

# STATE OF NEW YORK

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2023-2024 Regular Sessions

## IN SENATE

January 18, 2023

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Introduced by Sens. KRUEGER, ADDABBO, BRESLIN, BRISPORT, BROUK, CLEARE, FERNANDEZ, GIANARIS, GONZALEZ, GOUNARDES, HARCKHAM, HINCHEY, HOYLMAN-SIGAL, JACKSON, KAVANAGH, KENNEDY, LIU, MAY, MYRIE, PARKER, RAMOS, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO, STAVISKY, WEBB -- 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 -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- 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

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

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1 young people, who will experience greater impacts from climate change  
2 over their lifetimes, will be one of the state's greatest challenges  
3 over the next three decades. Meeting that challenge will require a  
4 shared commitment of purpose, huge investments in new or upgraded  
5 infrastructure, and new revenue sources to pay for those investments.

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

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

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

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

31 6. a. Payments by historical polluters into the climate change adap-  
32 tation cost recovery program would be used for new or upgraded infras-  
33 tructure needs such as coastal wetlands restoration, storm water drain-  
34 age system upgrades, energy efficient cooling systems in public and  
35 private buildings, including schools and public housing, support for  
36 programs addressing climate-driven public health challenges, and  
37 responses to extreme weather events, all of which are necessary to  
38 protect the public safety and welfare in the face of the growing impacts  
39 of climate change.

40 b. The cost to the state of climate adaptation investments through  
41 2050 will easily reach several hundred billion dollars, based on an  
42 array of estimates for projects impacting different regions across the  
43 state, far more than the \$75 billion being assessed on the fossil fuel  
44 industry. For example, upgrading New York City's sewer system to deal  
45 with regularly-occurring large rain events is estimated to cost around  
46 \$100 billion; a single project proposed by the Army Corps of Engineers  
47 to protect New York City from storm-driven flooding is estimated to cost  
48 \$52 billion; protecting Long Island from extreme weather is estimated to  
49 cost at least \$75-\$100 billion; a recent study from the State Comp-  
50 troller found that from 2018 to 2028, 55 percent of New York State  
51 localities' municipal spending outside of New York City was or will be  
52 related to climate change and that in fiscal year 2023-2024 alone, New  
53 York City planned to spend \$829 million on projects dedicated exclusive-  
54 ly to adaptation and resilience, with an additional \$1.3 billion on  
55 projects that are partially for these purposes. These are only a few

examples of the numerous projects that are now or will soon be needed across the state.

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

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

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

8. 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 weather-

1 ization and energy efficiency upgrades and retrofits in public and  
2 private buildings, including schools and public housing; upgrading parts  
3 of the electrical grid to increase stability and resilience, including  
4 supporting the creation of self-sufficient clean energy microgrids;  
5 addressing urban heat island effects through green spaces, urban fores-  
6 try, and other interventions; and responding to toxic algae blooms, loss  
7 of agricultural topsoil, and other climate-driven ecosystem threats to  
8 forests, farms, fisheries, and food systems.

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

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

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

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

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

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

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

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

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

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

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

50 14. "Greenhouse gas" shall have the same definition as in section  
51 75-0101 of this chapter.

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

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

4 17. "Petroleum products" shall have the same definition as in section  
5 1-103 of the energy law.

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

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

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

19 § 76-0103. The climate change adaptation cost recovery program.

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

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

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

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

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

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

31 e. To identify climate change adaptive infrastructure projects;

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

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

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

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

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

52 d. Where an entity owns a minority interest in another entity of ten  
53 percent or more, the calculation of the entity's applicable share of  
54 greenhouse gas emissions taken into account under this section shall  
55 include the applicable share of greenhouse gas emissions taken into  
56 account under this section by the entity in which the responsible party

1 holds a minority interest, multiplied by the percentage of the minority  
2 interest held.

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

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

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

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

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

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

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

52 ii. registering entities that are responsible parties under the  
53 program;

54 iii. issuing notices of cost recovery demand to responsible parties  
55 informing them of the cost recovery demand amount; how and where cost  
56 recovery demands can be paid; the potential consequences of nonpayment



1 and late payment; and information regarding their rights to contest an  
2 assessment;

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

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

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

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

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

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

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

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

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

46 f. provide opportunities for public engagement in all regions of the  
47 state.

48 6. The department, the department of taxation and finance, and the  
49 attorney general are hereby authorized to implement and enforce the  
50 provisions of this article.

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

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

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

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

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

16 § 76-0105. Labor and job standards and worker protection.

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

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

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

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

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

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

52 a. For any construction work, the payment of no less than prevailing  
53 wages for all employees of any contractors and subcontractors, consist-  
54 ent with sections two hundred twenty, two hundred twenty-a, two hundred  
55 twenty-b, two hundred twenty-i, two hundred twenty-three, and two  
56 hundred twenty-four-b of the labor law, and building services, consist-



ent 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) products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of products produced in the United States will increase the cost of

1 the overall project by more than twenty-five percent. If the head of the  
2 contracting public entity receives a request for a waiver under this  
3 subdivision, such person shall make available to the public on an  
4 informal basis a copy of the request and information available to such  
5 person concerning the request, and shall allow for informal public input  
6 on the request for at least fifteen days prior to making a finding based  
7 on the request. The head of the contracting public entity shall make the  
8 request and accompanying information available by electronic means,  
9 including on the official public website of the public entity. The  
10 provisions of subparagraph (i) of this paragraph shall not apply for  
11 products purchased prior to the effective date of this article.

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

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

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

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

55 b. The New York jobs plan shall require applicants, bidders, and  
56 responders to provide information on jobs that would result from being

1 awarded the bid or contract for such projects. At a minimum, this shall  
2 include the following information for nonsupervisory positions, broken  
3 down by classification:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 § 97-m. Climate change adaptation fund. 1. There is hereby established  
24 in the custody of the comptroller and the commissioner of taxation and  
25 finance a special revolving fund to be known as the "climate change  
26 adaptation fund" for the purpose of receiving moneys through cost recov-  
27 ery demands and issuing funds for qualifying expenditures pursuant to  
28 the climate change adaptation cost recovery program established in arti-  
29 cle seventy-six of the environmental conservation law.

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

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

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

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

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

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