

# STATE OF NEW YORK

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2129--A

2023-2024 Regular Sessions

## IN SENATE

January 18, 2023

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Introduced by Sens. KRUEGER, ADDABBO, CLEARE, FERNANDEZ, GIANARIS, GONZALEZ, GOUNARDES, HOYLMAN-SIGAL, JACKSON, KAVANAGH, LIU, MAY, MYRIE, PARKER, RAMOS, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- reported favorably from said committee and committed to the Committee on Finance -- 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-  
9 quences of climate change that are irreversible, including rising sea  
10 levels, increasing temperatures, extreme weather events, flooding, heat  
11 waves, toxic algal blooms and other climate-change-driven threats.  
12 Maintaining New York's quality of life into the future, particularly for  
13 young people, who will experience greater impacts from climate change  
14 over their lifetimes, will be one of the state's greatest challenges  
15 over the next three decades. Meeting that challenge will require a  
16 shared commitment of purpose, huge investments in new or upgraded  
17 infrastructure, and new revenue sources to pay for those investments.

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

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

7  
8     3. Based on decades of research it is now possible to determine with  
9 great accuracy the share of greenhouse gases released into the atmosphere  
10 by specific fossil fuel companies over the last 70 years or more,  
11 making it possible to assign liability to and require compensation from  
12 companies commensurate with their emissions during a given time period.

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

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

26     b. Nonetheless, the legislature recognizes that the actions of many of  
27 the biggest fossil fuel companies have been unconscionable, closely  
28 reflecting the strategy of denial, deflection, and delay used by the  
29 tobacco industry. In spite of the information provided by their own  
30 scientists that the continued burning of fossil fuels would have  
31 catastrophic results, these companies hid the truth from the public and  
32 actively spread false information that the science of climate change was  
33 uncertain when in fact it was beyond controversy. This breach of the  
34 public trust was breathtaking in its scope and consequences, and it  
35 continues to this day.

36     c. Since 2022, the fossil fuel industry has taken advantage of several  
37 overlapping global crises to earn immense profits, charging record high  
38 prices while aggressively rejecting any responsibility for the costs of  
39 its business activities. While all the profits accrue to the companies,  
40 all of the costs of climate change are paid by taxpayers and individuals.  
41 This is a market failure that needs to be addressed through policy  
42 change.

43     6. Payments by historical polluters into the climate change adaptation  
44 cost recovery program would be used for new or upgraded infrastructure  
45 needs such as coastal wetlands restoration, storm water drainage system  
46 upgrades, energy efficient cooling systems in public and private buildings,  
47 including schools and public housing, support for programs  
48 addressing climate-driven public health challenges, and responses to  
49 extreme weather events, all of which are necessary to protect the public  
50 safety and welfare in the face of the growing impacts of climate change.  
51 The cost to the state of climate adaptation investments through 2050  
52 will easily exceed \$150 billion, far more than the \$75 billion being  
53 assessed on the fossil fuel industry. At least 35%, with a goal of 40%  
54 or more of the overall benefits of program spending would go to climate  
55 change adaptive infrastructure projects that directly benefit disadvantaged  
56 communities.

7. This act is not intended to intrude on the authority of the federal government in areas where it has preempted the right of the states to legislate. This act is remedial in nature, seeking compensation for damages resulting from the past actions of polluters.

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

#### ARTICLE 76

#### CLIMATE CHANGE ADAPTATION COST RECOVERY PROGRAM

#### Section 76-0101. Definitions.

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

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

#### § 76-0101. Definitions.

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

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

2. "Climate change adaptive infrastructure project" means an infrastructure project designed to avoid, moderate, repair, or adapt to negative impacts caused by climate change, and to assist communities, households, and businesses in preparing for future climate change-driven disruptions. Such projects include but are not limited to restoring coastal wetlands and developing other nature-based solutions and coastal protections; upgrading storm water drainage systems; making defensive upgrades to roads, bridges, subways, and transit systems; preparing for and recovering from hurricanes and other extreme weather events; undertaking preventive health care programs and providing medical care to treat illness or injury caused by the effects of climate change; relocating, elevating, or retrofitting sewage treatment plants vulnerable to flooding; installing energy efficient cooling systems and other weatherization and energy efficiency upgrades and retrofits in public and private buildings, including schools and public housing; upgrading parts of the electrical grid to increase stability and resilience, including supporting the creation of self-sufficient clean energy microgrids; addressing urban heat island effects through green spaces, urban forestry, and other interventions; and responding to toxic algae blooms, loss of agricultural topsoil, and other climate-driven ecosystem threats to forests, farms, fisheries, and food systems.

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

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

5. "Cost recovery demand" means a charge asserted against a responsible party for cost recovery payments under the program for payment to the fund.

6. "Covered greenhouse gas emissions" means, with respect to any entity, the total quantity of greenhouse gases released into the atmosphere during the covered period, expressed in metric tons of carbon dioxide equivalent, as defined in section 75-0101 of this chapter, including but

1 not limited to releases of greenhouse gases resulting from the  
2 extraction, storage, production, refinement, transport, manufacture,  
3 distribution, sale, and use of fossil fuels or petroleum products  
4 extracted, produced, refined, or sold by such entity.

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

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

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

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

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

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

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

24 14. "Greenhouse gas" shall have the same definition as in section  
25 75-0101 of this chapter.

26 15. "Nature-based solutions" shall mean projects that utilize or mimic  
27 nature or natural processes and functions and that may also offer envi-  
28 ronmental, economic, and social benefits, while increasing resilience.  
29 Nature-based solutions include both green and natural infrastructure.

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

33 17. "Petroleum products" shall have the same definition as in section  
34 1-103 of the energy law.

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

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

40 20. "Responsible party" means any entity (or a successor in interest  
41 to such entity described herein), which, during any part of the covered  
42 period, was engaged in the trade or business of extracting fossil fuel  
43 or refining crude oil and is determined by the department to be respon-  
44 sible for more than one billion tons of covered greenhouse gas emis-  
45 sions. The term responsible party shall not include any person who lacks  
46 sufficient connection with the state to satisfy the nexus requirements  
47 of the United States Constitution.

48 § 76-0103. The climate change adaptation cost recovery program.

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

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

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

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

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

3 d. To accept and collect payment from responsible parties;

4 e. To identify climate change adaptive infrastructure projects;

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

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

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

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

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

25 d. Where an entity owns a minority interest in another entity of ten  
26 percent or more, the calculation of the entity's applicable share of  
27 greenhouse gas emissions taken into account under this section shall  
28 include the applicable share of greenhouse gas emissions taken into  
29 account under this section by the entity in which the responsible party  
30 holds a minority interest, multiplied by the percentage of the minority  
31 interest held.

32 e. In determining the amount of greenhouse gas emissions attributable  
33 to any entity, an amount equivalent to nine hundred forty-two and one-  
34 half metric tons of carbon dioxide equivalent shall be treated as  
35 released for every million pounds of coal attributable to such entity;  
36 an amount equivalent to four hundred thirty-two thousand one hundred  
37 eighty metric tons of carbon dioxide equivalent shall be treated as  
38 released for every million barrels of crude oil attributable to such  
39 entity; and an amount equivalent to fifty-three thousand four hundred  
40 forty metric tons of carbon dioxide equivalent shall be treated as  
41 released for every million cubic feet of fuel gases attributable to such  
42 entity.

43 f. The commissioner may adjust the cost recovery demand amount of a  
44 responsible party refining petroleum products (or who is a successor in  
45 interest to such an entity) if such responsible party establishes to the  
46 satisfaction of the commissioner that a portion of the cost recovery  
47 demand amount was attributable to the refining of crude oil extracted by  
48 another responsible party (or who is a successor in interest to such an  
49 entity) that accounted for such crude oil in determining its cost recov-  
50 ery demand amount.

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

54 h. A responsible party may elect to pay the cost recovery demand  
55 amount in twenty-four annual installments, eight percent of the total  
56 due in the first installment and four percent of the total due in each

1 of the following twenty-three installments. If an election is made under  
2 this paragraph, the first installment shall be paid on the applicable  
3 payment date and each subsequent installment shall be paid on the same  
4 date as the applicable payment date in each succeeding year.

5 i. If there is any addition to the original amount of the cost recovery  
6 demand for failure to timely pay any installment required under this  
7 subdivision, a liquidation or sale of substantially all the assets of  
8 the responsible party (including in a proceeding under U.S. Code: Title  
9 11 or similar case), a cessation of business by the responsible party,  
10 or any similar circumstance, then the unpaid balance of all remaining  
11 installments shall be due on the date of such event (or in the case of a  
12 proceeding under U.S. Code: Title 11 or similar case, on the day before  
13 the petition is filed). The preceding sentence shall not apply to the  
14 sale of substantially all of the assets of a responsible party to a  
15 buyer if such buyer enters into an agreement with the department under  
16 which such buyer is liable for the remaining installments due under this  
17 subdivision in the same manner as if such buyer were the responsible  
18 party.

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

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

25 ii. registering entities that are responsible parties under the  
26 program;

27 iii. issuing notices of cost recovery demand to responsible parties  
28 informing them of the cost recovery demand amount; how and where cost  
29 recovery demands can be paid; the potential consequences of nonpayment  
30 and late payment; and information regarding their rights to contest an  
31 assessment;

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

34 v. adopting procedures for identifying and selecting climate change  
35 adaptive infrastructure projects eligible to receive qualifying expendi-  
36 tures, including legislative budget appropriations, issuance of requests  
37 for proposals from localities and not-for-profit and community organiza-  
38 tions, grants to private individuals, or other methods as determined by  
39 the department, and for dispersing moneys from the fund for qualifying  
40 expenditures. When considering projects intended to stabilize tidal  
41 shorelines, the department shall encourage the use of nature-based  
42 solutions. Total qualifying expenditures shall be allocated in such a  
43 way as to achieve a goal that at least forty percent of the qualified  
44 expenditures from the program, but not less than thirty-five percent of  
45 such expenditures, shall go to climate change adaptive infrastructure  
46 projects that benefit disadvantaged communities as defined in section  
47 75-0101 of this chapter.

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

52 5. Within two years of the effective date of this article, the depart-  
53 ment shall complete a statewide climate change adaptation master plan  
54 for the purpose of guiding the dispersal of funds in a timely, effi-  
55 cient, and equitable manner to all regions of the state in accordance



1 with the provisions of this chapter. In completing such plan, the  
2 department shall:

3 a. collaborate with the department of state, empire state development,  
4 the department of agriculture and markets, the New York state energy  
5 research and development authority, the department of public service,  
6 and the New York independent systems operator;

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

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

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

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

20 f. provide opportunities for public engagement in all regions of the  
21 state.

22 6. The department, the department of taxation and finance, and the  
23 attorney general are hereby authorized to enforce the provisions of this  
24 article.

25 7. The department or the department of taxation and finance shall  
26 provide an opportunity to be heard to any responsible parties that seek  
27 to contest a cost recovery demand. Determinations made in favor of a  
28 petitioner after such hearing shall be final and conclusive. A determi-  
29 nation in favor of the state may be appealed under article seventy-eight  
30 of the civil practice law and rules.

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

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

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

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

46 § 76-0105. Labor and job standards and worker protection.

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

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

1 b. regulations necessary to ensure the prioritization of the statewide  
2 goal of creating good jobs and increasing employment opportunities; and  
3 c. steps that will be taken with all public entities, including local  
4 and county level governments, to implement a system to track compliance,  
5 accept reports of non-compliance for enforcement action, and report  
6 annually on the adoption of these standards to the legislature starting  
7 one year from the effective date of this section.

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

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

27 a. For any construction work, the payment of no less than prevailing  
28 wages for all employees of any contractors and subcontractors, consist-  
29 ent with sections two hundred twenty, two hundred twenty-a, two hundred  
30 twenty-b, two hundred twenty-i, two hundred twenty-three, and two  
31 hundred twenty-four-b of the labor law, and building services, consist-  
32 ent with article nine of the labor law; where a recipient of financial  
33 assistance contracts building service work or operations and maintenance  
34 work to a building service contractor, the contractor is held to the  
35 same obligations with respect to prevailing wages as the recipient. The  
36 recipient must include terms establishing this obligation within any  
37 contract signed with a contractor.

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

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

48 c. The inclusion of contract language requiring contractors to estab-  
49 lish labor harmony policies. The public entity may require a private  
50 owner, or a third party acting on such owner's behalf, as a condition of  
51 receiving funds pursuant to the climate change adaptation cost recovery  
52 program, to stipulate to the public entity that it will enter into a  
53 labor peace agreement with at least one bona fide labor organization  
54 either where such bona fide labor organization is actively representing  
55 employees in such job-type or, upon notice, by a bona fide labor organ-  
56 ization that is attempting to represent employees in such job-type. For



1 purposes of this section "labor peace agreement" means an agreement  
2 between an entity and labor organization that, at a minimum, protects  
3 the state's proprietary interests by prohibiting labor organizations and  
4 members from engaging in work stoppages, boycotts, and any other econom-  
5 ic interference with the relevant project or program.

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

25 (ii) The provisions of subparagraph (i) of this paragraph shall not  
26 apply in any case or category of cases in which the head of the  
27 contracting public entity finds that: (1) applying subparagraph (i) of  
28 this paragraph would be inconsistent with the public interest; (2)  
29 products are not produced in the United States in sufficient and reason-  
30 ably available quantities and of a satisfactory quality; or (3) inclu-  
31 sion of products produced in the United States will increase the cost of  
32 the overall project by more than twenty-five percent. If the head of the  
33 contracting public entity receives a request for a waiver under this  
34 subdivision, he or she shall make available to the public on an informal  
35 basis a copy of the request and information available to him or her  
36 concerning the request, and shall allow for informal public input on the  
37 request for at least fifteen days prior to making a finding based on the  
38 request. The head of the contracting public entity shall make the  
39 request and accompanying information available by electronic means,  
40 including on the official public website of the public entity. The  
41 provisions of subparagraph (i) of this paragraph shall not apply for  
42 products purchased prior to the effective date of this article.

43 (iii) The head of the contracting public entity may, at his or her  
44 sole discretion, provide for a solicitation of a request for proposal,  
45 invitation for bid, or solicitation of proposal, or any other method  
46 provided for by law or regulation for soliciting a response from offe-  
47 rs intending to result in a contract pursuant to this paragraph  
48 involving a competitive process in which the evaluation of competing  
49 bids gives significant consideration in the evaluation process to the  
50 procurement of equipment and supplies from businesses located in New  
51 York state.

52 e. Apprenticeship and workforce development utilization: (i) wherever  
53 possible, contractors and subcontractors should be required to partic-  
54 ipate in apprenticeship programs, registered in accordance with article  
55 twenty-three of the labor law, in the trades in which they are perform-  
56 ing work; (ii) for industries without apprenticeship programs, the use

1 of workforce training, preferably in conjunction with a bona fide labor  
2 organization, shall be required; and (iii) encouragement of registered  
3 pre-apprenticeship direct entry programs for the recruitment of local  
4 and/or disadvantaged workers.

5 f. Notwithstanding any provision of law to the contrary, all rights or  
6 benefits, including terms and conditions of employment, and protection  
7 of civil service and collective bargaining status of all existing public  
8 employees shall be preserved and protected. Nothing in this section  
9 shall result in the: (i) displacement of any currently employed worker  
10 or loss of position (including partial displacement such as a reduction  
11 in the hours of non-overtime work, wages, or employment benefits) or  
12 result in the impairment of existing collective bargaining agreements;  
13 (ii) transfer of existing duties and functions related to maintenance  
14 and operations currently performed by existing employees of authorized  
15 entities to a contracting entity; or (iii) transfer of future duties and  
16 functions ordinarily performed by employees of authorized entities to a  
17 contracting entity.

18 4. a. Any public entity requesting bids or awarding contracts for  
19 renewable energy projects, energy efficiency projects, or other projects  
20 funded by the climate change adaptation cost recovery program, except  
21 for construction projects, shall require any applicant, bidder, or  
22 responder to submit a New York jobs plan as part of its application, bid  
23 or response. The department of environmental conservation, in consulta-  
24 tion with the department of labor, shall develop all forms, procedures,  
25 evaluation and scoring criteria, and guidance, necessary for the imple-  
26 mentation of the New York jobs plan. To the extent feasible, the depart-  
27 ment of environmental conservation, in consultation with the department  
28 of labor, shall consider the input and recommendations of relevant  
29 public entities on the development of the New York jobs plan.

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

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

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

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

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

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

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

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

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

3 e. For non-competitive public contracts awarded under this article,  
4 applicants, bidders, or responders shall create a New York jobs plan as  
5 set forth in this section. For competitive public contracts, public  
6 entities shall award contracts using a competitive best-value bid  
7 procurement process. The applicants', bidders', or responders' New York  
8 jobs plan shall be scored as a part of the overall application for the  
9 public contract, awarding additional consideration to applicants,  
10 bidders, or responders who do any of the following:

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

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

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

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

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

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

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

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

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

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

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

48 6. Nothing set forth in this section shall preclude a public entity  
49 from setting additional requirements or standards in addition to those  
50 set forth in this article.

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

53 § 97-m. Climate change adaptation fund. 1. There is hereby established  
54 in the custody of the comptroller and the commissioner of taxation and  
55 finance a special revolving fund to be known as the "climate change  
56 adaptation fund" for the purpose of receiving moneys through cost recov-

1 ery demands and issuing funds for qualifying expenditures pursuant to  
2 the climate change adaptation cost recovery program established in arti-  
3 cle seventy-six of the environmental conservation law.

4 2. No monies shall be expended from the fund for any project except  
5 qualifying expenditures pursuant to the program, including their opera-  
6 tion and maintenance, as well as reasonable costs incurred by the  
7 department of environmental conservation for administering the program.

8 3. Revenues in the fund shall be kept separate and shall not be  
9 commingled with any other moneys in the custody of the comptroller or  
10 the commissioner of taxation and finance. All deposits of such revenues  
11 shall, if required by the comptroller, be secured by obligations of the  
12 United States or of the state having a market value equal at all times  
13 to the amount of such deposits and all banks and trust companies are  
14 authorized to give security for such deposits. Any such revenues in such  
15 fund may, upon the discretion of the comptroller, be invested in obli-  
16 gations in which the comptroller is authorized to invest pursuant to  
17 section ninety-eight-a of this article.

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

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

24 § 6. Severability. If any word, phrase, clause, sentence, paragraph,  
25 section, or part of this act shall be adjudged by any court of competent  
26 jurisdiction to be invalid, such judgment shall not affect, impair, or  
27 invalidate the remainder thereof, but shall be confined in its operation  
28 to the word, phrase, clause, sentence, paragraph, section, or part ther-  
29 eof directly involved in the controversy in which such judgment shall  
30 have been rendered.

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

34 § 8. This act shall take effect immediately.