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:

Section 1. Legislative findings and declaration. 1. Pursuant to article 75 of the environmental conservation law, as added by the Climate Leadership and Community Protection Act, the department of environmental conservation must promulgate regulations, by January 1, 2024, to ensure achievement of the statewide greenhouse gas emission limits, as defined and established therein. Among other requirements, the regulations promulgated by such department pursuant to section 75-0109 of the environmental conservation law must ensure that the aggregate emissions of greenhouse gases from greenhouse gas emission sources will not exceed the statewide greenhouse gas emissions limits established in section 75-0107 of the environmental conservation law; include legally enforceable emissions limits, performance standards, or measures or other requirements to control emissions from greenhouse gas emission sources; prioritize emissions and co-pollutant reductions in disadvantaged communities; do not result in a net increase in co-pollutant emissions or otherwise disproportionately burden disadvantaged communities; and reflect, in substantial part, the findings of the scoping plan prepared by the Climate Action Council pursuant to section 75-0103 of the environmental conservation law.

2. The scoping plan prepared by the Climate Action Council pursuant to section 75-0103 of the environmental conservation law recommends that the department of environmental conservation and the New York state 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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invest program to, among other purposes, ensure achievement of the statewide greenhouse gas limits, as defined and established in article 75 of the environmental conservation law.

3. An economy-wide cap and invest program, established through regulation by the department of environmental conservation and the New York state energy research and development authority, would meet the requirements of section 75-0109 of the environmental conservation law.

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

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

16. "Authority" means the New York state energy research and development authority.

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

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

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

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

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

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

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

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

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

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

a. articulates a mutual understanding of how participating jurisdictions will collaborate to facilitate reductions of carbon-dioxide equivalent emissions;

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

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

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

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

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

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

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

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

f. At the discretion of the department, require greenhouse gas emission sources to submit compliance items electronically and maintain and utilize electronic signatures for verification purposes.

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

5. No later than one year after the effective date of this section, the department shall set statewide greenhouse gas emissions limits for each compliance period for the purpose of determining interim progress in achieving the statewide greenhouse gas emissions limits set forth in section 75-0107 of this article. Such statewide greenhouse gas emissions limits shall be set by the department as interim greenhouse gas emissions reduction targets to inform decision-making regarding the need to reduce total allowable greenhouse gas emissions under the cap and invest program, and shall be reviewed annually. If, in the determination of the department, such statewide greenhouse gas emissions limits are set at a level which is insufficient to incentivize state greenhouse gas emissions reductions progress necessary to achieve the emissions reduction targets set forth in section 75-0107 of this article, the department shall immediately modify the statewide greenhouse gas emissions limits set pursuant to this subdivision to correct such insufficiency, beginning with the next compliance period.

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

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

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

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

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

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

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

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

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

b. The [~~council~~] working group shall also ensure that there are meaningful opportunities for public comment for all segments of the population that will be impacted by the criteria, including persons living in areas that may be identified as disadvantaged communities under the proposed criteria.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Such regulations shall:

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

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

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

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

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

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

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

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

(D) contractual commitment on the part of the facility to avoid leakage and continue to meet such economic development or economic maintenance requirements as determined to be appropriate by the department, in

consultation with the authority and the department of economic development.

c. Upon a satisfactory showing by an EITE to the department that such EITE will be significantly negatively impacted by compliance with the cap and invest program so as to result in leakage, the department and the authority may, in a manner not inconsistent with any other provision of this article or the scoping plan, provide for allowances to initially be issued to eligible EITEs at reduced cost. The amount of such reduced cost shall be that amount which is necessary to prevent leakage with respect to the facility, as determined by the department, in consultation with the authority and the department of economic development, as long as the EITE employs best available technology to reduce its emissions; provided, however, that the term "best available technology" will not include the use of alternate fuel combustion, or carbon capture and sequestration. For the first compliance period, any allowances issued to an EITE at reduced cost shall not represent more than the minimum amount of allowances necessary to authorize such EITE to emit an amount of carbon dioxide equivalent emissions equal to such EITE's average annual carbon dioxide equivalent emissions for the three years following the effective date of this section as determined by the department. Such amount shall be adjusted downward as necessary to account for the requirement that such EITE employ best available technology to reduce its emissions. In subsequent compliance periods, any allocation to EITEs of allowances at reduced cost shall decline in proportion to the reduction in total available allowances for a given compliance period in accordance with the cap for such compliance period. An EITE shall not be issued an allowance at reduced cost for an amount which is less than the amount paid by such EITE for a reduced cost allowance in the previous compliance period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 75-0123. Use of allowances.

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

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

3. Allowances shall not be tradable, sellable, exchangeable, or otherwise transferable.

§ 75-0125. Price of allowances.

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

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

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

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

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

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

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

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

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

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

b. The department and the authority may seek and obtain such information as may be necessary or convenient for the determination of the pricing of allowances from other state or federal agencies or the federally designated electric bulk system operator.

§ 75-0127. Linkage with other jurisdictions.

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

regional greenhouse gas initiative and the cap and invest program shall receive interjurisdictional credit for greenhouse gas emissions reductions and amounts paid for allowances acquired under the respective programs through a reduction in the price of an allowance equivalent to the amount paid for an allowance for an equivalent amount of emissions in another participating jurisdiction. In determining such reduction in price, the department shall evaluate the relative cost of allowances with respect to emissions covered by the regional greenhouse gas initiative as compared to the cap and invest program, and make such determination in a manner that results in an equal treatment of the cost of allowances relative to covered sources which are not subject to the regional greenhouse gas initiative. No source otherwise subject to the cap and invest program shall be excluded from the cap and invest program because it is subject to the regional greenhouse gas initiative.

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

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

(ii) The department has:

(A) at least six months prior to any such linkage, released a plan for any proposed linkage which includes (1) a detailed explanation of the department's determinations with respect to this paragraph and paragraphs a, b, and c of subdivision three of this section, and (2) processes for regular review and audit of such linkage;

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

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

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

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

3. Any linkage shall provide assurance that:

a. It does not compromise, limit, or impinge upon the state's progress, ability, or likelihood of meeting or exceeding the requirements of this article;

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

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

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

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

5. Any linkage shall require approval of the legislature.

§ 75-0129. Enforcement; penalties.

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

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

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

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

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

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

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

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

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

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

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

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

31. The authority shall annually issue to the governor and the legislature, and post on its website, beginning the next fiscal year succeeding the first allocation of funds from the climate and community protection fund, a report detailing the use of such funds, including information regarding the programs to which such funds are appropriated, recipients of funds pursuant to such programs, and outcomes of such programmatic spending.

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

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

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

§ 1885. Office of equity for energy and climate. 1. Definitions. As used in this section, the following terms shall have the following meanings:

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

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

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

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

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

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

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

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

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

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

(ii) Sub-applicants may include other non-profit organizations, academic institutions, local businesses, municipalities and other similarly-situated stakeholders.

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

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

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

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

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

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

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

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

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

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

6. Beginning one year after its establishment and annually thereafter, the office shall submit a report to the climate justice working group established pursuant to section 75-0111 of the environmental conservation law, the governor, and the legislature on the use of funds in the community directed climate solutions fund, including information regarding recipients of the solutions grants program.

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

§ 13. This act shall take effect immediately.