STATE OF NEW YORK

5360

2023-2024 Regular Sessions

IN SENATE

March 2, 2023

Introduced by Sen. HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, the public authorities law, the labor law and the state finance law, in relation to climate and community protection

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

Section 1. Section 75-0109 of the environmental conservation law is amended by adding a new subdivision 5 to read as follows:

5. All revenue, interest and penalties received under programs and regulations adopted pursuant to this section shall be deposited in the climate and community protection transfer account established by the New York state energy research and development authority pursuant to paragraph (c) of subdivision one of section eighteen hundred fifty-nine of the public authorities law.

§ 2. Subdivision 1 of section 1859 of the public authorities law is amended by adding a new paragraph (c) to read as follows:

(c) Notwithstanding the provisions of paragraph (a) of this subdivision, the authority shall establish a segregated climate and community protection transfer account for the deposit of all funds collected by the authority under programs and regulations adopted pursuant to section 75-0109 of the environmental conservation law. Within thirty days of receipt of funds in the climate and community protection transfer account, such funds shall be deposited in the climate and community protection fund established pursuant to section ninety-two-kk of the state finance law.

§ 3. The public authorities law is amended by adding a new section 1872-b to read as follows:

§ 1872-b. Gap funding for green residential buildings. 1. The authority shall establish and administer a program to provide assistance for residences to meet green residential building standards as defined in

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

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section eighteen hundred seventy-two of this title for circumstances and applications in which other assistance is lacking or inadequate to meet identified needs.

2. Such program shall address existing issues in broader achievement of green residential building standards, and in so doing, shall consider, at minimum:

(a) appropriateness of non-energy measures such as electrification readiness;

(b) local supply chain development;

(c) increasing visibility and outreach of authority programs;

(d) whole-home retrofitting options; and

(e) pilot programs for low-income residents.

3. The authority shall implement strategies to mitigate adverse economic impacts of the program on tenants, including but not limited to residents in rent-regulated housing or recipients of housing subsidies.

§ 4. The public authorities law is amended by adding two new sections 1885 and 1886 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, a municipality.

(ii) Sub-applicants may include other non-profit organizations, academic institutions, business entities, municipalities and other stakeholders.

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

(i) Grants shall only be made for zero-emissions projects that reduce greenhouse gas emissions, urban heat island effects, or local pollution, or that support community ownership and governance of energy infrastructure.

(ii) At least seventy-five percent of funding must support projects located within disadvantaged communities.

(iii) Up to twenty-five percent of funding may support projects located outside disadvantaged communities, provided that such funding provides a benefit to disadvantaged communities, including by reducing pollution in disadvantaged communities, reducing energy costs in disadvantaged communities, or increasing disadvantaged community ownership or governance of energy infrastructure.

(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 seven hundred ninety 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 on the use of funds in the community directed climate solutions fund and recipients of the solutions grants program.

§ 1886. Climate rebates. 1. The authority shall develop a rebate program to reduce potential increased costs to consumers resulting from regulatory changes undertaken pursuant to article seventy-five of the environmental conservation law.

2. Program design shall be guided by the findings and recommendations of the final scoping plan prepared pursuant to section 75-0103 of the environmental conservation law and the study conducted pursuant to subdivision three of this section.

3. The authority, in consultation with the climate justice working group established pursuant to section 75-0111 of the environmental conservation law, shall conduct a study to determine how to best structure and distribute rebates pursuant to this section in an equitable manner. Such study shall be completed by the first of February two thousand twenty-four.

4. (a) The authority shall establish a variety of rebate types to meet the varied needs of the people of the state, which may include tax cred-

its, transit vouchers, direct payments, utility assistance, or other financial benefits as are reasonable and practicable.

(b) Individuals receiving means-tested government assistance shall receive rebates through mechanisms that will not constitute income for purposes of any such means-tested government assistance programs.

5. An individual eligible for a rebate pursuant to the provisions of this section may opt out of receiving such rebate.

6. The authority shall implement the rebate program in a manner that limits the administrative effort required of recipients of rebates.

7. The authority is authorized and directed to promulgate rules and regulations to effect the provisions of this section, and shall hold no fewer than three public hearings in connection therewith.

§ 5. The labor law is amended by adding a new article 21-B to read as follows:

ARTICLE 21-B
LABOR STANDARDS FOR CLIMATE FUNDING

Section 790. Labor standards for climate funding.

§ 790. Labor standards for climate funding. 1. Projects funded pursuant to paragraphs (b), (c), and subparagraph (ii) of paragraph (d) of subdivision five of section ninety-two-kk of the state finance law shall require for any procurement for the manufacturing or retrofitting as part of such project that the components and parts 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 and that final assembly of any article pursuant to such project shall occur in the United States, its territories or possessions.

2. The commissioner, in consultation with the New York state energy research and development authority and the office of general services, may waive the contracting requirements set forth in subdivision one of this section if the commissioner determines that the requirements would not be in the public interest, would result in unreasonable costs, or that obtaining such components and parts in the United States would increase the cost of a project by an unreasonable amount, or such components and parts cannot be produced, made, or assembled in the United States in sufficient and reasonably available quantities or of satisfactory quality. Such determination shall be made on an annual basis no later than December thirty-first, after providing notice and an opportunity for public comment, and be made publicly available, in writing, on the department's website with a detailed explanation of the findings leading to such determination. If the commissioner has issued determinations for three consecutive years that no such waiver is warranted pursuant to this paragraph, then the commissioner shall no longer be required to provide the annual determinations required by this paragraph.

3. (a) Nothing in this section shall alter the rights or benefits, and privileges, including, but not limited to terms and conditions of employment, civil service status, and collective bargaining unit membership, of any current employees of any entity contracted to provide services for a project funded pursuant to paragraphs (b), (c), and subparagraph (ii) of paragraph (d) of subdivision five of section ninety-two-kk of the state finance law, or services attendant thereto.

(b) Nothing in this section shall result in: (i) the discharge, displacement, or loss of position, including partial displacement such as a reduction in the hours of non-overtime work, wages, or employment

benefits; (ii) the impairment of existing collective bargaining agreements; (iii) the transfer of existing duties and functions; or (iv) the transfer of future duties and functions, of any currently employed worker impacted by the proposed purchase or lease who agrees to be retrained.

(c) Prior to the beginning of the procurement process for a project funded pursuant to paragraphs (b), (c), and subparagraph (ii) of paragraph (d) of subdivision five of section ninety-two-kk of the state finance law an employer whose workers provide services for such project, shall create and implement a workforce development report that: (i) estimates the number of current positions that would be eliminated or substantially changed as a result of the project, and the number of positions expected to be created by such employer as a result of the project; (ii) identifies gaps in skills of its current workforce that are needed to provide services for such project; (iii) includes a comprehensive plan to transition, train, or retrain employees that are impacted by the project; and (iv) contains an estimated budget to transition, train, or retrain employees that are impacted by the project.

(d) Nothing in this section shall: (i) limit rights of employees pursuant to a collective bargaining agreement, or (ii) alter the existing representational relationships among collective bargaining representatives or the bargaining relationships between the employer and any collective bargaining representative. Employees of public entities serving in positions in newly created titles shall be assigned to the appropriate bargaining unit.

(e) Prior to beginning the procurement process for a project funded pursuant to paragraphs (b), (c), and subparagraph (ii) of paragraph (d) of subdivision five of section ninety-two-kk of the state finance law, an employer of workers covered by this section shall inform its employees' collective bargaining representative of any potential impact on its members or unit, including positions that may be affected, altered, or eliminated as a result of the project.

4. Any work related to a project funded pursuant to paragraphs (b), (c), and subparagraph (ii) of paragraph (d) of subdivision five of section ninety-two-kk of the state finance law shall be considered public work and shall be subject to prevailing wage requirements in accordance with section two hundred twenty and two hundred twenty-b of this chapter.

§ 6. The state finance law is amended by adding a new section 92-kk to read as follows:

§ 92-kk. Climate and community protection fund. 1. There is hereby established in the joint custody of the comptroller and the commissioner of taxation and finance a special fund to be known as the "climate and community protection fund".

2. (a) The comptroller shall establish the following separate and distinct accounts within the climate and community protection fund:

(i) the climate jobs and infrastructure account;

(ii) the community transition account;

(iii) the worker transition account; and

(iv) the energy affordability account.

(b) All monies received by the comptroller for deposit in the climate and community protection fund shall be deposited to the credit of such accounts as follows: forty-one percent to the climate jobs and infrastructure account, twenty percent to the community transition account, six percent to the worker transition account and thirty-three percent to the energy affordability account. No monies shall be

expended from any such account except pursuant to appropriation by the legislature.

3. Such fund shall consist of all moneys transferred pursuant to paragraph (c) of subdivision one of section eighteen hundred fifty-nine of the public authorities law and all other moneys credited or transferred thereto from any other fund or source pursuant to law. All such moneys shall be initially deposited into the climate and community protection fund, for application as provided in subdivision five of this section.

4. Moneys in the climate and community protection fund shall be kept separate and shall not be commingled with any other moneys in the custody of the comptroller. All deposits of such revenues shall, if required by the comptroller, be secured by obligations of the United States or of the state having a market value equal at all times to the amount of such deposits and all banks and trust companies are authorized to give security for such deposits. Any such moneys in such fund may, upon the discretion of the comptroller, be invested in obligations in which the comptroller is authorized to invest pursuant to section ninety-eight-a of this article.

5. (a) All moneys heretofore and hereafter deposited in the climate and community protection transfer account shall be transferred by the comptroller only to the climate jobs and infrastructure account, community transition account, worker transition account, and energy affordability account. Such transfers shall be made at the request of the director of the budget.

(b) Moneys of the climate jobs and infrastructure account shall be available, pursuant to appropriation and upon certificate of approval of availability only for projects under title nine-A of article eight of the public authorities law, projects under title fifteen of article fifty-four of the environmental conservation law, the New York state energy research and development authority NY-Sun program, the New York state energy research and development authority P-12 schools: clean green schools initiative, offshore wind projects, transit authorities, the New York state energy research and development authority truck voucher incentive program, the New York state energy research and development authority regional clean energy hubs program, the New York state energy research and development authority renewable capital programs, methane leakage detection projects, thermal energy network pilot programs, cost associate with section thirty-six hundred thirty-eight of the education law, the New York state energy research and development authority affordable multifamily energy efficiency program, the New York state energy research and development authority New York truck voucher incentive program, the agricultural environmental management program established in article eleven-A of the agriculture and markets law, the New York city housing preservation and development-New York state energy research and development authority retrofit electrification pilot program, zero-emission state light-duty vehicle fleet procurement, zero-emission medium- and heavy-duty vehicle rebates for municipalities, zero-emission light-duty vehicle rebates for municipalities, the department of environmental conservation's urban and community forestry grant program, the forest conservation easement land trusts grant program, New York state energy research and development authority clean heat program rebates and incentives, programs related to the New Efficiency: New York report, and other programs administered by the department of environmental conservation or the New York state energy research and development authority which, in the determination of the department

of environmental conservation or the New York state energy research and development authority, as applicable, meet the following requirements:

(i) the project will result in direct reductions in statewide greenhouse gas emissions and/or co-pollutants in compliance with provisions of subdivisions two and three of section 75-0109 of the environmental conservation law;

(ii) the project will not utilize any combustion fuels or fossil fuels in operation; and

(iii) the project will create jobs or support economic development subject to the standards set forth in section seven hundred ninety of the labor law.

(c) Moneys from the community transition account shall be available, pursuant to appropriation and upon certificate of approval of availability by the director of the budget, only for department of environmental conservation environmental justice grants, New York state energy research and development authority energy equity collaborative, and the community directed climate solutions grants program as established pursuant to section eighteen hundred eighty-five of the public authorities law.

(d) Moneys from the worker transition account shall be available, pursuant to appropriation, and upon certificate of approval of availability by the director of the budget, only for:

(i) Grants, income support, or programs administered by a labor union or the department of labor which provide direct support for workers adversely affected or displaced by fossil fuel facility closures, including support for such workers in starting new business enterprises.

(ii) Grants, tax replacement, payment in lieu of taxes, or programmatic support for local governments and counties which have hosted fossil fuel or energy infrastructure significantly impacted by energy regulatory changes, including:

(A) the empire state development corporation's electric generation facility cessation mitigation program;

(B) the New York state energy research and development authority's just transition site reuse planning program; and

(C) state assistance for brownfield opportunity areas pursuant to section nine hundred seventy-r of the general municipal law.

(e) Moneys from the energy affordability account shall be available, pursuant to appropriation and upon certificate of approval of availability by the director of the budget, for:

(i) programs that prevent increases in energy burden due to energy regulatory changes;

(ii) reducing energy use and utility costs for low- and moderate-income households, small businesses, and not-for-profits;

(iii) affordability rebate payments to help reduce potential increased costs of various goods and services that may result from the implementation of regulations promulgated pursuant to section 75-0109 of the environmental conservation law; and

(iv) assistance pursuant to section eighteen hundred seventy-two-b of the public authorities law.

(f) Agencies or authorities distributing moneys of the climate and community protection fund shall be entitled to recover from such moneys their own necessary and documented costs incurred in administering such distributions, provided, however, sums so recovered shall not exceed five percent of such moneys distributed.

6. All payments of moneys from the fund shall be subject to the provisions of section 75-0117 of the environmental conservation law,

provided that, notwithstanding the provisions thereof, disadvantaged communities shall receive no less than forty percent of such payments. Payments made from the climate jobs and infrastructure account pursuant to paragraph (b) of subdivision five of this section, the community transition account pursuant to paragraph (c) of subdivision five of this section, and payments pursuant to subparagraph (ii) of paragraph (d) of subdivision five of this section shall be subject to the requirements of section seven hundred ninety of the labor law, as applicable.

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

8. Notwithstanding any other law to the contrary and in accordance with section four of this chapter, the comptroller is hereby authorized at the direction of the director of the division of the budget to transfer moneys from the general fund to the climate and community protection fund for the purpose of maintaining the solvency of the climate and community protection fund. If, in any fiscal year, moneys in the climate and community protection fund are deemed insufficient by the director of the division of the budget to meet actual and anticipated disbursements from enacted appropriations or reappropriations made pursuant to this section, the comptroller shall at the direction of the director of the division of the budget, transfer from the general fund to the climate and community protection fund moneys sufficient to meet such disbursements. Such transfers shall be made only upon certification of need by the director of the division of the budget, with copies of such certification filed with the chairperson of the senate finance committee, the chairperson of the assembly ways and means committee and the state comptroller.

§ 7. This act shall take effect immediately.