reserve allowance" means an allowance provided by the department
15 pursuant to subdivision five of section 75-0121 of this article.

16 28. "Working group" means the climate justice working group.

17 29. "Best available technology" and "emissions mitigation" means tech-
18 nologies and mitigation techniques currently being used anywhere in the
19 world to reduce emissions and increase efficiency. Such technologies and
20 mitigation techniques shall not include the use of alternate fuel
21 combustion, or carbon capture and sequestration.

22 § 3. Subdivision 2 of section 75-0109 of the environmental conserva-
23 tion law is amended by adding two new paragraphs e and f to read as
24 follows:

25 e. Notwithstanding any other provision of law or regulation to the
26 contrary, utilize software systems and/or electronic mechanisms to
27 ensure adequate data collection and assess greenhouse gas emission
28 source compliance with department regulations.

29 f. At the discretion of the department, require greenhouse gas emis-
30 sion sources to submit compliance items electronically and maintain and
31 utilize electronic signatures for verification purposes.

32 § 4. Section 75-0109 of the environmental conservation law is amended
33 by adding five new subdivisions 5, 6, 7, 8 and 9 to read as follows:

34 5. No later than one year after the effective date of this section,
35 the department shall set statewide greenhouse gas emissions limits for
36 each compliance period for the purpose of determining interim progress
37 in achieving the statewide greenhouse gas emissions limits set forth in
38 section 75-0107 of this article. Such statewide greenhouse gas emissions
39 limits shall be set by the department as interim greenhouse gas emis-
40 sions reduction targets to inform decision-making regarding the need to
41 reduce total allowable greenhouse gas emissions under the cap and invest
42 program, and shall be reviewed annually. If, in the determination of the
43 department, such statewide greenhouse gas emissions limits are set at a
44 level which is insufficient to incentivize state greenhouse gas emis-
45 sions reductions progress necessary to achieve the emissions reduction
46 targets set forth in section 75-0107 of this article, the department
47 shall immediately modify the statewide greenhouse gas emissions limits
48 set pursuant to this subdivision to correct such insufficiency, begin-
49 ning with the next compliance period.

50 6. No later than January first, two thousand twenty-four, the depart-
51 ment shall assess and set site or facility specific caps for each
52 stationary source emitter of greenhouse gas for each compliance period
53 in disadvantaged communities for the purpose of determining interim
54 progress in achieving the statewide greenhouse gas emissions limits set
55 forth in section 75-0107 of this article. Such site or facility specific
56 caps on greenhouse gas emissions shall be set by the department as

1 interim greenhouse gas emissions reduction targets to inform decision-
2 making under the cap and invest program, and shall be reviewed annually.

3 7. No later than January first, two thousand twenty-four, the depart-
4 ment shall assess and set site or facility specific caps for each
5 stationary source emitter of greenhouse gas for each compliance period
6 in disadvantaged communities for the purpose of determining interim
7 progress in achieving the statewide greenhouse gas emissions limits set
8 forth in section 75-0107 of this article. Such site or facility specific
9 caps on greenhouse gas emissions shall be set by the department as
10 interim greenhouse gas emission reduction targets to inform decision-
11 making regarding the need to reduce total allowable greenhouse gas emis-
12 sions under the cap and invest program and shall be reviewed annually.

13 8. No later than January first, two thousand twenty-four, the depart-
14 ment shall set sector specific benchmarks and goals for the reduction of
15 greenhouse gas emissions in each compliance period for the purpose of
16 determining interim progress in achieving the statewide greenhouse gas
17 emissions limits set forth in section 75-0107 of this article. Such
18 sector specific goals on greenhouse gas emissions shall be set by the
19 department as interim greenhouse gas emission reduction targets to
20 inform decision-making regarding the need to reduce or eliminate total
21 allowable greenhouse gas emissions under the cap and invest program,
22 including measures to prioritize greenhouse gas emissions and co-pollu-
23 tant reductions in disadvantaged communities, and shall be reviewed
24 annually.

25 9. All revenue, interest, and penalties received under programs and
26 regulations adopted pursuant to this article shall be deposited in the
27 greenhouse gas emissions reduction account.

28 § 5. Subdivision 1 of section 75-0111 of the environmental conserva-
29 tion law is amended by adding a new paragraph d to read as follows:

30 d. Working group members shall receive no compensation for their
31 services but shall be reimbursed for actual and necessary expenses
32 incurred in the performance of their duties.

33 § 6. Paragraphs a and b of subdivision 2 of section 75-0111 of the
34 environmental conservation law, as added by chapter 106 of the laws of
35 2019, are amended to read as follows:

36 a. The [~~council~~] working group shall hold at least six regional public
37 hearings on the draft criteria and the draft list of disadvantaged
38 communities, including three meetings in the upstate region and three
39 meetings in the downstate region, and shall allow at least one hundred
40 twenty days for the submission of public comment.

41 b. The [~~council~~] working group shall also ensure that there are mean-
42 ingful opportunities for public comment for all segments of the popu-
43 lation that will be impacted by the criteria, including persons living
44 in areas that may be identified as disadvantaged communities under the
45 proposed criteria.

46 § 7. Paragraph b of subdivision 2 of section 75-0119 of the environ-
47 mental conservation law, as added by chapter 106 of the laws of 2019, is
48 amended to read as follows:

49 b. An assessment of existing regulations [~~and~~], whether modifications
50 are needed to ensure fulfillment of the statewide greenhouse gas emis-
51 sions limits, and a description of any such modifications the department
52 has made and intends to make pursuant to sections 75-0121 and 75-0125 of
53 this article.

54 § 8. The environmental conservation law is amended by adding five new
55 sections 75-0121, 75-0123, 75-0125, 75-0127 and 75-0129 to read as
56 follows:

1 § 75-0121. Cap and invest program; allocation of allowances.

2 1. a. There is hereby created an economy-wide cap and invest program
3 pursuant to the requirements of sections 75-0107 and 75-0109 of this
4 article through emissions reductions methods adopted and implemented by
5 the department and the authority. The department and the authority shall
6 undertake such adoption and implementation so as to provide for the
7 program to begin as of the start of the first compliance period. The cap
8 and invest program shall be subject to public notice and comment,
9 including at least five public hearings, and shall include substantial
10 consultation with the climate justice working group and members of
11 disadvantaged communities.

12 b. The cap and invest program shall provide for annually declining
13 aggregate greenhouse gas emissions limits by setting a maximum allowable
14 amount of greenhouse gas emissions from all covered sources in a given
15 compliance period.

16 c. A certain number of allowances shall be created by the department
17 to be transferred to the greenhouse gas emissions reduction account so
18 as to be made available by the authority to the covered sources pursuant
19 to this section and subdivision twenty-five of section eighteen hundred
20 fifty-four of the public authorities law. The total number of allowances
21 created and transferred so as to be made available by the authority for
22 auction or sale in a given compliance period shall not exceed the cap
23 for such compliance period.

24 d. All covered sources must register with the department in a form and
25 manner to be prescribed by the department and shall be subject to such
26 requirements as the department may establish by regulation to ensure
27 compliance with this article.

28 e. In implementing the cap and invest program, the department shall
29 prioritize greenhouse gas emissions and co-pollutant reductions in
30 disadvantaged communities, including but not limited to, by establishing
31 maximum allowable greenhouse gas limits for all individual sources
32 located in or proximate to, or otherwise contributing to the pollution
33 burden in, a disadvantaged community. Maximum allowable greenhouse gas
34 emissions limits on individual sources shall decline at a rate which is
35 proportional to the decline of the cap. Such emissions limits shall be
36 sufficient to ensure that disadvantaged communities experience pollution
37 reduction at rates exceeding the rates of pollution reduction in other
38 communities as a result of the cap and invest program, and are not
39 disproportionately negatively affected as a result of the cap and invest
40 program pursuant to paragraph c of subdivision three of section 75-0109
41 of this article, taking into account the characteristics of such commu-
42 nities and such sources. The department may set emissions limits at a
43 lower level for sources located in or proximate to, or otherwise
44 contributing to the pollution burden in, a disadvantaged community than
45 would otherwise be required under the cap and invest program.

46 f. The department shall provide for appropriate mechanisms to address
47 covered sources for which regulation under the cap and invest program is
48 preempted by federal law.

49 g. The department and the authority shall coordinate with the commis-
50 sion to determine a timeline and related planning process for the
51 retirement of fossil fuel generation facilities or their conversion to
52 renewable energy facilities to ensure the emissions reductions necessary
53 to comply with the statewide greenhouse gas emissions limits established
54 by section 75-0107 of this article.

55 2. The department shall transfer all allowances, as created and issued
56 by the department pursuant to the cap and invest program established by

1 subdivision one of this section, to the greenhouse gas emissions
2 reduction account for auction, sale, or direct allocation thereof in the
3 manner set forth in this article and in subdivision twenty-five of
4 section eighteen hundred fifty-four of the public authorities law;
5 provided, however, that the department shall not allocate permits for
6 zero or de minimis cost.

7 3. a. The department shall adopt regulations that establish criteria
8 and methods for determining energy intensity and trade exposure for the
9 purpose of identifying facilities which may be significantly impacted by
10 the cap and invest program such that they may be designated as EITEs in
11 a manner which is consistent with the treatment of EITEs in the scoping
12 plan, including appendix C thereof. The department shall ensure that
13 any designated EITEs attempt strategies to proactively reduce the risk
14 of leakage by relying on incentive-oriented approaches or technical
15 support prior to approving any reduced cost allowances. The development
16 of such regulations shall include at least three public hearings and
17 other efforts to provide meaningful opportunities for public comment
18 from all persons who will be impacted by the scoping plan, including but
19 not limited to, persons working for EITEs and persons living in disad-
20 vantaged communities. Such regulations shall be developed in compliance
21 with the provisions of paragraph b of this subdivision.

22 b. Such regulations shall:

23 (i) identify a procedure for demonstrating that such facilities are
24 using best available technology for control of greenhouse gas emissions
25 and best available energy efficiency practices to reduce such emissions
26 and incorporate co-pollutant reduction measures or mitigation require-
27 ments for such facilities located in or proximate to disadvantaged
28 communities; provided, however, that the term "best available technolo-
29 gy" shall not include the use of alternate fuel combustion, or carbon
30 capture and sequestration;

31 (ii) consider how program design can further mitigate the cost of
32 reducing emissions for such facilities while providing an incentive to
33 improve efficiency and reduce emissions; provided, however that such
34 mitigation shall not include the use of alternate fuel combustion, or
35 carbon capture and sequestration;

36 (iii) incorporate co-pollutant reduction measures or co-pollutant
37 mitigation requirements for such facilities located in or proximate to,
38 or otherwise contributing to the pollution burden in, a disadvantaged
39 community;

40 (iv) ensure that actual emissions reductions by each emitter are in
41 compliance with site or facility specific caps for facilities located in
42 or proximate to, or otherwise contributing to the pollution burden in,
43 disadvantaged communities; and

44 (v) provide for an application process for a facility to be designated
45 by the department as an EITE, which such application shall include:

46 (A) such information as the department may request to establish wheth-
47 er such facility satisfies the energy intensity and trade exposure
48 criteria established pursuant to paragraph a of this subdivision;

49 (B) a description of the expected impact of the cap and invest program
50 on such facility;

51 (C) such facility's plans to reduce emissions of greenhouse gases and
52 co-pollutants; and

53 (D) contractual commitment on the part of the facility to avoid leak-
54 age and continue to meet such economic development or economic mainte-
55 nance requirements as determined to be appropriate by the department, in

1 consultation with the authority and the department of economic develop-
2 ment.

3 c. Upon a satisfactory showing by an EITE to the department that such
4 EITE will be significantly negatively impacted by compliance with the
5 cap and invest program so as to result in leakage, the department and
6 the authority may, in a manner not inconsistent with any other provision
7 of this article or the scoping plan, provide for allowances to initially
8 be issued to eligible EITEs at reduced cost. The amount of such reduced
9 cost shall be that amount which is necessary to prevent leakage with
10 respect to the facility, as determined by the department, in consulta-
11 tion with the authority and the department of economic development, as
12 long as the EITE employs best available technology to reduce its emis-
13 sions; provided, however, that the term "best available technology" will
14 not include the use of alternate fuel combustion, or carbon capture and
15 sequestration. For the first compliance period, any allowances issued
16 to an EITE at reduced cost shall not represent more than the minimum
17 amount of allowances necessary to authorize such EITE to emit an amount
18 of carbon dioxide equivalent emissions equal to such EITE's average
19 annual carbon dioxide equivalent emissions for the three years following
20 the effective date of this section as determined by the department. Such
21 amount shall be adjusted downward as necessary to account for the
22 requirement that such EITE employ best available technology to reduce
23 its emissions. In subsequent compliance periods, any allocation to EITEs
24 of allowances at reduced cost shall decline in proportion to the
25 reduction in total available allowances for a given compliance period in
26 accordance with the cap for such compliance period. An EITE shall not
27 be issued an allowance at reduced cost for an amount which is less than
28 the amount paid by such EITE for a reduced cost allowance in the previ-
29 ous compliance period.

30 d. EITEs shall not receive allowances at reduced cost after the tenth
31 compliance period. The department shall cease the issuance of allowances
32 to an EITE at reduced cost if it determines that:

33 (i) issuance of allowances at reduced cost to such EITE is no longer
34 necessary to limit leakage;

35 (ii) such EITE is not employing best available technology to reduce
36 emissions;

37 (iii) such EITE is located in or proximate to, or otherwise contribut-
38 ing to the polluting burden in, a disadvantaged community, and such
39 EITE's co-pollutant emissions have increased relative to the previous
40 compliance period;

41 (iv) such EITE no longer qualifies as an EITE pursuant to paragraph b
42 of this subdivision; or

43 (v) such EITE made material misstatements on its application for EITE
44 designation, or materially violated (A) the terms of any approval of
45 such application, (B) any agreement in respect thereof, or (C) any law,
46 rule, or regulation adopted pursuant to this article or article nineteen
47 of this chapter, including without limitation the individual source
48 emissions limits set pursuant to paragraph e of subdivision one of this
49 section.

50 e. If the actual greenhouse gas equivalent emissions of an EITE exceed
51 the allowances issued to such EITE at reduced cost for that compliance
52 period, such EITE must acquire additional allowances at full price and
53 submit such allowances as necessary to satisfy its compliance obligation
54 during such compliance period.

55 f. If the department issues allowances to EITEs at reduced cost, the
56 department shall:

1 (i) conduct regular audits of such EITEs to determine whether such
2 EITEs continue to qualify as EITEs for purposes of receiving reduced
3 cost allowances under this subdivision; and

4 (ii) regularly review the need to issue allowances to EITEs at reduced
5 cost.

6 g. The department shall create an online public database on its
7 website and report to the governor and the legislature at least every
8 compliance period on the emissions and location of all EITEs at least
9 once per compliance period.

10 h. Notwithstanding anything in this subdivision to the contrary, the
11 total number of allowances issued at reduced cost for a compliance peri-
12 od shall not exceed fifteen percent of the total allowances for such
13 compliance period. To the extent that this paragraph limits the number
14 of reduced cost allowances otherwise allocated to EITEs pursuant to this
15 subdivision, allocations of reduced cost allowances shall be reduced as
16 necessary, in a manner to be determined appropriate by the department,
17 in consultation with the authority.

18 4. a. The department shall provide support to the authority for the
19 auction or sale of allowances pursuant to subdivision twenty-five of
20 section eighteen hundred fifty-four of the public authorities law.

21 b. The department, in consultation with the authority, shall adopt
22 such rules and regulations as it deems necessary to govern the auction
23 or sale of allowances, and may enter into such contracts as may be
24 necessary or convenient for such purpose.

25 c. The department, in coordination with the authority, shall adopt
26 such rules and regulations as it deems necessary to protect the confi-
27 dentiality of purchasers of allowances, guard against bidder collusion
28 and minimize the potential for market manipulation of the auction or
29 sale of allowances.

30 5. The department may reserve a small portion of allowances under the
31 cap for purposes of market stability and to incentivize additional emis-
32 sions reductions so long as such allowances are not in addition to the
33 total allowances under the cap. Such allowances may be transferred to
34 the greenhouse gas emissions reduction account upon notice to the
35 department by the authority at such times as is deemed necessary by the
36 authority. Such reserve allowances may be auctioned or sold in a manner
37 and at a time as determined to be appropriate by the authority. Such
38 reserve allowances shall be auctioned or sold for a price which is equal
39 to or greater than the maximum allowance price provided for in subdivi-
40 sion two of section 75-0125 of this article. The sale of these allow-
41 ances may be used for cost containment, provided that such sale does not
42 violate any other section of this article or exceed the current annual
43 cap.

44 § 75-0123. Use of allowances.

45 1. Allowances must be submitted to the department for the full amount
46 of greenhouse gas emissions emitted during a given compliance period. If
47 greenhouse gas emissions emitted during a given compliance period exceed
48 allowances submitted for such compliance period, such shortfall shall be
49 penalized pursuant to section 75-0129 of this article.

50 2. Any allowances not submitted at the end of the compliance period in
51 which they are issued by the authority shall automatically expire one
52 hundred eighty days after the end of such compliance period if not
53 submitted prior to such date of expiration.

54 3. Allowances shall not be tradable, sellable, exchangeable, or other-
55 wise transferable.

56 § 75-0125. Price of allowances.

1 1. In consultation with the authority, the department shall establish
2 by regulation a minimum allowance price for each compliance period and a
3 schedule for the amount by which the minimum allowance price shall
4 increase every year. Except with respect to allowances provided at
5 reduced cost to EITEs pursuant to subdivision three of section 75-0121
6 of this article, allowances shall not be sold or auctioned at an amount
7 lower than such minimum allowance price for the applicable compliance
8 period.

9 2. In consultation with the authority, the department shall determine
10 and establish a maximum allowance price for each compliance period and a
11 schedule for the maximum price to increase by a predetermined amount
12 every year at a rate which is greater than or equal to the rate of
13 increase of the price floor set by the price floor increase schedule
14 pursuant to subdivision one of this section. The price ceiling schedule
15 must be set at a level sufficient to incentivize investments to achieve
16 further greenhouse gas emission reductions beyond those enabled by the
17 price ceiling for a given compliance period.

18 3. In consultation with the authority, the department shall increase
19 the price floor and price ceiling for any given compliance period above
20 the schedules of price increases set forth in subdivisions one and two
21 of this section if necessary to ensure achievement of the emissions
22 reductions necessary to comply with the statewide greenhouse gas emis-
23 sions limits established by section 75-0107 of this article. The depart-
24 ment shall assess whether such increases are necessary on at least an
25 annual basis. In making such assessment, the department shall consider
26 actual emissions reductions, progress towards achieving the statewide
27 greenhouse gas emissions limits established by section 75-0107 of this
28 article, and performance with respect to the statewide greenhouse gas
29 emissions limits established pursuant to subdivision five of section
30 75-0109 of this article.

31 4. a. The department shall make all determinations under this section
32 with reference to the following considerations:

33 (i) the need for certainty in achieving the emissions reduction
34 requirements set forth in section 75-0107 of this article and the state-
35 wide greenhouse gas emissions limits established pursuant to section
36 75-0109 of this article;

37 (ii) the social cost of carbon as determined pursuant to section
38 75-0113 of this article;

39 (iii) other greenhouse gas pricing programs throughout the world, and
40 the successes and failures of such programs with respect to the pricing
41 of allowances;

42 (iv) the statewide greenhouse gas emissions report developed pursuant
43 to section 75-0105 of this article;

44 (v) cost-of-living inflation, with reference to the United States
45 bureau of labor statistics consumer price index or, if such index is not
46 available, another appropriate index approved by the department; and

47 (vi) such other information as may be necessary or convenient to
48 comply with the provisions of this section.

49 b. The department and the authority may seek and obtain such informa-
50 tion as may be necessary or convenient for the determination of the
51 pricing of allowances from other state or federal agencies or the feder-
52 ally designated electric bulk system operator.

53 § 75-0127. Linkage with other jurisdictions.

54 1. The department shall determine an equitable and efficient manner to
55 link the cap and invest program with the regional greenhouse gas initi-
56 ative. Such linkage shall provide that any source subject to the

1 regional greenhouse gas initiative and the cap and invest program shall
2 receive interjurisdictional credit for greenhouse gas emissions
3 reductions and amounts paid for allowances acquired under the respective
4 programs through a reduction in the price of an allowance equivalent to
5 the amount paid for an allowance for an equivalent amount of emissions
6 in another participating jurisdiction. In determining such reduction in
7 price, the department shall evaluate the relative cost of allowances
8 with respect to emissions covered by the regional greenhouse gas initi-
9 ative as compared to the cap and invest program, and make such determi-
10 nation in a manner that results in an equal treatment of the cost of
11 allowances relative to covered sources which are not subject to the
12 regional greenhouse gas initiative. No source otherwise subject to the
13 cap and invest program shall be excluded from the cap and invest program
14 because it is subject to the regional greenhouse gas initiative.

15 2. a. The department may link the cap and invest program with one or
16 more similar programs in jurisdictions other than the regional green-
17 house gas initiative if it determines that:

18 (i) Such linkage will result in cap and invest program market bene-
19 fits, reduce costs, and result in economic benefits to the people of the
20 state without reducing the overall emissions reductions or slowing or
21 reducing emissions reductions in disadvantaged communities; and

22 (ii) The department has:

23 (A) at least six months prior to any such linkage, released a plan for
24 any proposed linkage which includes (1) a detailed explanation of the
25 department's determinations with respect to this paragraph and para-
26 graphs a, b, and c of subdivision three of this section, and (2) proc-
27 esses for regular review and audit of such linkage;

28 (B) solicited public comment on such plan for a period of at least
29 thirty days; and

30 (C) considered such public comments and, if appropriate, updated the
31 plan in response to such public comments.

32 (D) if any analysis submitted as public comments shows that the link-
33 age will raise emissions or increase unequal cumulative pollution
34 burdens in disadvantaged communities, any such linkage shall be delayed
35 for at least twelve months while the impact of such linkage shall be
36 reassessed.

37 b. If any analysis of a plan for any proposed linkage submitted as
38 public comments shows that the linkage will raise emissions or increase
39 unequal cumulative pollution burdens in disadvantaged communities, then
40 the linkage must be delayed for at least twelve months, and the impact
41 of the linkage must be reassessed.

42 3. Any linkage shall provide assurance that:

43 a. It does not compromise, limit, or impinge upon the state's
44 progress, ability, or likelihood of meeting or exceeding the require-
45 ments of this article;

46 b. Credit for greenhouse gas emissions reductions under one program
47 shall not reduce compliance obligations in the other jurisdictional
48 program more than an equivalent amount of greenhouse gas emissions
49 reductions in such program; and

50 c. Such linkage will not result in increased co-pollutant emissions in
51 disadvantaged communities.

52 4. If the department determines that linkage with another similar
53 program made pursuant to subdivision two of this section no longer meets
54 the requirements set forth in paragraph a of such subdivision and para-
55 graphs a, b, and c of subdivision three of this section, the department
56 shall take immediate action to ensure compliance with such paragraphs.

1 If such compliance is not achieved within one year of such determination
2 of non-compliance, the department shall discontinue such linkage within
3 one hundred eighty days thereafter.

4 5. Any linkage shall require approval of the legislature.
5 § 75-0129. Enforcement; penalties.

6 1. All covered entities are required to submit allowances in a timely
7 manner to satisfy compliance obligations under this article and shall
8 comply with all requirements for monitoring, reporting, holding, and
9 transferring emission allowances pursuant to the cap and invest program
10 established by section 75-0121 of this article and other provisions of
11 this chapter.

12 2. Any person that violates the provisions of this article or an order
13 issued under this article shall incur a penalty of up to twelve thousand
14 five hundred dollars per day for each day that such violation continues.
15 In the event of multiple violations, each violation shall be considered
16 a separate offense.

17 3. All penalties collected under subdivisions two and seven of this
18 section shall be credited to the New York climate action fund estab-
19 lished pursuant to section ninety-nine-qq of the state finance law, and
20 shall be subject to subdivisions twenty-seven, twenty-eight and twenty-
21 nine of section eighteen hundred fifty-four of the public authorities
22 law.

23 4. Any electric corporation, gas corporation, or combination gas and
24 electric corporation, as such terms are defined in section two of the
25 public service law, which pays a monetary penalty under this section
26 must notify its customers in published form within three months of
27 paying such monetary penalty.

28 5. In addition to the right conferred upon the department under subdivi-
29 vision two of this section, the attorney general shall have the right to
30 seek the penalties set forth in subdivision two of this section in a
31 civil action brought pursuant to subdivision twelve of section sixty-
32 three of the executive law.

33 6. Nothing in this section shall relieve any person, private entity or
34 public agency or entity of compliance with other applicable federal,
35 state, or local laws or regulations or limit the existing authority of a
36 state, municipal or county agency or entity of adopting, implementing,
37 or enforcing greenhouse gas reduction measures including civil penalties
38 under section 71-4003 of this chapter.

39 § 9. Section 1854 of the public authorities law is amended by adding
40 five new subdivisions 27, 28, 29, 30 and 31 to read as follows:

41 27. To conduct, foster, assist, evaluate, and support programs and
42 services related to: greenhouse gas emissions or co-pollutant
43 reductions; research, analysis and support of climate mitigation, adap-
44 tation, and resilience; other measures as identified in the scoping plan
45 developed pursuant to section 75-0103 of the environmental conservation
46 law, including without limitation those measures identified relative to
47 a just transition or workforce development; fossil fuel generation
48 retirement planning; conversion of fossil fuel generation to renewable
49 energy planning; or measures identified in the state energy plan devel-
50 oped pursuant to article six of the energy law.

51 28. To establish, administer, implement, and support the greenhouse
52 gas emissions reduction account as defined in section 75-0101 of the
53 environmental conservation law, consistent with article seventy-five of
54 the environmental conservation law, and pursuant to regulations adopted
55 pursuant to such article and other existing authority, including by
56 making allowances available from such account for auction or sale pursu-

1 ant to the cap and invest program, as defined by section 75-0101 of the
2 environmental conservation law. Such auction or sale shall be conducted
3 on a quarterly basis and in a manner that, subject to the other require-
4 ments of article seventy-five of the environmental conservation law and
5 regulations adopted pursuant thereto, is efficient, transparent, and
6 provides certainty for participants to the extent practicable, provided
7 that with respect to reserve allowances as defined in section 75-0101 of
8 the environmental conservation law, auctions need not be quarterly. The
9 authority shall establish procedures to guard against the potential for
10 market manipulation, including but not limited to bidder collusion or
11 other improper release or disclosure of any bidding information. A
12 violation of rules with respect to market manipulation shall be subject
13 to a civil penalty of sixty thousand dollars per violation for a first
14 violation, and one hundred twenty thousand dollars for each subsequent
15 violation, and any applicable criminal penalties. The authority shall
16 develop rules and procedures in respect of all such requirements. The
17 proceeds from the auction or sale of allowances and any penalties will
18 be placed into a segregated authority funding account, established
19 pursuant to section eighteen hundred fifty-nine of this title, and shall
20 not be commingled with other authority funds. Except as otherwise set
21 forth in this title, the authority may use a portion of such proceeds
22 for administrative costs, auction or sale, design and support costs, and
23 program design, implementation, and evaluation costs directly related to
24 implementing the cap and invest program, provided that such amounts
25 shall not exceed the greater of ten million dollars or one percent of
26 such aggregate annual proceeds.

27 29. Within thirty days following receipt of proceeds collected from
28 the auction or sale of allowances allocated by the department of envi-
29 ronmental conservation to the authority pursuant to subdivision two of
30 section 75-0121 of the environmental conservation law and regulations
31 adopted by the department of environmental conservation pursuant to
32 article seventy-five of the environmental conservation law and other
33 existing authority, the authority shall transfer such funds from such
34 segregated authority funding account to the New York climate action fund
35 established pursuant to section ninety-nine-gg of the state finance law.

36 30. Within sixty days following the deposit of proceeds collected from
37 the auction or sale of allowances as outlined in subdivision twenty-six
38 of this section, the authority shall issue to the governor and the
39 legislature, and post on its website, a detailed report which shall
40 include, but is not limited to, the amount of revenue generated by the
41 auction or sale of allowances under subdivision twenty-five of this
42 section, the number of entities that purchased allowances, the number of
43 entities that received reduced cost allowances, the number of allowances
44 sold at reduced cost, and the amounts paid for reduced cost allowances.

45 31. The authority shall annually issue to the governor and the legis-
46 lature, and post on its website, beginning the next fiscal year succeed-
47 ing the first allocation of funds from the climate and community
48 protection fund, a report detailing the use of such funds, including
49 information regarding the programs to which such funds are appropriated,
50 recipients of funds pursuant to such programs, and outcomes of such
51 programmatic spending.

52 § 10. Any and all funds received pursuant to sections 75-0121,
53 75-0123, 75-0125, 75-0127, and 75-0129 of the environmental conservation
54 law or subdivisions 27, 28, 29, 30, and 31 of section 1854 of the public
55 authorities law must be allocated pursuant to state law only to the New
56 York Climate Action Fund, and the state comptroller and office of budget

1 will ensure that no funds are used for any purpose not in compliance
2 with and in furtherance of the goals in the Climate Leadership and
3 Community Protection Act of 2019.

4 § 11. The public authorities law is amended by adding a new section
5 1885 to read as follows:

6 § 1885. Office of equity for energy and climate. 1. Definitions. As
7 used in this section, the following terms shall have the following mean-
8 ings:

9 (a) "Community solutions fund" shall mean the community directed
10 climate solutions fund established pursuant to subdivision three of this
11 section.

12 (b) "Office" shall mean the office of equity for energy and climate
13 established pursuant to subdivision two of this section.

14 (c) "Solutions grants program" shall mean the community directed
15 climate solutions grants program established pursuant to subdivision
16 four of this section.

17 2. Office of equity for energy and climate. (a) There is established
18 within the authority an office of equity for energy and climate.

19 (b) The purpose of the office of equity for energy and climate is to
20 support local and communally developed climate projects to support
21 disadvantaged communities, including by establishing and administering
22 the community solutions fund and the solutions grants program pursuant
23 to subdivisions three and four of this section.

24 3. The community directed climate solutions fund. There is established
25 within the office the community solutions fund, out of which the office
26 shall make grants pursuant to the solutions grants program.

27 4. Community directed climate solutions grants program. (a) The office
28 shall establish the community directed climate solutions grants program
29 to provide assistance to community-based organizations, projects, and
30 initiatives that may not meet application criteria for other assistance
31 programs, or for which other assistance programs are inadequate.

32 (b) The office shall design the solutions grants program, to the
33 extent practicable and permissible, to maximize the ability of grant
34 recipients to use such grants as matching funds in other assistance
35 program applications and/or to leverage the funding to receive addi-
36 tional grants from other assistance programs.

37 (c) The office shall identify the needs of disadvantaged communities
38 to prioritize grant allocation. Such identification process shall
39 include significant consultation with community stakeholders in a varie-
40 ty of disadvantaged communities throughout the state, at least three
41 public hearings, and other opportunities for public input. The office
42 shall also consult with the climate justice working group established
43 pursuant to section 75-0111 of the environmental conservation law.

44 (d) Applicants eligible for the solutions grants program. (i) Lead
45 applicants eligible for grants shall be constituency-based organiza-
46 tions, tribal nations, or, in communities where neither constituency-
47 based organizations or tribal nations exist or do not wish to apply for
48 such grants, a municipality.

49 (ii) Sub-applicants may include other non-profit organizations,
50 academic institutions, local businesses, municipalities and other simi-
51 larly-situated stakeholders.

52 (e) Community directed climate solutions grants program restrictions.
53 The following restrictions shall apply to the community directed climate
54 solutions grants program:

55 (i) Grants shall only be made for projects that reduce energy costs,
56 support community ownership and governance of energy infrastructure, or

1 enhance climate change resiliency, including but not limited to
2 reduction of urban heat island effects and flooding protections.

3 (ii) At least seventy-five percent of funding allocated to the
4 solutions grants program must support projects located within disadvan-
5 tagged communities.

6 (iii) Up to twenty-five percent of funding allocated to the solutions
7 grants program may support projects located outside disadvantaged commu-
8 nities, provided that such funding provides a benefit to disadvantaged
9 communities, including those benefits identified in subparagraph (i) of
10 this paragraph.

11 (iv) To the extent practicable, grants shall be distributed equitably
12 to disadvantaged communities throughout the state, based on population.

13 (v) Grants shall only be made for projects which satisfy the community
14 decision-making and accountability standards established pursuant to
15 subdivision five of this section.

16 (vi) Projects funded by grants made under the solutions grants program
17 shall be subject to the provisions of the labor law.

18 (vii) Preference shall be given to proposals that include significant
19 participation by minority and women-owned business enterprises.

20 5. The office shall develop and establish standards for community
21 decision-making and accountability mechanisms with respect to eligible
22 projects and the use of grant funding pursuant to the provisions of this
23 section.

24 6. Beginning one year after its establishment and annually thereafter,
25 the office shall submit a report to the climate justice working group
26 established pursuant to section 75-0111 of the environmental conserva-
27 tion law, the governor, and the legislature on the use of funds in the
28 community directed climate solutions fund, including information regard-
29 ing recipients of the solutions grants program.

30 § 12. Severability. If any provision of this article is, for any
31 reason, declared unconstitutional or invalid, in whole or in part, by
32 any court of competent jurisdiction, such portion shall be deemed sever-
33 able, and such unconstitutionality or invalidity shall not affect the
34 validity of the remaining portions of this article, which remaining
35 portions shall continue in full force and effect.

36 § 13. This act shall take effect immediately.