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Introduced by Sens. PARKER, BAILEY, BRISPORT, BROUK, COMRIE, GIANARIS, GOUNARDES, HARCKHAM, HOYLMAN-SIGAL, JACKSON, KAVANAGH, KRUEGER, LIU, MAY, MYRIE, PERSAUD, RAMOS, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO, STAVISKY -- 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 executive law, the labor law and the tax law, in relation to enacting the climate and community investment act

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "climate and community investment act".

3 § 2. Article 19 of the environmental conservation law is amended by
4 adding a new title 13 to read as follows:

TITLE 13

VALUE OF POLLUTION AND MITIGATION PROGRAM

Section 19-1301. Definitions.

8 19-1303. Methodology and valuation of pollution price index.

9 19-1305. Implementation of fees.

10 19-1307. Allocation of revenues.

11 19-1309. Inventory.

12 19-1311. Transportation pollution.

13 19-1313. Reporting.

§ 19-1301. Definitions.

15 For the purposes of this title, the following terms shall have the
16 following meanings:

17 1. "The Act" shall have the same meaning as in subdivision eight of
18 section 19-0107 of this article.

19 2. "Comptroller" means the New York state comptroller.

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

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1 3. "Covered sources" means those sources of regulated air contaminants
2 required to have a permit under Title V of the Act (42 U.S.C. section
3 7661 et seq).

4 4. "Cumulative burdens" mean the adverse health impacts that accrue to
5 individuals and population groups as a result of exposure to pollution
6 over time, and as a result of exposure to multiple forms of pollution
7 and other risk factors, including poverty, violence, and substance
8 abuse.

9 5. "Disadvantaged communities" shall have the same meaning as in
10 subdivision five of section 75-0101 of this chapter.

11 6. "Downstate region" means the counties of Richmond, Kings, Queens,
12 New York, Bronx, Westchester, Nassau and Suffolk.

13 7. "Emissions hotspot" means a location where emissions of regulated
14 air contaminants from specific sources may expose individuals and popu-
15 lation groups to elevated risks of adverse health effects and may
16 contribute to the cumulative health risks of emissions from other sourc-
17 es in the area.

18 8. "Emissions leakage" means an increase in emissions outside of the
19 state, as a result of, or in correlation with, the implementation of
20 measures within the state to limit such emissions.

21 9. "Greenhouse gas" means carbon dioxide, methane, nitrous oxide,
22 hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other
23 substance emitted into the air that may be reasonably anticipated to
24 cause or contribute to anthropogenic climate change, with the exception
25 of agricultural emissions from livestock.

26 10. "Regulated air contaminant" shall have the same meaning as in
27 subdivision twenty-two of section 19-0107 of this article.

28 11. "Social cost of pollution" means the cost to New York residents of
29 emitting one ton, or another unit of measurement deemed appropriate by
30 the department, of a given regulated air contaminant.

31 12. "Upstate region" means all New York state counties other than
32 Nassau, Suffolk, Richmond, Kings, Queens, New York, Bronx and Westches-
33 ter.

34 § 19-1303. Methodology and valuation of pollution price index.

35 1. Not later than one year after the effective date of this title, the
36 department shall publish an index that lists the social cost of
37 pollution for all regulated air contaminants, or appropriate sub-group-
38 ing thereof. At the same time, the department shall publish a methodol-
39 ogy for determining the social cost of pollution for each regulated air
40 contaminant, or appropriate sub-grouping thereof. In determining the
41 social cost of pollution for a given regulated air contaminant, the
42 department shall consider, at a minimum:

43 (a) public health impacts, including but not limited to: loss of
44 life, loss of welfare, and employment impacts;

45 (b) impacts to public and private property, including agricultural
46 property;

47 (c) impacts to ecosystems and the ability of ecosystems to provide
48 ecosystem services; and

49 (d) the full life-cycle of impacts.

50 2. If the department demonstrates that it is not administratively
51 feasible in the time allotted in subdivision one of this section to
52 complete a methodology for each individual regulated air contaminant, or
53 appropriate sub-grouping thereof, then the department may delay the
54 completion of methodologies for some portion of regulated air contam-
55 inants for future rule-makings, provided that:

1 (a) in the first publication of such methodologies, the department
2 completes a methodology, pursuant to subdivision one of this section,
3 for each of the following pollutants:

4 (i) oxides of nitrogen;

5 (ii) volatile organic compounds;

6 (iii) sulfur dioxide;

7 (iv) particulate matter;

8 (v) carbon monoxide; and

9 (vi) lead;

10 (b) in the first publication of such methodologies, the department
11 completes a methodology, pursuant to subdivision one of this section,
12 for each of the air contaminants listed under section 112 of the Act (42
13 USC section 7412) that the department finds to be most damaging to
14 public health in New York, of all air contaminants listed under such
15 section;

16 (c) the department demonstrates and publishes, along with the publica-
17 tion of methodologies described under subdivision one of this section, a
18 description of why it is not administratively feasible in the time
19 allotted in subdivision one of this section to complete a methodology,
20 for each individual regulated air contaminant, or appropriate sub-group-
21 ing thereof; and

22 (d) the department subsequently publishes at least five additional
23 methodologies per year, until that date when each regulated air contam-
24 inant, or appropriate sub-grouping thereof, has a complete methodology
25 ascribed to it.

26 § 19-1305. Implementation of fees.

27 1. Not later than two years after the effective date of this title,
28 the department shall institute a system of compliance fees that reflect
29 the index established under section 19-1303 of this title. All covered
30 sources shall be required to pay the fee for each regulated air contam-
31 inant emitted.

32 2. Notwithstanding any inconsistent provisions of the state adminis-
33 trative procedure act, such fee shall be established as a rule by publi-
34 cation in the environmental notice bulletin no later than thirty days
35 after the budget bills making appropriations for the support of govern-
36 ment are enacted or July first, whichever is later, of the year such fee
37 will be effective.

38 3. Bills issued for the fee shall be based on actual emissions for the
39 prior calendar year, as demonstrated to the department's satisfaction,
40 or in the absence of such demonstration, on permitted emissions, or,
41 where there is no applicable permit, on potential to emit. Persons
42 required to submit an emissions statement to the department shall use
43 such statement to demonstrate actual emissions under this section.

44 4. Any person required to pay fees imposed pursuant to this section
45 may elect to base such fees on the level of permitted emissions set
46 forth in a permit, certificate or approval issued pursuant to section
47 19-0311 of this article.

48 5. If a city or county is delegated the department to administer the
49 operating permit program established pursuant to section 19-0311 of this
50 article, it may collect the fees established pursuant to this section
51 and no additional liability for fees under this section shall accrue for
52 any such source.

53 § 19-1307. Allocation of revenues.

54 1. The comptroller and department shall establish a trust fund to be
55 known as the "value of pollution and mitigation program fund", consist-

1 ing of such amounts as may be appropriated or credited to such fund as
2 provided in this section.

3 2. (a) Funds received under this title shall be allocated according-
4 ly:

5 (i) forty percent of funds shall be invested in a manner which will
6 benefit disadvantaged communities, consistent with the purpose of this
7 title;

8 (ii) twenty percent of funds shall go to expanding, operating and
9 maintaining the New York state Title V emissions inventory within the
10 department;

11 (iii) twenty percent of funds shall go to expanding, operating and
12 maintaining air quality monitoring, including ambient air quality moni-
13 toring and point source monitoring within the department; and

14 (iv) twenty percent of funds shall be allocated at the discretion of
15 the department, based on the needs of the department.

16 No funds shall be allocated to fund police, prisons or related infras-
17 tructure.

18 (b) The value of pollution and mitigation program fund shall be admin-
19 istered by the department.

20 § 19-1309. Inventory.

21 Not later than eighteen months after the effective date of this title,
22 the department shall update and publish the inventory of emissions from
23 Title V sources to:

24 1. assess the extent to which given regulated air contaminants, espe-
25 cially air contaminants that have highly adverse health impacts, are
26 co-emitted with greenhouse gas emissions;

27 2. assess the extent to which regulated air contaminants that have
28 especially adverse health impacts are likely to be reduced over time as
29 a result of:

30 (a) the fee established in section three thousand forty of the tax
31 law; and

32 (b) the investment programs established in article seventy-seven of
33 this chapter;

34 3. identify and analyze emissions hotspots and cumulative burdens,
35 pertaining to regulated air contaminants in order to prioritize emis-
36 sions reductions in these areas;

37 4. assess emissions and pollution-related health impacts associated
38 with the transportation sector; and

39 5. make the Title V emissions inventory more accessible to the public
40 including, but not limited to, taking action to release the related
41 data, analysis and assumptions of agency websites.

42 § 19-1311. Transportation pollution.

43 1. Not later than one year after the effective date of this title, the
44 commissioner shall prepare and approve a scoping plan for accelerating
45 the reduction of regulated air contaminants from mobile sources.

46 2. The draft scoping plan shall be developed in consultation with
47 other stakeholders.

48 (a) The department shall provide meaningful opportunities for public
49 comment from all persons who will be impacted by the plan, including
50 persons living in disadvantaged communities.

51 (b) On or before one year after the effective date of this title, the
52 department shall submit the final scoping plan to the governor, the
53 speaker of the assembly and the temporary president of the senate and
54 post such plan on its website.

55 3. The measures and actions considered in such scoping plan shall at a
56 minimum include:

1 (a) performance-based standards for mobile sources of regulated air
2 contaminants;

3 (b) market-based mechanisms to reduce emissions from mobile sources,
4 including:

5 (i) the imposition of fees per unit of regulated air contaminant;

6 (ii) a zoned surcharge system on trucking and ports; and

7 (iii) congestion pricing;

8 (c) the creation of low emission zones and the policies to promote
9 zero-emission and low-emission transportation options, including the
10 electrification of port facilities and freight transportation; and

11 (d) land-use and transportation planning measures aimed at reducing
12 emissions from mobile sources.

13 4. No later than three years after the effective date of this title,
14 the department, after public workshops and consultation with represen-
15 tatives of regulated entities, and other stakeholders, and not less than
16 two public hearings, shall promulgate rules and regulations to acceler-
17 ate the reduction of regulated air contaminants from mobile sources.

18 (a) The regulations promulgated by the department pursuant to this
19 subdivision may include legally enforceable emissions limits, perform-
20 ance standards, market-based mechanisms or measures or other require-
21 ments to control regulated air contaminant emissions from mobile sourc-
22 es. The department is hereby authorized to establish any such policies
23 pursuant to this section.

24 (b) In promulgating these regulations, the department shall:

25 (i) design and implement all regulations in a manner that seeks to be
26 equitable, to minimize costs and to maximize the total benefits to the
27 state;

28 (ii) ensure that emissions reductions achieved are real, quantifiable,
29 verifiable, and enforceable by the department;

30 (iii) ensure that activities undertaken to comply with the regulations
31 do not disproportionately burden disadvantaged communities;

32 (iv) prioritize measures to maximize net reductions of emissions in
33 disadvantaged communities;

34 (v) prioritize measures that encourage early action to reduce emis-
35 sions; and

36 (vi) minimize emissions leakage.

37 5. If any of the policies implemented by the department pursuant to
38 this section generate state revenue, the department shall ensure that,
39 at a minimum, forty percent of any funds collected are invested in a
40 manner which will benefit disadvantaged communities, consistent with the
41 purposes of this title.

42 § 19-1313. Reporting.

43 1. Not later than three years following the effective date of this
44 title, and every two years thereafter, the department shall produce a
45 report on the implementation of the policies established under this
46 title. Such report shall include, but not be limited to:

47 (a) the effectiveness of the fees established in section 19-1305 of
48 this title to reduce regulated air contaminants statewide and within
49 geographic subdivisions of the state;

50 (b) the effectiveness of the policies established under section
51 19-1311 of this title to reduce regulated air contaminants from mobile
52 sources statewide and within geographic subdivisions of the state;

53 (c) an overview of social benefits from the regulations or other meas-
54 ures established pursuant to this title, including reductions in regu-
55 lated air contaminants, and other benefits to the economy, environment,
56 and public health, including but not limited to the health of women,

1 youth and children and a detailed analysis of the benefits to disadvan-
2 tagged communities;

3 (d) an overview of compliance costs for regulated entities;

4 (e) an overview of administrative costs for the department and other
5 state agencies;

6 (f) whether the fees established in this title are equitable, minimize
7 costs and maximize the total benefits to the state;

8 (g) recommendations as to changes that should be made to any policy
9 promulgated pursuant to this title, including the methodology estab-
10 lished under section 19-1303 of this title, and the implementation of
11 the fees established under section 19-1305 of this title; and

12 (h) recommendations for future regulatory actions pertaining to reduc-
13 ing regulated air contaminants from mobile and stationary sources.

14 2. Before finalizing the report described in subdivision one of this
15 section, the department shall ensure that there are meaningful opportu-
16 nities for public participation, including by:

17 (a) allowing at least one hundred twenty days for the submission of
18 public comment, following the date of the publication of a draft report;
19 and

20 (b) holding at least four regional public hearings, including two
21 meetings in the upstate region and two meetings in the downstate region,
22 with emphasis on maximizing participation and accessibility for members
23 of disadvantaged communities.

24 3. The final report shall be submitted to the governor, the temporary
25 president of the senate, the speaker of the assembly, the minority lead-
26 er of the senate and the minority leader of the assembly, and shall be
27 posted on the website of the department.

28 § 3. The executive law is amended by adding a new section 184 to read
29 as follows:

30 § 184. Diversion of funds dedicated to climate and community invest-
31 ment to the general fund of the state or to any other purpose, is
32 prohibited. 1. For the purposes of this section, the term "climate and
33 community investment" shall mean any public benefit corporation consti-
34 tuting a climate and community investment authority which provides or
35 contracts for the provision of climate and community investment, or a
36 subsidiary thereof, or any county or city which provides or contracts
37 for the provision of, pursuant to article seventy-seven of the environ-
38 mental conservation law.

39 2. The director of the budget shall be prohibited from diverting
40 revenues derived from fees paid by the public into any fund created by
41 law including but not limited to article forty-two of the tax law, arti-
42 cle forty-three of the tax law, and article eight-B of the labor law for
43 the purpose of funding climate and community investment into the general
44 fund of the state or into any other fund maintained for the support of
45 another governmental purpose. No diversion of funds can occur contrary
46 to this section by an administrative act of the director of the budget
47 or any other person in the executive branch.

48 3. If any diversion of funds occurs by passage of legislation during a
49 regular or extraordinary session of the legislature, the director of the
50 budget shall create and include with the budget or legislation diverting
51 funds, a diversion impact statement which shall include the following
52 information:

53 (a) the amount of the diversion from dedicated climate and community
54 investment funds;

55 (b) the amount diverted from each fund;

1 (c) the cumulative amount of diversion from dedicated climate and
2 community investment funds during the preceding five years;

3 (d) the date or dates when the diversion is to occur; and

4 (e) a detailed estimate of the impact of diversion from dedicated
5 climate and community investment, including any impact on climate
6 infrastructure development, just transition, worker and community assur-
7 ance, energy rebates, maintenance, security, and the current capital
8 program.

9 4. The state comptroller shall report on the receipt of all funds
10 collected pursuant to the climate and community investment act in exist-
11 ing cash basis reports, and the spending of any fund collected or spent
12 pursuant to such act by the department in its existing transparency
13 report as well as if consideration is given to moving such funds on or
14 off budget.

15 § 4. The labor law is amended by adding a new article 8-B to read as
16 follows:

17 ARTICLE 8-B

18 RESPONSIBLE CONTRACTING, LABOR AND JOB STANDARDS AND
19 WORKER PROTECTION

20 Section 228. Definitions.

21 229. Labor and project performance standards.

22 229-a. Best value requirements for the solicitation, evaluation
23 and award of renewable energy projects, energy effi-
24 ciency projects and other construction projects under-
25 taken with support from the department of environmental
26 conservation or receiving state assistance.

27 229-b. Best value requirements for all work other than
28 construction.

29 § 228. Definitions. For the purposes of this article, the following
30 terms shall have the following meanings:

31 1. "The Act" shall mean the "climate and community investment act".

32 2. "Climate and community investment" shall mean any public benefit
33 corporation constituting a climate and community investment authority
34 which provides or contracts for the provision of climate and community
35 investment, or a subsidiary thereof, or any county or city which
36 provides or contracts for the provision of, pursuant to article seven-
37 ty-seven of the environmental conservation law.

38 3. "Labor organization" means any organization which exists and is
39 constituted for the purpose, in whole or in part, of collective bargain-
40 ing, or of dealing with employers concerning grievances, terms or condi-
41 tions of employment, or of other mutual aid or protection and which is
42 not a company union. This includes, but is not limited to bona fide
43 labor organizations that are certified or recognized as the organization
44 of jurisdiction representing the workers involved and/or bona fide
45 building and construction trades councils and/or district councils and
46 state and local labor federations comprised of local unions certified or
47 recognized as the representative of the workers.

48 4. "Neutrality policy/agreement" shall mean a policy or agreement
49 wherein an employer remains neutral in a union organizing drive and does
50 not actively oppose union efforts to gain majority support of the rele-
51 vant employees of the employer.

52 5. "Project labor agreement" or "PLA" shall mean a pre-hire collective
53 bargaining agreement between a construction industry employer and a bona
54 fide building and construction trade labor organization representing all
55 construction trades that will perform work on a project and that

1 provides only contractors and subcontractors who agree to comply with
2 the PLA shall be eligible to perform work on the project.

3 § 229. Labor and project performance standards. The following require-
4 ments shall apply to any projects assisted under the Act:

5 1. Construction - project labor agreement. A project labor agreement
6 for purposes of this section is a pre-hire collective bargaining agree-
7 ment with labor organizations in the construction industry that estab-
8 lishes the terms and conditions of employment for a specific
9 construction project and is an agreement described in 29 U.S.C. 158(F).

10 2. Execution of project labor agreement. The party which receives
11 assistance from the state for a renewable energy project, energy effi-
12 ciency project, other construction project undertaken with support from
13 the department of environmental conservation, or receiving state assist-
14 ance shall take the necessary contractual actions to ensure that a
15 project labor agreement is executed between the general contractor or
16 other entity responsible for construction of the assisted project and
17 bona fide building and construction trade councils that have the capa-
18 bility to supply skilled craft personnel in all crafts needed for the
19 project in the area where the project is located.

20 3. Terms of project labor agreement. A project labor agreement
21 executed for purposes of this section shall include the necessary
22 provisions to:

23 (a) bind all contractors and subcontractors on the assisted project to
24 the project labor agreement through the inclusion of appropriate spec-
25 ifications in all relevant solicitation provisions and contract docu-
26 ments;

27 (b) allow all contractors and subcontractors to compete for contracts
28 and subcontracts on the project without regard to whether they are
29 otherwise parties to collective bargaining agreements;

30 (c) establish uniform terms and conditions of employment for all
31 construction craft labor employed on the projects;

32 (d) contain guarantees against strikes, lockouts, and similar job
33 disruptions;

34 (e) set forth effective, prompt, and mutually binding procedures for
35 resolving labor disputes arising during the project labor agreement; and

36 (f) include any other provisions as negotiated by the parties needed
37 to promote successful delivery of the assisted project.

38 4. Penalties and sanctions. The failure of a party receiving assist-
39 ance under the Act to ensure compliance with the requirements of this
40 section shall constitute a material breach of the agreement under which
41 assistance is provided and shall permit the state to impose applicable
42 penalties and sanctions for conduct constituting non-compliance, includ-
43 ing but not limited to revocation of all or part of the assistance
44 provided by the state.

45 5. Responsible contractor requirements. The party which receives
46 assistance from the state for a renewable energy project, energy effi-
47 ciency project, or other construction project undertaken with support
48 from the department of environmental conservation shall take the neces-
49 sary contractual actions to ensure each contractor and subcontractor
50 involved in the construction of the assisted project completes a sworn
51 certification that the firm:

52 (a) has the necessary resources to perform the portion of the assisted
53 project to which they are assigned, including the necessary technical,
54 financial, and personnel resources;

1 (b) has all required contractor, specialty contractor or trade
2 licenses, certifications or certificates required of any business entity
3 or individual by applicable state or local law;

4 (c) participates in an apprenticeship training program for each trade
5 in which it employs craft workers that is registered with and approved
6 by the U.S. department of labor or a state apprenticeship agency and
7 shall provide proof within seven days of a request from the department
8 of environmental conservation or any authority or agency that its
9 program is actively training employees, has functioning training facili-
10 ties, and is regularly graduating apprentices to journey person status,
11 and such apprentices are placed in employment, hereinafter referred to
12 as "class A apprenticeship programs";

13 (d) in the past three years:

14 (i) has not been debarred by any government agency;

15 (ii) has not defaulted on any project;

16 (iii) has not had any license, certification or other credential
17 relating to the business revoked or suspended;

18 (iv) has not been found in violation of any law applicable to its
19 business that resulted in the payment of a fine, back pay damages, or
20 any other type of penalty in the amount of ten thousand dollars or more;
21 will pay craft personnel employed on the project, at a minimum, the
22 applicable wage and fringe benefit rates for the classification in which
23 the worker is employed in accordance with applicable required rates for
24 the project; and

25 (e) will not misclassify craft labor employees as independent contrac-
26 tors.

27 6. Contractor responsibility certifications. Contractor responsibility
28 certifications executed in accordance with this article:

29 (a) shall be submitted to the department of environmental conservation
30 and the department at least thirty days prior to commencement of
31 construction of a state-assisted project; and

32 (b) shall constitute public documents which shall be made available
33 without redaction on a publicly available website within seven days of
34 being submitted to the department of environmental conservation and the
35 department.

36 7. Fraudulent certifications. A responsible contractor certification
37 containing false, misleading, or inaccurate information shall, after
38 notice and opportunity to be heard, subject the firm to a three-year
39 debarment from future public and publicly assisted projects and other
40 applicable penalties and sanctions.

41 8. Penalties and sanctions. The failure of a party receiving assist-
42 ance under the Act to ensure compliance with the requirements of this
43 article shall constitute a material breach of the agreement under which
44 assistance is provided and shall permit the state to impose applicable
45 penalties and sanctions for conduct constituting non-compliance, includ-
46 ing but not limited to revocation of part or all of the assistance
47 provided by the state.

48 9. Prevailing wage rates. Contractors and subcontractors on assisted
49 projects shall pay construction craft employees on the project, at a
50 minimum, the applicable prevailing wage and fringe benefit rates for the
51 appropriate classification in which the worker is employed. Firms
52 engaged in the construction of an assisted project shall be subject to
53 all reporting, and compliance requirements of article eight of this
54 chapter. Violations of prevailing wage requirements on assisted projects
55 shall be subject to penalties and sanctions applicable to public works
56 projects.

1 10. Prevailing wage exception. Prevailing wage requirements under the
2 Act shall not apply to assisted projects covered by project labor agree-
3 ments.

4 § 229-a. Best value requirements for the solicitation, evaluation and
5 award of renewable energy projects, energy efficiency projects and other
6 construction projects undertaken with support from the department of
7 environmental conservation or receiving state assistance. 1. Purpose.
8 The purpose of this section is to establish best value requirements for
9 the solicitation, evaluation and award of renewable energy projects,
10 energy efficiency projects, and other construction projects undertaken
11 with support from the department of environmental conservation, or
12 assisted by the state, including those assisted by the Act.

13 2. Definitions. For purposes of this section, the following terms
14 shall be defined as follows:

15 (a) "agency" means the New York state energy research and development
16 authority or any other state department or agency that provides assist-
17 ance to covered projects.

18 (b) "best value" shall be given the meaning specified in paragraph j
19 of subdivision one of section one hundred sixty-three of the state
20 finance law.

21 (c) "contracting team" means the lead contractor and project subcon-
22 tractors.

23 (d) "covered projects" means projects designed to provide renewable
24 energy, as defined in paragraph (b) of subdivision one of section
25 sixty-six-p of the public service law, which are eligible to receive
26 energy credits or other forms of assistance from the state.

27 (e) "offeror" means the project owner, developer or other entity which
28 seeks to propose a renewable energy project, energy efficiency project,
29 other construction project undertaken with support from the department
30 of environmental conservation, or receiving state assistance and obtain
31 renewable energy credit or other assistance from the state.

32 (f) "lead contractor" means the general contractor, construction
33 manager or other prime contractor which is contracted by the offeror to
34 build a covered project.

35 (g) "project team" means the lead contractors and all subcontractors
36 proposed for the project.

37 3. Solicitation requirements for covered projects. Solicitations used
38 to provide state assistance to covered projects shall utilize the
39 following procedures:

40 (a) solicitations shall be designed to ensure best value results for
41 the state by:

42 (i) permitting project proposals for any type of viable renewable
43 energy source; and

44 (ii) promoting maximum competition among qualified offerors presenting
45 proposals.

46 (b) solicitations shall be administered through a public request for
47 proposals process that provides adequate notice, instructions for
48 submitting proposals and other relevant information as determined by the
49 agency.

50 (c) requests for proposals shall require sealed proposals from an
51 offeror, which include:

52 (i) proposed project, including type, viability and projected amount
53 of energy, project plan and schedule; and

54 (ii) the qualifications, resources and capabilities of the offeror
55 and, the project team to be used on the project.

1 (d) the agency shall approve the project that provides the best value,
2 considering the viability and benefits of the proposed project and qual-
3 ifications of the offeror and project team.

4 4. Request for proposals process. Requests for proposals shall be
5 administered in compliance with this section and additional instructions
6 set forth in the solicitation and notice of requests for proposals:

7 (a) the agency shall evaluate proposals on the basis of a maximum
8 point scale. The proposal that attains the high score shall be selected
9 for award. Proposals shall be scored only on the basis of the evaluation
10 factors set forth in the request for proposals.

11 (b) request for proposals shall include only factors listed in this
12 section and any additional factors or subfactors the agency deems neces-
13 sary for achieving best value results for the state.

14 (c) in determining which proposal offers the best value to the state,
15 the agency shall evaluate the following factors in accordance with the
16 following criteria:

17 (i) proposed project;

18 (ii) offeror qualifications;

19 (iii) project team qualifications; and

20 (iv) economically disadvantaged impact.

21 5. Project selection. The offeror that complies with the specifica-
22 tions and requirements of the request for proposals and receives the
23 highest maximum score shall be selected by the agency for project award.

24 6. Evaluation of proposed project. In evaluating competitive
25 proposals, the agency shall evaluate the proposed project on the follow-
26 ing factors:

27 (a) projected amount of energy to be generated;

28 (b) viability of the proposed energy source;

29 (c) feasibility of the project plan and schedule; and

30 (d) qualifications of the project team.

31 7. Evaluation of offeror's qualifications. The offeror's qualifica-
32 tions shall be determined by an evaluation of its past performance
33 record, expertise and technical qualifications and present performance
34 capabilities, including financial resources and experience of the
35 offeror's senior management and project team management.

36 8. Evaluation of project team qualifications. The qualifications of
37 the lead contractor and subcontractors shall be determined by an evalu-
38 ation of the following subfactors:

39 (a) past performance record: 30 points. Evaluation of this subfactor
40 requires a review of past projects, including budget, schedule and safe-
41 ty data, performance evaluation reports, quality of workmanship and
42 compliance with project specifications.

43 (b) expertise and technical qualifications: 10 points. Evaluation of
44 this subfactor requires examination of the general and specific experi-
45 ence in relevant market sectors and in projects similar to the proposed
46 project.

47 (c) performance capabilities of management: 10 points. Evaluation of
48 this subfactor requires examination of:

49 (i) resources, including equipment and financial resources;

50 (ii) experience of the senior management and project management of the
51 lead contractor and subcontractors.

52 (d) performance capabilities of craft labor: 40 points. Evaluation of
53 craft labor personnel shall consider the use of:

54 (i) project labor agreements as a reliable source for ensuring an
55 adequate supply of skilled craft labor in all trades needed for the
56 proposed project;

1 (ii) participation in registered apprenticeship programs that have a
2 track record of graduating apprentices for at least three years;

3 (iii) training programs used to provide training for upgrading skills
4 or training for specialized skills; and

5 (iv) training programs that provide safety training and certification,
6 including, but not limited to OSHA 10 hour and 30 hour programs.

7 9. Prelisting of subcontractors. The lead contractor shall provide a
8 list in its proposals that identifies the names of all subcontractors,
9 regardless of tier, it proposes to use for the project and the scope of
10 work and approximate percentage of the total project of each subcontrac-
11 tor listed.

12 10. Prequalification process. Requests for proposals may be preceded
13 by a prequalification stage to require interested offerors to demon-
14 strate that they have adequate minimum qualifications and sufficiently
15 viable project proposals to qualify to compete in a request for
16 proposals process.

17 11. Evaluation of economically disadvantaged impact. Evaluation of
18 this factor shall include an assessment of the degree to which the
19 project promotes opportunities to small, minority-owned businesses and
20 workers in economically disadvantaged communities.

21 12. Project evaluation team. Proposals submitted in response to
22 request for proposals under this section shall be evaluated by a techni-
23 cal evaluation team that consists of no fewer than three persons quali-
24 fied to conduct such evaluations.

25 13. Audits of evaluation process. Proposal evaluations pursuant to
26 this section shall be subject to periodic audits, including random,
27 unannounced audits by qualified personnel appointed by the agency to
28 ensure the evaluation process is conducted in accordance with this
29 section and the requests for proposals.

30 14. Project performance evaluations. Project evaluation reports shall
31 be prepared upon completion for projects that receive state assistance.
32 Project evaluation reports shall include information determined relevant
33 by the agency but shall at a minimum include the following:

34 (a) the amount of energy projected in the project proposal and the
35 actual amount of energy the facility is capable of producing;

36 (b) the proposed project completion date and the actual completion
37 date; and

38 (c) additional information as determined by the agency.

39 § 229-b. Best value requirements for all work other than construction.

40 1. Purpose. This section establishes best value requirements for the
41 solicitation, evaluation and award of renewable energy and other
42 projects assisted by the state, including those assisted by the Act. All
43 investments under this section shall utilize the following best value
44 framework to evaluate bids for projects developed with these funds. The
45 best value framework shall provide specially-defined best value
46 contracting and labor provisions as options for any bidder responding to
47 requests for proposals for renewable energy projects. Bids that include
48 responsive provisions can receive added credit to their bid scores.

49 2. Definitions. For purposes of this section, the following terms
50 shall be defined as follows:

51 (a) "awarding authority" shall mean the governmental unit empowered to
52 request bids and enter into contracts for renewable energy projects,
53 energy efficiency, and other projects other than the construction aspect
54 of the project funded by this statute.

55 (b) "best-value framework" shall mean contracts and subcontracts on
56 projects funded by the Act shall use a best-value framework to consider

1 the quality, cost and efficiency of offers when evaluating procurement
2 contract proposals. Such framework shall reflect, whenever possible,
3 objective and quantifiable analysis and identify a quantitative factor
4 for offerors.

5 (c) "contract" shall mean a direct agreement between a vendor and the
6 awarding authority for projects funded by the Act valued at five million
7 dollars and over.

8 (d) "vendor" shall mean a business entity entering into a contract
9 with the awarding authority for projects, including manufacturing
10 projects, funded by the Act.

11 (e) "subcontract" shall mean an agreement between a vendor and subven-
12 dor to provide manufactured materials or perform additional work under
13 the vendor.

14 (f) "subvendor" shall mean a business entity entering into a subcon-
15 tract with the vendor to provide manufactured materials for completion
16 of a contract or perform additional work under the vendor.

17 (g) "U.S. employment plan (USEP)" shall mean the plan which an entity
18 submitting proposals to awarding authorities for renewable energy
19 projects, energy efficiency, other projects other than the construction
20 aspect of the project include in their proposal to receive extra credit
21 and/or points as defined by the applicable awarding authority. If a
22 proposer chooses to submit a U.S. employment plan to win extra credit,
23 the proposal shall include a worksheet with: proposed wages, benefits,
24 retraining and training, including a workforce training plan, completed
25 by the proposer and the potential subvendors, and a narrative
26 description of the proposers' plan to:

27 (i) recruit and hire individuals from zip codes with high rates of
28 poverty unemployment, and chronic unemployment;

29 (ii) give priority in any hiring of employees not currently or previ-
30 ously employed by the proposer and the suppliers of manufactured materi-
31 als for the project to individuals with barriers to employment including
32 people who have been incarcerated, people with disabilities, and people
33 who have been traditionally underrepresented in manufacturing or
34 construction employment, like women and minorities; and

35 (iii) recruit from "disadvantaged workers" and "disadvantaged communi-
36 ties" as defined by the Act and not detailed in this section.

37 (h) "local employment plan" shall mean the plan which an entity
38 submitting proposals to awarding authorities for renewable energy
39 projects, energy efficiency, other projects other than the construction
40 aspect of the project include in their proposal to receive extra credit
41 and/or points as defined by the applicable awarding authority. The local
42 employment plan will apply to work that is not financed with federal
43 money. A proposer is required to submit a local employment plan to win
44 extra credit. The proposer shall include the same items in the U.S.
45 employment plan as well as a plan:

46 (i) to retain and create high-skilled local jobs; and

47 (ii) to develop family-sustaining career pathways into the sector for
48 disadvantaged workers and disadvantaged communities in a specified local
49 area.

50 (i) "workforce training plan" means a plan to create permanent, trans-
51 ferable skills for all new hires and retained employees under a contract
52 proposal, which may:

53 (i) take advantage of publicly funded workforce development programs,
54 an apprenticeship program registered with the department or a federally
55 recognized state apprenticeship agency and that complies with the

1 requirements under Parts 29 and 30 of title 29, code of federal regu-
2 lations; and

3 (ii) include pre-apprenticeship commitments to provide training that
4 helps participants in apprenticeship programs prepare for and success-
5 fully complete their training.

6 3. Application process. This section shall apply to all contracts as
7 defined in this section.

8 (a) in awarding contracts under this section, awarding authorities
9 shall utilize the best-value framework for contracts.

10 (b) awarding authorities shall develop a system for awarding extra
11 points and/or credit for those proposers that create and submit a local
12 employment plan or U.S. employment plan (depending on source of fund-
13 ing).

14 (c) final contracts with a local employment plan and/or U.S. employ-
15 ment plan that are awarded under this section shall require vendors to
16 submit quarterly reports within the first year of award and annual
17 reports for subsequent years demonstrating vendor and subvendor compli-
18 ance with their local employment plan and/or U.S. employment plan. These
19 quarterly and annual reports shall be certified under penalty of perjury
20 and must be submitted in order to receive milestone payments under the
21 contract.

22 (d) requests for proposals under this section shall specify that terms
23 and conditions of employment and compliance reports under the local
24 employment plan and/or U.S. employment plan are not exempt from disclo-
25 sure under the freedom of information law. Quarterly and subsequent
26 annual reports related to contract fulfillment will be shared online on
27 the awarding authority's web site.

28 (e) the awarding authority shall enact regulations creating forms for
29 completion of the local employment plan and/or U.S. employment plan that
30 the awarding authority will include with requests for proposals for
31 contracts.

32 § 5. Section 231 of the labor law is amended by adding a new subdivi-
33 sion 8 to read as follows:

34 8. Building service employees employed in any building or facility
35 that has received grants or tax abatements or exemptions or other
36 assistance with a total present financial value of one million dollars
37 or more for the increase of energy efficiency, building electrification
38 upgrades, the development of renewable energies, or climate change resi-
39 liency shall be paid not less than the prevailing wage. Employers
40 engaged in the provision of building service work shall be subject to
41 all the reporting and compliance requirements of this article, including
42 the right to maintain an action for the difference between the prevail-
43 ing wages and the wages actually received. The prevailing wage require-
44 ment shall apply for the duration of the assistance or ten years after
45 the project opens, whichever is longer.

46 § 6. The environmental conservation law is amended by adding a new
47 article 77 to read as follows:

48 ARTICLE 77

49 CLIMATE CHANGE JUST TRANSITION

50 Title 1. General provisions.

51 3. Community just transition.

52 5. Climate jobs and infrastructure.

53 7. Just transition for impacted workers and community assurance.

TITLE 1
GENERAL PROVISIONS

Section 77-0101. Definitions.

77-0103. Coordination of programs.

77-0105. Transparency and accountability.

77-0107. Report on community ownership.

§ 77-0101. Definitions.

For the purposes of this title, the following terms shall have the following meanings:

1. "Community ownership" means projects, businesses and legal models in regard to renewable energy assets and services that allow for one or more of the following:

(a) the flow of benefits from energy generation and conservation goes directly to communities and utility customers while minimizing the extraction of benefits and profit by third parties;

(b) access to energy infrastructure ownership, including energy efficiency measures and savings, by renters, non-profit organizations, and individuals with a broader spectrum of income and credit profiles than traditional financing allows for;

(c) creation of cooperative and cooperative-like structures for the development and ownership of energy infrastructure; and

(d) ownership by individuals or organizations that are located where a project is sited.

2. "Constituency-based organization" means an organization incorporated for the purpose of providing services or other assistance to economically or socially disadvantaged persons within a specified community, and which is supported by, or whose actions are directed by, members of the community in which it operates.

3. "Disadvantaged communities" means communities that bear burdens of negative public health effects, environmental pollution, and impacts of climate change, and possess certain socioeconomic criteria, as identified pursuant to section 75-0111 of this chapter.

4. "Downstate region" means the counties of Richmond, Kings, Queens, New York, Bronx, Westchester, Nassau and Suffolk.

5. "Emissions leakage" means an increase in emissions outside of the state, as a result of, or in correlation with, the implementation of measures within the state to limit such emissions.

6. "Greenhouse gas" shall have the same meaning as in subdivision nine of section 19-1301 of this chapter.

7. "Municipality" shall have the same meaning as in subdivision six of section four hundred eighty-one of the executive law.

8. "Regulated air contaminant" shall have the same meaning as in subdivision twenty-two of section 19-0107 of this chapter.

9. "Tribal nation" means those tribes, nations or other organized groups of persons having origins in any of the original peoples of North America recognized in the state or considered by the federal secretary of the interior to be a tribal nation, including the following New York state tribal nations: Cayuga Nation, Oneida Nation of New York, Onondaga Nation, Poospatuck or Unkechauge Nation, Saint Regis Mohawk Tribe, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Band of Seneca and Tuscarora Nation.

10. "Upstate region" means all New York counties other than Nassau, Suffolk, Richmond, Kings, Queens, New York, Bronx and Westchester.

§ 77-0103. Coordination of programs.

The department shall undertake actions to ensure maximum coordination between each of the programs created under section three thousand

1 forty-six of the tax law, including conducting each program such that
2 all three programs together:

- 3 1. maximize the total economic and social benefits to New York;
- 4 2. maximize administrative efficiency;
- 5 3. achieve the most cost-effective and the greatest amount of
6 reductions in greenhouse gas emissions and regulated air contaminants;
- 7 4. achieve an equitable distribution of funds;
- 8 5. maximize benefits to disadvantaged communities;
- 9 6. encourage early action to reduce emissions;
- 10 7. minimize emissions leakage;
- 11 8. promote equitable access to program participation across programs,
12 including interoperability with existing programs and the use of
13 universal eligibility applications for low-income applicants who may be
14 eligible for multiple services; and
- 15 9. identify and utilize best industry standard practices to overcome
16 barriers to implementation, such as split incentives for energy effi-
17 ciency.

18 § 77-0105. Transparency and accountability.

19 1. No later than two years following the effective date of this arti-
20 cle, and every two years thereafter, the department shall produce a
21 report on the implementation of the programs established under this
22 article and the extent to which program implementation is meeting stated
23 program goals and priorities. Such report shall include but not be
24 limited to:

25 (a) For the program under title three of this article:

26 (i) the extent to which needs identified in the needs assessment are
27 being met;

28 (ii) the effectiveness of projects funded under the program in reduc-
29 ing emissions of greenhouse gas and regulated air contaminants;

30 (iii) the effectiveness of projects funded under the program in reduc-
31 ing the energy burdens of households in disadvantaged communities;

32 (iv) the geographic distribution of grants made under the program;

33 (v) barriers reported by eligible applicants in developing competitive
34 proposals and receiving funding;

35 (vi) the jobs created as a result of funds distributed under the
36 program by type, duration, and pay scale; and

37 (vii) the number of projects funded that are community-owned or incor-
38 porate community ownership, including an assessment of continued barri-
39 ers to community ownership.

40 (b) For the program under title five of this article:

41 (i) the number of jobs created by the program;

42 (ii) the effectiveness of projects funded under the program in reduc-
43 ing emissions of greenhouse gas and regulated air contaminants;

44 (iii) the extent to which projects funded under the program leveraged
45 additional private investment;

46 (iv) the number of minority and women-owned businesses involved in
47 projects funded under the program as lead contractors or subcontractors,
48 and barriers to involvement by such businesses;

49 (v) the effectiveness of projects funded under the program in reducing
50 energy burdens of households, including households in disadvantaged
51 communities; and

52 (vi) the impact of the program on disadvantaged communities, including
53 the impact on the elderly, youth, women and children.

54 (c) For the program under articles forty-two and forty-three of the
55 tax law:

1 (i) the actual costs of the fee as compared to the amount of the
2 rebate;

3 (ii) the overall net cost to households; and

4 (iii) the rate of participation in the program by eligible households
5 and the barriers to participation, if any.

6 2. Before finalizing the report described in subdivision one of this
7 section, the department shall ensure that there are meaningful opportu-
8 nities for public participation, including by:

9 (a) allowing at least one hundred twenty days for the submission of
10 public comment, following the date of the publication of a draft report;
11 and

12 (b) holding at least four regional public hearings, including two
13 meetings in the upstate region and two meetings in the downstate region,
14 with emphasis on maximizing participation and accessibility for members
15 of disadvantaged communities.

16 3. The final report shall be submitted to the governor, the temporary
17 president of the senate, the speaker of the assembly, the minority lead-
18 er of the senate and the minority leader of the assembly, and shall be
19 posted on the website of the department.

20 § 77-0107. Report on community ownership.

21 1. Not later than two years following the effective date of this
22 title, and every two years thereafter, the department, with input from
23 the department of labor, and the state energy planning board, shall
24 produce a report on barriers to, and opportunities for, community owner-
25 ship, including:

26 (a) a study of contractual and pricing mechanisms that make siting and
27 ownership of renewable energy assets and services in disadvantaged
28 communities more viable and scalable.

29 (b) recommendations on how to increase community ownership in disad-
30 vantaged communities of the following services and commodities:

31 (i) distributed renewable energy generation;

32 (ii) utility scale renewable energy generation;

33 (iii) energy efficiency and weatherization investments; and

34 (iv) electric grid investments, including energy storage and smart
35 meters.

36 2. Before finalizing the report described in subdivision one of this
37 section, the department shall ensure that there are meaningful opportu-
38 nities for public participation, including by:

39 (a) allowing at least one hundred twenty days for the submission of
40 public comment, following the date of the publication of a draft report;
41 and

42 (b) holding at least four regional public hearings, including two
43 meetings in the upstate region and two meetings in the downstate region,
44 with emphasis on maximizing participation and accessibility for members
45 of disadvantaged communities.

46 3. The final report shall be submitted to the governor, the temporary
47 president of the senate, the speaker of the assembly, the minority lead-
48 er of the senate and the minority leader of the assembly, and shall be
49 posted on the website of the department.

50 TITLE 3

51 COMMUNITY JUST TRANSITION

52 Section 77-0301. Definitions.

53 77-0303. Office of community just transition.

54 77-0305. Establishment of community just transition program.

55 77-0307. Administration by the department.

1 77-0309. Allocation of funds.

2 77-0311. Selection process.

3 77-0313. Identification of disadvantaged community needs.

4 77-0315. Community decision-making and accountability mech-
5 anisms.

6 77-0317. Criteria for implementing community accountability
7 mechanisms.

8 § 77-0301. Definitions.

9 For the purposes of this title, the following terms shall have the
10 following meanings:

11 1. "Act" means the "climate and community investment act".

12 2. "Disadvantaged communities" shall have the same meaning as in
13 subdivision three of section 75-0111 of this chapter.

14 3. "Eligible lead applicant" means a constituency-based organization
15 or a tribal nation, in or serving a disadvantaged community or communi-
16 ties. Notwithstanding the preceding sentence, a constituency-based
17 organization or tribal nation may be an eligible lead applicant, whether
18 or not it is in or serving a disadvantaged community or communities, if
19 it makes an application for funding on behalf of one or more constituen-
20 cy-based organizations or tribal nations that are in or serving one or
21 more disadvantaged communities with the consent of such constituency-
22 based organization or organizations or tribal nation or nations and
23 subgrants to such constituency-based organization or organizations or
24 tribal nation or nations. A municipality or county where a project is
25 proposed to be located shall also be considered an eligible lead appli-
26 cant if it affirms that there is no constituency-based organization or
27 tribal nation in or serving the disadvantaged community or that is will-
28 ing or able to submit an application or consent to be a subgrantee under
29 this subdivision, and that it provided a reasonable opportunity for
30 residents and organizations in or serving the municipality or county to
31 comment on the application prior to submission.

32 4. "Eligible sub-applicants" means private sector entities, academic
33 institutions, non-profit organizations, other stakeholders, and munici-
34 palities and counties in cases where there is a constituency-based
35 organization in the disadvantaged community or communities.

36 5. "Fund" means the community just transition fund established under
37 subdivision one of section three thousand forty-six of the tax law.

38 6. "Minority- or women-owned business enterprise" means either a
39 "minority-owned business enterprise" as defined in subdivision seven of
40 section three hundred ten of the executive law, or a "women-owned busi-
41 ness enterprise" as defined in subdivision fifteen of such section.

42 7. "Program" means the community just transition program established
43 under this title.

44 8. "Community ownership" shall have the same meaning as set forth in
45 subdivision one of section 77-0101 of this article.

46 9. "Downstate region" means the counties of Richmond, Kings, Queens,
47 New York, Bronx, Westchester, Nassau and Suffolk.

48 10. "Upstate region" means all New York counties other than Nassau,
49 Suffolk, Richmond, Kings, Queens, New York, Bronx and Westchester.

50 § 77-0303. Office of community just transition.

51 The department shall administer the fund and the program. The depart-
52 ment shall be responsible for implementing new, progressive and equita-
53 ble grant opportunities that support disadvantaged communities transi-
54 tioning to a regenerative renewable energy economy, under this section.
55 The department shall develop and assess programs.

56 § 77-0305. Establishment of community just transition program.

1 There is hereby established by the department, a community just tran-
2 sition program, to be implemented by the commissioner. The purpose of
3 the program is to disburse funds from the community just transition fund
4 pursuant to section 77-0309 of this title.

5 § 77-0307. Administration by the department.

6 Within six months of the effective date of this title, the department
7 is hereby authorized and directed to establish and administer the commu-
8 nity just transition program. The department is authorized and directed
9 to:

10 1. use monies made available for the program, pursuant to sections
11 77-0309 and 77-0311 of this title;

12 2. enter into contracts with eligible lead applicants and sub-appli-
13 cants through a competitive selection process;

14 3. recover from the monies made available for the program, not in
15 excess of two percent of annual fund proceeds, its own necessary and
16 documented costs incurred in administering the program, including
17 program evaluation; and

18 4. exercise such other powers as are necessary for the proper adminis-
19 tration of the program.

20 § 77-0309. Allocation of funds.

21 1. Funds from the community just transition fund shall be disbursed
22 through direct grants to eligible lead applicants.

23 2. At least seventy-five percent of funds from the community just
24 transition fund shall be for projects physically located within a desig-
25 nated disadvantaged community, or for projects as close to such communi-
26 ty as is practicable, provided that a project not physically located in
27 the disadvantaged community shall only be eligible for funding under
28 this subdivision if the department finds that it is impracticable to
29 locate the project in such disadvantaged community or that funding such
30 project is in the best interests of such disadvantaged community, taking
31 into account such factors as the burdens of negative public health
32 effects, environmental pollution and the impacts of climate changes. Any
33 project funded under this subdivision shall achieve one or more of the
34 goals in paragraph (a), (b) or (c) of this subdivision:

35 (a) maximizing greenhouse gas emissions reductions, including through
36 the completion of projects, including but not limited to: energy effi-
37 ciency and energy demand reduction; renewable energy; energy storage;
38 renewable energy-powered microgrids; energy resiliency; demand response;
39 and reducing urban heat island effects through various means, such as
40 through the completion of urban forestry, urban agriculture, or green
41 infrastructure projects;

42 (b) the reduction of other regulated air contaminants in conjunction
43 with greenhouse gas emissions reductions; and

44 (c) community ownership and governance, including through the funding
45 of planning, design and construction of community solar installation and
46 other projects listed under paragraph (a) of this subdivision.

47 3. Up to twenty-five percent of funds from the community just transi-
48 tion fund may be used for projects other than as specified in subdivi-
49 sion two of this section, but must provide at least one of the following
50 benefits to one or more designated disadvantaged communities:

51 (a) reducing emissions from stationary sources, including the perma-
52 nent closure of fossil fuel-fired power plants, including peaker-plants,
53 or waste-to-energy plants, with priority given to reducing emissions
54 from sources that emit pollution into the airshed of disadvantaged
55 communities;

1 (b) reducing the financial burden of energy expenses for disadvantaged
2 communities, including reducing energy costs through the creation of
3 community-owned solar assets; and

4 (c) increasing and supporting opportunities for community ownership of
5 energy projects by residents of disadvantaged communities, including
6 ownership of the type of energy projects specified under subdivision two
7 of this section and by establishing community-owned energy cooperatives.
8 § 77-0311. Selection process.

9 1. The department shall develop criteria and a process for competi-
10 tively selecting project proposals under this title, in accordance with
11 this section and section 77-0309 of this title.

12 2. The department shall competitively select project proposals accord-
13 ing to the criteria and process established under subdivision three of
14 this section.

15 3. In selecting projects and distributing funds, the director shall
16 meet the standards in paragraphs (a), (b), (c), (d), (e) and (f) of this
17 subdivision.

18 (a) All projects shall be led by an eligible lead applicant; provide
19 benefits to designated disadvantaged communities; comply with section
20 77-0309 of this title; incorporate community decision-making, pursuant
21 to section 77-0315 of this title, throughout project planning and imple-
22 mentation; and provide a community accountability mechanism, pursuant to
23 section 77-0317 of this title and comply with the labor and job perform-
24 ance standards in this act.

25 (b) Program funds as a whole shall be equitably distributed to members
26 of disadvantaged communities, with roughly an even distribution of funds
27 per capita among disadvantaged communities across the state.

28 (c) Communities shall be targeted in areas where energy costs are
29 particularly high in relation to a measure of median household income as
30 determined by the department; or which have been designated as a nonat-
31 tainment area for one or more pollutants pursuant to section 107 of the
32 federal Clean Air Act (42 U.S.C. section 7407).

33 (d) The department shall give preference in awards to applicants that
34 include significant participation by minority- or women-owned business
35 enterprises.

36 (e) The department shall give preference in awards to applicants that
37 implement mechanisms to maximize community ownership, pursuant to the
38 findings of the latest report mandated by section 77-0107 of this arti-
39 cle.

40 (f) The department shall give preference in awards to projects that
41 would not otherwise likely be completed without the support of the
42 program.

43 4. The department shall encourage eligible lead applicants to propose
44 projects in collaboration with eligible sub-applicants and comply with
45 the labor and job performance standards in this act.

46 5. The department shall annually issue at least one and not more than
47 four program opportunity notices or requests for proposals to solicit
48 applications from eligible lead applicants.

49 6. The department shall prioritize creating a streamlined and simpli-
50 fied application and disbursement process for eligible lead applicants,
51 including but not limited to, quarterly available grant opportunities,
52 at least quarterly information webinars, and providing opportunities for
53 technical assistance to navigate the application process.

54 7. To the extent otherwise permitted by law, the department shall
55 distribute funds in a manner that provides at least seventy-five percent

1 of each award up-front, to ensure that eligible lead applicants with
2 limited existing budgets are able to implement projects effectively.

3 8. The department shall consult with the division of housing and
4 community renewal to develop strategies to mitigate any adverse economic
5 impact of the program on tenants and homeowners, including, but not
6 limited to, residents of rent-regulated housing or recipients of housing
7 subsidies and rent-burdened households; and enhance long-term community
8 cohesion while preventing gentrification and displacement.

9 9. Nothing in this title shall preclude the department from permitting
10 eligible lead applicants or sub-applicants to use program funds awarded
11 under this title in conjunction with other public or private funding
12 awarded for other purposes, providing that the lead applicant can demon-
13 strate, in a manner sufficient to the department, that the program goals
14 and other requirements of this title will be met.

15 § 77-0313. Identification of disadvantaged community needs.

16 1. The department, in cooperation with the commissioners of health and
17 labor shall identify disadvantaged community needs for the purposes of
18 implementing this section.

19 2. Disadvantaged community needs shall be identified, with the input
20 of experts, local government representatives, public utility represen-
21 tatives, and other local stakeholders, for each disadvantaged community
22 or set of disadvantaged communities.

23 3. Before finalizing the list of identified disadvantaged community
24 needs pursuant to subdivision one of this section, the department shall
25 ensure that there are meaningful opportunities for public comment for
26 all persons who will be impacted by the identified needs, including
27 persons living in areas that may be identified as disadvantaged communi-
28 ties, including by:

29 (a) publishing draft identified disadvantaged community needs, and
30 making such information available on the internet;

31 (b) holding at least six regional public hearings on the draft identi-
32 fied disadvantaged community needs, including three meetings in upstate
33 regions and three meetings in downstate regions; and

34 (c) allowing at least one hundred twenty days for the submission of
35 public comment, following the date of the publication of draft identi-
36 fied disadvantaged community needs described under paragraph (a) of this
37 subdivision.

38 4. The department, in cooperation with the commissioners of health and
39 labor or their designees, shall meet no less than annually to review the
40 identified disadvantaged community needs and methods used to identify
41 such needs, and may modify such methods to incorporate new data and
42 scientific findings, subject to the same process requirements listed
43 under subdivision three of this section.

44 § 77-0315. Community decision-making and accountability mechanisms.

45 1. The department, in cooperation with the commissioners of health and
46 labor shall establish criteria for appropriate community decision-making
47 practices for the purposes of implementing this section.

48 2. Community decision-making practices shall be identified based on
49 consultations with constituency-based organizations, members of disad-
50 vantaged communities, and other stakeholders identified by the depart-
51 ment.

52 3. Before finalizing the criteria for appropriate community decision-
53 making practices pursuant to subdivision one of this section, the
54 department shall ensure that there are meaningful opportunities for
55 public comment for all persons who will be impacted by the criteria,

1 including persons living in areas that may be identified as disadvan-
2 taged communities, including by:

3 (a) publishing draft criteria, and making such information available
4 on the internet;

5 (b) holding at least ten regional public hearings on the draft crite-
6 ria, one in each region; and

7 (c) allowing at least one hundred twenty days for the submission of
8 public comment, following the date of the publication of draft criteria
9 described under paragraph (a) of this subdivision.

10 4. The department, in cooperation with the commissioners of health and
11 labor shall meet no less than annually to review the criteria and meth-
12 ods used to identify appropriate community decision-making practices,
13 and may modify such methods to incorporate new data and scientific find-
14 ings, subject to the same process requirements listed under subdivision
15 three of this section.

16 5. For the purposes of paragraph (b) of subdivision three of this
17 section, "region" shall have the same meaning as in subdivision nine of
18 section twenty-four hundred twenty-six of the public authorities law.

19 § 77-0317. Criteria for implementing community accountability mech-
20 anisms.

21 The department, in cooperation with the commissioners of health and
22 labor shall establish criteria for implementing community accountability
23 mechanisms for the purposes of implementing this section.

24 1. Criteria for implementing community accountability mechanisms shall
25 be based on input from the department and the commissioners of health
26 and labor.

27 2. Before finalizing the criteria for implementing community account-
28 ability mechanisms pursuant to subdivision one of this section, the
29 department shall ensure that there are meaningful opportunities for
30 public comment for all persons who will be impacted by the criteria,
31 including persons living in areas that may be identified as disadvan-
32 taged communities, including by:

33 (a) publishing draft criteria, and making such information available
34 on the internet;

35 (b) holding at least six regional public hearings on the draft crite-
36 ria, including three meetings in the upstate region and three meetings
37 in the downstate region; and

38 (c) allowing at least one hundred twenty days for the submission of
39 public comment, following the date of the publication of draft criteria
40 described under paragraph (a) of this subdivision.

41 3. The department, in cooperation with the commissioners of health and
42 labor shall meet no less than annually to review the criteria and meth-
43 ods used to identify community accountability mechanisms, and may modify
44 such methods to incorporate new data and scientific findings, subject to
45 the same process requirements listed under subdivision two of this
46 section.

47 TITLE 5

48 CLIMATE JOBS AND INFRASTRUCTURE

49 Section 77-0501. Definitions.

50 77-0503. Establishment of climate jobs and infrastructure
51 program.

52 77-0505. Administration by the department.

53 77-0507. Allocation of funds.

54 77-0509. Funding instruments.

55 77-0511. Selection process and criteria.

1 77-0513. Comprehensive approach to existing structures.

2 § 77-0501. Definitions.

3 For the purposes of this title, the following terms shall have the
4 following meanings:

5 1. "Eligible applicant" means a constituency-based organization,
6 tribal nation, labor union, municipality, transit agency, port authori-
7 ty, metropolitan planning organizations, small business, minority- or
8 women-owned business enterprise or any other entity deemed appropriate
9 by the department.

10 2. "Fund" means the climate jobs and infrastructure fund established
11 under subdivision two of section three thousand forty-six of the tax
12 law.

13 3. "Minority- or women-owned business enterprise" means either a
14 "minority-owned business enterprise" as defined in subdivision seven of
15 section three hundred ten of the executive law, or a "women-owned busi-
16 ness enterprise" as defined in subdivision fifteen of such section.

17 4. "Program" means the climate jobs and infrastructure program estab-
18 lished under this title.

19 5. "Third-party entities" means private sector entities, academic
20 institutions, non-profit organizations and other stakeholders that are
21 not eligible applicants.

22 6. "Tribal nation" shall have the same meaning as in subdivision nine
23 of section 77-0101 of this article.

24 7. "Disadvantaged communities" shall have the same meaning as in
25 subdivision five of section 75-0101 of this chapter.

26 § 77-0503. Establishment of climate jobs and infrastructure program.

27 There is hereby established by the department, a climate jobs and
28 infrastructure program, which shall disburse funds from the climate jobs
29 and infrastructure fund pursuant to the goals established under section
30 77-0507 of this title.

31 § 77-0505. Administration by the department.

32 Within six months of the effective date of this title, the department
33 is hereby authorized and directed to establish and administer the
34 climate jobs and infrastructure program. The department shall implement
35 the program in consultation with the public service commission, the New
36 York independent system operator, the New York energy research and
37 development authority, and the departments of transportation, health and
38 labor. The department is authorized and directed to take the following
39 steps:

40 1. using monies made available from the fund to achieve the goals of
41 the program outlined in section 77-0507 of this title;

42 2. entering into contracts with eligible applicants and other entities
43 through the competitive selection process authorized by this title;

44 3. using from the monies made available for the program, not in excess
45 of two percent of annual fund proceeds, its own necessary and documented
46 costs incurred in administering the program, including program evalu-
47 ation; and

48 4. exercising such other powers as are necessary for the proper admin-
49 istration of the program.

50 § 77-0507. Allocation of funds.

51 1. Funds from the climate jobs and infrastructure fund shall be
52 disbursed under the climate jobs and infrastructure program to achieve
53 quantifiable, verifiable, and significant reductions in greenhouse gas
54 emissions and of regulated air contaminants while achieving the general
55 goals specified in subdivision two of this section. These funds are

1 intended to advance the goals of the climate leadership and community
2 protection act.

3 2. In addition to meeting the goals specified in subdivision one of
4 this section, funds shall be disbursed to meet the following goals:

5 (a) job creation, pursuant to the standards established under article
6 eight-B of the labor law, including opportunities for new entrants into
7 the state's workforce, and the long-term unemployed or displaced work-
8 ers, and the development of an in-state manufacturing and supply chain
9 for clean energy technologies;

10 (b) funding large-scale projects, including those that may span multi-
11 ple communities or regions;

12 (c) reducing greenhouse gas emissions and energy costs through
13 improvements in energy efficiency, energy conservation, load balancing,
14 energy storage and the installation of clean energy technologies;

15 (d) achieving advancements in social equity, including promoting
16 community ownership and governance of energy production, including
17 youth, children, the incarcerated and the formerly incarcerated; and
18 supporting sustainable local economic development;

19 (e) electrification of equipment and appliances for residential,
20 commercial and industrial applications;

21 (f) promoting the participation of private capital, municipal govern-
22 ments and tribal nations in achieving the goals stated in this section
23 and the use of innovative financing mechanisms to finance energy effi-
24 ciency improvements through energy cost savings;

25 (g) encouraging the development of programs to support communities
26 with high cumulative environmental burden, high peak energy load, and
27 aging housing stock in order to preserve affordable housing and enhance
28 long-term community cohesion while preventing gentrification and
29 displacement;

30 (h) encouraging the development of energy efficiency and renewable
31 energy projects and programs for and in public schools, school transpor-
32 tation including centralized procurement by the department of zero-emis-
33 sion school buses and charging infrastructure in order to promote effi-
34 ciency, innovation, and the creation of high-quality jobs in school bus
35 and charging infrastructure manufacturing and community centers, with
36 priority given to schools located in and serving disadvantaged communi-
37 ties in order to preserve and improve school infrastructure, improve
38 community resilience and provide co-educational benefits for students in
39 science, technology, engineering, art, ecology and science;

40 (i) encouraging the development of quality child and dependent care
41 with priority given to the development of quality child care located in
42 and serving disadvantaged communities; and

43 (j) encouraging the development of workforce development programs that
44 identify and utilize best practices to provide and train workers for
45 high quality and continuous career and work opportunities.

46 3. Every five years, the department shall designate priority project
47 types for investments based on capital funding needs, the potential for
48 greenhouse gas emission reductions, and the potential for regional job
49 creation. These priorities shall guide the department in soliciting
50 proposals and selecting projects. The first five years of funding shall
51 prioritize investment in:

52 (a) public transit, with special priority for intra-city transit
53 modes, in upstate regions and in other underserved regions of the state,
54 including through: subsidizing transit rate reductions, the establish-
55 ment of new transit routes, and improvements in transit service (includ-
56 ing increased frequency, accessibility and safety), especially to better

1 serve low- to moderate-income individuals; creating journey to work
2 routes, dedicated to creating access to major areas of employment in
3 both urban and non-urban areas, especially routes connecting non-urban
4 areas without necessitating a trip through the central city; directing
5 infrastructure funding, including through various approaches to support-
6 ing bonding, revolving loan funds and other financing mechanisms; and
7 subsidizing electric and zero-emissions vehicles and infrastructure,
8 including charging infrastructure and energy storage technologies;

9 (b) energy efficiency and conservation projects, including projects in
10 public buildings, and incentives for new private buildings that achieve
11 high efficiency or net-zero status and for retrofits of existing build-
12 ings, providing that landlords who receive retrofit funds or financial
13 assistance of any kind under this program not be allowed to include such
14 investments as major capital improvements or individual apartment
15 assessments in order to raise rents to recoup costs in rent-regulated
16 housing;

17 (c) large scale renewable energy projects, community-owned renewable
18 energy projects, such as community solar and community wind projects,
19 and publicly-owned renewable energy projects, including projects on
20 public buildings and land;

21 (d) port facility electrification and sustainability measures, includ-
22 ing but not limited to at the port of Albany, the port of Buffalo, and
23 the New York city waterfront, including Hunts Point and Sunset Park;

24 (e) electric grid upgrades within the state, including the
25 construction of electricity transmission, energy storage and smart grid
26 infrastructure, and including support for establishing electric vehicle
27 infrastructure and systems to optimize distributed energy resources;

28 (f) energy efficiency and renewable energy projects and programs for
29 and in public schools, school transportation (including school buses)
30 and community centers with priority given to schools located in or serv-
31 ing disadvantaged communities; and

32 (g) child and dependent care facilities and programs with priority
33 given to child and dependent care facilities and programs located in or
34 serving disadvantaged communities.

35 4. In addition to allocating funds under the program to achieve the
36 goals and priorities outlined in this section, the department shall
37 allocate funds for the purposes of providing technical assistance to
38 eligible applicants. Such technical assistance shall include assistance
39 with: developing project proposals; implementing project proposals;
40 conducting analysis and reporting on projects implemented under the
41 program; and other needs identified by the department.

42 5. No monies from the climate jobs and infrastructure fund shall fund
43 police, prisons or related infrastructure.

44 § 77-0509. Funding instruments.

45 The department shall determine the appropriate instrument, or variety
46 of instruments, including grants, loan guarantees, incentives, bond
47 payments, loan programs, and other mechanisms for achieving the goals
48 stated in section 77-0507 of this title.

49 § 77-0511. Selection process and criteria.

50 The department is authorized, within amounts appropriated, to disburse
51 funds from the fund to eligible applicants on a competitive basis.

52 1. The department shall develop criteria and a process for selecting
53 project proposals submitted by eligible applicants under this title.

54 2. In selecting projects and distributing funds, the department shall
55 include the following criteria:

1 (a) the extent to which the project meets each of the goals set forth
2 in subdivisions one and two of section 77-0507 of this title;

3 (b) whether the project falls under a priority area for investment for
4 the five-year period;

5 (c) whether the project will benefit geographic areas where energy
6 costs are particularly high in relation to a measure of median household
7 income as determined by the department; or which have been designated as
8 a nonattainment area for one or more pollutants pursuant to section 107
9 of the federal clean air act (42 U.S.C. section 7407);

10 (d) whether the applicants include significant participation by minor-
11 ity- and women-owned business enterprises; and

12 (e) the extent to which projects would not otherwise be completed
13 without the support of the program.

14 3. In allocating funds, the department shall also, where possible, aim
15 to geographically distribute funds in an equitable manner across the
16 state, taking into account population density.

17 4. The department shall encourage eligible applicants to propose
18 projects in partnership with other eligible applicants, and with third-
19 party entities.

20 § 77-0513. Comprehensive approach to existing structures.

21 1. In consultation with the department of state, department of homes
22 and community renewal, the New York energy research and development
23 authority and other relevant stakeholders, the department shall develop
24 a master plan to:

25 (a) ensure a comprehensive approach exists to improve building energy
26 efficiency that includes all of the state's existing buildings;

27 (b) ensure that the state meets its energy efficiency goals;

28 (c) reduces energy use in all existing structures and new buildings;

29 (d) improves and protects housing affordability and enhances long-term
30 community cohesion while preventing gentrification and displacement; and

31 (e) incorporates health and safety assessments and improvements.

32 2. The master plan will specifically include recommendations for coor-
33 dated changes to the building and energy codes, energy efficiency
34 programs administered by the state and others, and spending pursuant to
35 the climate and community investment act, in order to ensure that most
36 buildings receive deep energy efficiency retrofits that include assess-
37 ment and improvements to health and safety.

38 3. To prepare the master plan, the department shall convene relevant
39 stakeholders in each region of the state at least once, giving at least
40 ninety days' notice of the proposed meeting in order for the public to
41 attend. For the purposes of this subdivision, "region" shall have the
42 same meaning as in subdivision nine of section twenty-four hundred twen-
43 ty-six of the public authorities law.

44 TITLE 7

45 JUST TRANSITION FOR IMPACTED WORKERS AND COMMUNITY ASSURANCE

46 Section 77-0701. Definitions.

47 77-0703. Worker assurance program.

48 77-0705. Community assurance program.

49 77-0707. Administration.

50 77-0709. Allocation of funds.

51 77-0711. Selection process.

52 77-0713. Designation of significant impact.

53 77-0715. Public engagement and social dialogue.

54 77-0717. Reporting.

55 § 77-0701. Definitions.

1 For the purposes of this title, the following terms shall have the
2 following meanings:

3 1. "Adversely affected employment" means employment in an entity regu-
4 lated by the New York state department of public service generating
5 energy that is not renewable.

6 2. "Adversely affected worker" means an individual who, because of
7 lack of work in adversely affected employment, has been totally or
8 partially separated from such employment, is expected to be totally or
9 partially separated from such employment, or is a displaced worker.

10 3. "Adjustment assistance" means any compensation, credit, benefit,
11 funding, training, or service provided under this article through any
12 option described.

13 4. "Applicable firm" means, as applicable:

14 (a) the firm, or subdivision of a firm, for which the group of workers
15 who are petitioning for certification work at;

16 (b) the firm, or subdivision of a firm, for which a group of certified
17 adversely affected workers work at;

18 (c) a group of firms within close geographic proximity, as determined
19 by the department, employing a group of workers who are petitioning for
20 certification; or

21 (d) a group of firms within a close geographic proximity, as deter-
22 mined by the department, for which a group of certified adversely
23 affected workers work.

24 5. "Energy industry" means a commercial sector, as determined by the
25 department, that:

26 (a) extracts, transports, or uses as a direct input energy resources
27 or electricity; or

28 (b) is otherwise dependent on the generation or consumption of energy
29 resources or electricity.

30 6. "Constituency-based organization" shall have the same meaning as in
31 subdivision three of section eighteen hundred ninety-one of the public
32 authorities law.

33 7. "Disadvantaged communities" shall have the same meaning as in
34 section 75-0111 of this chapter.

35 8. "Displaced worker" means an individual who is a resident of New
36 York state and who has either:

37 (a) been terminated or has received notice of termination as a result
38 of a permanent facility closure; or

39 (b) experienced partial separation and is in the energy industry.

40 9. "Disadvantaged worker" is a resident of New York state who:

41 (a) is a woman, when considering construction and building contracts;

42 (b) has a household income of less than fifty percent of the area
43 median income (AMI);

44 (c) is an individual residing in an area of concentrated poverty;

45 (d) is disabled;

46 (e) is a veteran;

47 (f) is a person previously incarcerated or convicted of a criminal
48 offense; or

49 (g) is long-term unemployed.

50 10. "Downstate region" means the counties of Richmond, Kings, Queens,
51 New York, Bronx, Westchester, Nassau and Suffolk.

52 11. "Eligible lead applicant" means a constituency-based organization,
53 labor organization, a tribal nation, local school district, or a municipi-
54 pal or county government located in or serving the impacted community or
55 communities which makes an application for funding under this title on
56 behalf of itself alone or along with eligible sub-applicants.

1 12. "Eligible sub-applicants" means private sector entities, academic
2 institutions, non-profit organizations, other stakeholders, with a
3 relationship to the impacted community. Eligible sub-applicants, may
4 apply with a lead applicant pursuant to standards prescribed by the
5 department. Applying with support from an eligible lead applicant.

6 13. "Fund" means the worker and community assurance special purpose
7 fund created under article forty-two of the tax law.

8 14. "Greenhouse gas" shall have the same meaning as in subdivision
9 nine of section 19-1301 of this chapter.

10 15. "Labor organization" means any organization which exists and is
11 constituted for the purpose, in whole or in part, of collective bargain-
12 ing, or of dealing with employers concerning grievances, terms or condi-
13 tions of employment, or of other mutual aid or protection and which is
14 not a company union. This includes but is not limited to bona fide labor
15 organizations that are certified or recognized as the organization of
16 jurisdiction representing the workers involved and/or bona fide building
17 and construction trades councils and/or district councils and state and
18 local labor federations comprised of local unions certified or recog-
19 nized as the representative of the workers.

20 16. "Partial separation" means, with respect to an individual who has
21 not been totally separated, that such individual has experienced:

22 (a) a reduction in hours of work to eighty percent or less of the
23 individual's average weekly hours in adversely affected employment; and

24 (b) a reduction in wages to eighty percent or less of the individual's
25 average weekly wage in such adversely affected employment.

26 17. "Permanent facility closure" means the permanent shutdown of a
27 single site of employment, or one or more facilities or operating units
28 within a single site of employment, if the shutdown results in an
29 employment loss at the single site of employment during any thirty-day
30 period.

31 18. "Program" means the worker assurance program and community assur-
32 ance program established under this title.

33 19. "Significantly impacted community" is a community, municipality,
34 or other area designated as such by the department.

35 20. "Social dialogue" means an open dialogue with resources available
36 to the public and all stakeholders to encourage participation intended
37 to develop a consensus among the parties consisting of discussions where
38 participants can discuss, be provided with resources and make decisions
39 about how to respond to the challenges of the transition.

40 21. "Total separation" means the layoff or severance of an individual
41 from employment with an applicable firm.

42 22. "Totally separated" means, with respect to an individual, that
43 such individual is experiencing total separation.

44 23. "Upstate region" means all New York counties other than Nassau,
45 Suffolk, Richmond, Kings, Queens, New York, Bronx and Westchester.

46 § 77-0703. Worker assurance program.

47 There is hereby established within the department, a worker assurance
48 program, to be implemented by the department.

49 1. The purpose of the program is to create programs or disburse funds
50 from the fund to benefit the following persons, regardless of immi-
51 gration status or term of residency:

52 (a) adversely affected workers;

53 (b) displaced workers; and

54 (c) disadvantaged workers in significantly impacted communities.

1 2. Benefits, services, or financial support may be delivered directly
2 by the department or through eligible lead applicants and eligible sub-
3 applicants.

4 3. Applications under this section can be made on behalf of a group of
5 workers by an eligible lead applicant, however individuals may apply for
6 support directly from the agency even if there is a local program admin-
7 istered by or application made by an eligible lead applicant.

8 4. All individual applicants will be approved to receive benefits,
9 services, or financial support regardless of immigration status or term
10 of residency. To receive benefits applicants must demonstrate they are:

11 (a) adversely affected workers;

12 (b) displaced workers; or

13 (c) disadvantaged workers in significantly impacted communities.

14 5. The department will promulgate such regulations or guidelines for
15 the creation of programs by eligible lead applicants as may be needed.

16 6. Benefits, services, or financial support upon an application being
17 accepted, benefits, services, or financial support shall be made avail-
18 able for qualifying workers for at least three years and up to ten
19 years.

20 7. These benefits shall include income support equal to their prior
21 salary either until new employment is found at a comparable wage or as a
22 supplement to the new wage to meet the prior level for three years; and
23 additional appropriate supports including:

24 (a) employment by the department or a lead applicant (for example
25 doing remediation at their current site of employment) on a project to
26 reutilize facilities to replace losses in the tax base, or pursuant to
27 another program created under this title;

28 (b) retraining and placement in public or private sector positions;

29 (c) payment towards pension support;

30 (d) on the job training funds or wage subsidies to match their prior
31 salary or hourly wage;

32 (e) payment towards early retirement;

33 (f) transitional support including but not limited to skills training,
34 job counseling, tuition support and on-the-job training; and

35 (g) support for impacted workers to start employee-owned business,
36 early retirement or income support.

37 8. The department will report regularly to the public on the status of
38 these programs as well as what benefits are being provided and where
39 programs have been created by eligible lead applicants.

40 9. When approved applicants are employed or have been immediately
41 prior to displacement under an existing collective bargaining agreement,
42 the department shall notify the labor organization party to that agree-
43 ment of the application.

44 § 77-0705. Community assurance program.

45 There is hereby established within the department, a community assur-
46 ance program, to be implemented by the department. The purpose of the
47 program is to:

48 1. disburse funds from the fund, pursuant to this section;

49 2. provide support for disadvantaged communities and significantly
50 impacted communities directly from the department, through local govern-
51 ment entities, eligible lead applicants, or eligible sub-applicants to:

52 (a) replace lost school aid, lost property tax payments to schools, or
53 other lost school funding;

54 (b) establish job creation programs;

55 (c) replace lost payment in-lieu-of taxes (PILOT) and local tax reven-
56 ue, replace revenue raised by or paid by the state or an employer to

1 municipalities or school districts (including, but not limited to,
2 central school districts and city school districts), and other public
3 funding that is being lost; and

4 (d) facilitate the expansion of existing economic development programs
5 to enable communities to respond to permanent facility closure and/or
6 major reductions in property taxes or pilot payments; and

7 3. review which proposals for program funding may include, but are not
8 limited to:

9 (a) support to start cooperative employee-owned businesses, including
10 by displaced workers or labor organizations;

11 (b) infrastructure projects in communities where energy-intensive
12 facilities are closing;

13 (c) efforts at reclamation project creating a renewable project
14 located at:

15 (i) a brownfield site as defined in subdivision two of section 27-1405
16 of this chapter, not excluding a site subject to an enforcement order as
17 provided for in paragraph (c) of subdivision two of section 27-1405 of
18 this chapter;

19 (ii) a dormant electric generating site as determined by the commis-
20 sion; or

21 (iii) real property owned by a private developer or real property
22 owned by an applicable firm.

23 (d) projects proposed through negotiated project labor agreements or
24 neutrality agreements with labor organizations representing impacted
25 workers or adversely affected workers.

26 (e) small business retraining and transition programs: including
27 programs to identify and support small businesses, to avoid job losses
28 due to energy transition, make technological changes or training
29 improvements, on the job training programs, equipment grants, and tech-
30 nical support for existing businesses to transition to practices focused
31 on sustainability, decarbonization, or non-emitting operations.

32 (f) support for local manufacturing coordinated with decarbonization
33 programs to provide grants and no-interest loans to develop and acceler-
34 ate manufacturing of:

35 (i) electric buses (including school buses), electric pickup trucks,
36 electric cars, and other electric vehicles; and

37 (ii) energy-efficient electric appliances in significantly impacted
38 communities and adversely affected communities.

39 § 77-0707. Administration.

40 1. Within six months of the effective date of this title, the depart-
41 ment is hereby authorized and directed to establish the programs author-
42 ized by this title. The department shall:

43 (a) use monies made available for the programs for the establishment
44 of the worker assurance program pursuant to section 77-0703 of this
45 title, and the community assurance program pursuant to section 77-0705
46 of this title to achieve the purposes of each program;

47 (b) enter into contracts with eligible lead applicants, eligible sub-
48 applicants, and other entities through the competitive selection process
49 authorized by this title;

50 (c) enter into contracts with one or more program implementers to
51 perform such functions as the department deems appropriate;

52 (d) evaluate disadvantaged communities and other communities to iden-
53 tify those where permanent facility closure is likely, and engage in
54 outreach to ensure that constituency-based organizations, labor organ-
55 izations, and eligible applicants are aware that the program is under

1 development and invite them to be involved in the development of the
2 program; and

3 (e) exercise such other powers as are necessary for the proper admin-
4 istration of the program.

5 2. The department shall notify the labor organizations party to
6 collective bargaining agreements covering workers in significantly
7 impacted communities of proposed programs or funding opportunities under
8 this section.

9 § 77-0709. Allocation of funds.

10 1. Funds from the fund shall be disbursed under the programs and be
11 used to ensure a stable transition for workers and communities impacted
12 by the transition to a carbon free economy. Funds may be used for activ-
13 ities pursuant to sections 77-0703 and 77-0705 of this title.

14 2. The department shall:

15 (a) develop clear guidelines and engage in public comment before allo-
16 cating funds;

17 (b) determine a transparent and consistent level of funding, program
18 portfolio, and process for accessing that support in both the upstate
19 region and the downstate region; and

20 (c) coordinate with the New York state department of labor regarding
21 the program administered by the department that directs funds to indi-
22 vidual New York residents pursuant to section 77-0703 of this title;

23 3. (a) All projects funded pursuant to this section must be operated
24 as zero-emission projects. No funds from this program may be awarded to
25 any project that uses carbon-based-fuels in its operations.

26 (b) No funds under this title shall fund police, prisons or related
27 infrastructure.

28 (c) Funds administered under section 77-0705 of this title should be
29 coordinated whenever possible with existing programs, and with funding
30 opportunities under other titles of this article.

31 § 77-0711. Selection process.

32 The department is authorized, within amounts appropriated, to disburse
33 funds from the fund on a competitive basis for approved projects to
34 eligible applicants and partners.

35 1. The department shall develop criteria and a process for selecting
36 project proposals submitted by eligible applicants under this title.

37 2. The department will select projects based on proposals from eligi-
38 ble lead applicants and labor organizations or based on a request from
39 individual impacted workers and adversely affected workers.

40 3. Proposals should clearly articulate: the programs to be supported;
41 the number of workers impacted; overall expected funding level; a plan
42 to engage the people most affected by the transition, including workers
43 and community members; a plan for any necessary site remediation and
44 economic development; and a plan to ensure that funding is time limited
45 to no more than ten years of direct support from the fund.

46 4. The department shall give priority to proposals from or related to:

47 (a) disadvantaged workers or disadvantaged communities;

48 (b) adversely affected workers;

49 (c) eligible applicants that relate to adversely affected employment;
50 and

51 (d) projects that have significant employment and tax base impacts
52 when experiencing a permanent closure.

53 5. Where a proposal is received and one or more labor organization
54 represent impacted workers, they shall be notified, and given a reason-
55 able opportunity to submit a proposal either on their own or in partner-
56 ship with other eligible applicants.

1 6. In developing the criteria, the department shall attempt to maxi-
2 mize: the number of people from affected communities that will benefit
3 from any implemented project and from the suite of projects across the
4 program; the degree of direct benefits delivered to affected communi-
5 ties; greenhouse gas and emissions reductions for regulated air contam-
6 inants; and, to the extent possible, the leveraging of private capital.

7 7. The department shall encourage lead eligible applicants to propose
8 projects in partnership with other eligible lead applicants, and in
9 partnership with eligible sub-applicants, and will notify all those
10 parties involved if multiple proposals are received regarding the same
11 site, workers, or community.

12 8. Where possible, the department shall aim to distribute funds in an
13 equitable manner by region of the state.

14 9. If adequate funding is available, the department may consider
15 proposals related to other impacts associated with climate change that
16 have the effect of causing job losses, including climate-related natural
17 disasters.

18 10. The department shall allocate funding annually, or as determined
19 appropriate by the department for ensuring continuous funding for the
20 needs of the chosen programs and projects.

21 § 77-0713. Designation of significant impact.

22 1. The department shall establish criteria to determine when an indus-
23 try has become significantly impacted as a direct result of policies to
24 reduce greenhouse gas emissions in New York state. The department shall
25 identify an initial set of industries that are significantly impacted as
26 a direct result of emissions reduction policies for the purposes of
27 implementing this section. After those initial set of industries,
28 further industries can be added by the department.

29 2. In designing the criteria and listing the industries described in
30 subdivision one of this section, the department shall consider factors
31 such as:

32 (a) permanent facility closures or the closure of businesses as a
33 result of regulatory changes related to the climate and community
34 investment act;

35 (b) significant job losses across an industry as a result of techno-
36 logical change in order to achieve greenhouse gas emission reductions;
37 or

38 (c) loss of property tax or school tax revenue that would lead to
39 local layoffs or service reductions as a result of regulatory changes
40 related to such act.

41 3. Before finalizing the criteria for identifying industries that are
42 significantly impacted as a direct result of climate change policy and
43 identifying a list of significantly impacted industries pursuant to
44 subdivision one of this section, the department shall ensure that there
45 are meaningful opportunities for public comment, including by persons
46 working in potentially significantly impacted industries and persons
47 that may be identified as part of affected communities pursuant to this
48 article, including by:

49 (a) publishing draft criteria and a draft list of significantly
50 impacted industries and making such information available on the inter-
51 net.

52 (b) holding at least six regional public hearings on the draft crite-
53 ria and the draft list of significantly impacted industries, including
54 at least three meetings in the upstate region and three meetings in the
55 downstate region; and

1 (c) allowing at least one hundred twenty days for the submission of
2 public comment, following the date of the publication of draft criteria
3 described in paragraph (a) of this subdivision.

4 4. The department no less than four times annually shall review the
5 criteria and methods used to identify significantly impacted industries,
6 and may modify such methods to incorporate new data and scientific find-
7 ings, subject to the same process requirements listed under subdivision
8 three of this section.

9 5. An industry that has been significantly impacted as a direct result
10 of climate change policy, or workers in an industry that has been
11 significantly impacted as a direct result of climate change policy, may
12 also be identified based on a petition from a municipality, labor organ-
13 ization, or constituency-based organization located in or adjacent to an
14 impacted community.

15 6. The comptroller of the state of New York shall oversee the distrib-
16 ution of funds in collaboration with the department.

17 § 77-0715. Public engagement and social dialogue.

18 1. The department may regularly seek input and feedback from the
19 community, both in every region and directly from impacted communities
20 and impacted workers.

21 2. All meetings of the department shall include opportunities for
22 meaningful public input and allow all those affected the opportunity to
23 be a part of the dialogue; additionally, the department shall hold
24 regional meetings in each region each year, in addition to their regular
25 meetings in order to get public input.

26 3. The department will release a preliminary report within one year of
27 their first meeting, but after completing public engagement meetings in
28 each region this report will include:

29 (a) initial recommendations for a process for a comprehensive long
30 term just transition planning for New York state, including, but not
31 limited to identifying impacted communities, identifying applicable
32 firms, making recommendations for ongoing workforce strategy, and any
33 additional programs or supports required for a just transition.

34 (b) identifying every community across New York that is already a
35 significantly impacted community, already has significant adversely
36 affected employment (including significant employment in the energy
37 industry is likely to be a significantly impacted community), or already
38 has impacted workers or permanently closed facilities.

39 4. The department shall commence a social dialogue in each region
40 consisting of discussions where participants can discuss, be provided
41 with resources, and develop a consensus about how to respond to the
42 challenges of the transition. The social dialogue must be directed by
43 the people most affected. Goals of the social dialogue include: ensuring
44 economic decisions are made with real input from those most affected
45 they must include engagement with the broader community and across
46 sectors including input from the community, workers, businesses and
47 others who are impacted by climate policies, uncovering the best local
48 economic development and workforce plans and set the stage for diverse
49 investments into community rebirth provide resources to communities to
50 develop solutions, including access to technical expertise, information
51 about climate change, its impacts and causes; the impact climate change
52 has on the communities and the workforce, and regional economy; and
53 information about emerging jobs and sectors.

54 5. Within two years of the effective date of this title, the depart-
55 ment will release a draft plan that shall include, at a minimum:

56 (a) specifics of how to transition a workforce into emerging jobs;

1 (b) estimates of sufficient resources for that transition;
2 (c) what expertise and supports must be allocated for the development
3 and implementation of an effective workforce plan;

4 (d) a skills map for each impacted position, current and emerging new
5 energy jobs and regional employment opportunities with similar require-
6 ments; and

7 (e) education and training options for workers that allows them to
8 rapidly re-skill for jobs in demand that recognizes their current and
9 transferable skills, provides competency-based training, learn and earn,
10 and credit for prior learning opportunities upskilling through joint
11 labor management journey person extension programs sponsored by joint
12 apprenticeship training programs.

13 6. The department will also seek public input on:

14 (a) a policy for workforce impact statements; and

15 (b) additional potential funding and possible partnerships for oppor-
16 tunity and workforce and economic revitalization.

17 7. For the purposes of subdivisions two, three and four of this
18 section, "region" shall have the same meaning as in subdivision nine of
19 section two thousand four hundred twenty-six of the public authorities
20 law.

21 § 77-0717. Reporting.

22 1. No later than two years following the effective date of this title,
23 and every two years thereafter, the department shall produce a report on
24 the implementation of the program established under this title and the
25 extent to which program implementation is meeting stated program goals
26 and priorities. Such report shall include but not be limited to:

27 (a) reporting on the effectiveness of the policies established under
28 this title to the legislature and public on the job creation and
29 retention impacts;

30 (b) an overview of social benefits pursuant to the implementation of
31 this section, including benefits to the economy, environment, and public
32 health, including women's health;

33 (c) an overview of administrative costs for the department and other
34 state agencies;

35 (d) recommendations for future policy pertaining to transition assist-
36 ance; and

37 (e) data identifying both who submitted petitions and who received
38 support from the program and why.

39 2. (a) Prior to finalizing the report described in subdivision one of
40 this section, the department shall ensure that there are meaningful
41 opportunities for public participation, including by:

42 (i) allowing at least one hundred twenty days for the submission of
43 public comment, following the date of the publication of a draft report;
44 and

45 (ii) holding at least four regional public hearings, including: two
46 meetings in the upstate region and two meetings in the downstate region,
47 with emphasis on maximizing participation and accessibility for members
48 of disadvantaged communities.

49 (b) The following entities shall be invited to attend and given notice
50 of the public hearings described in paragraph (a) of this subdivision:

51 (i) environmental justice representatives;

52 (ii) organizations representing disadvantaged community members;

53 (iii) labor organizations in the area;

54 (iv) local businesses;

55 (v) local governments and school authorities; and

56 (vi) climate change experts.

1 3. The final report described in subdivision one of this section shall
2 be submitted to the governor, the president of the senate, the speaker
3 of the assembly, the minority leader of the senate and the minority
4 leader of the assembly and shall be posted on the website of the depart-
5 ment. Additionally, all reports shall be shared publicly through the
6 department of information technology and telecommunications of the city
7 of New York.

8 § 7. The tax law is amended by adding two new articles 42 and 43 to
9 read as follows:

10 ARTICLE 42

11 CLIMATE POLLUTION FEE

12 Section 3039. Definitions.

13 3040. Imposition of carbon pollution fee.

14 3041. Amount of fee.

15 3042. Applicable entities.

16 3043. Calculation of emissions factors.

17 3044. Exemptions and deductions.

18 3045. Emissions leakage mitigation policy.

19 3046. Creation of funds within the department of environmental
20 conservation.

21 3047. Reporting.

22 § 3039. Definitions. For the purposes of this article, the following
23 terms shall have the following meanings:

24 1. "Border carbon adjustment fee" means a fee imposed to address emis-
25 sions leakage that adjusts the price of a good, at the point of the
26 importation into the state of goods that require emissions of greenhouse
27 gases for their production or operation, or export from the state, to
28 reflect the known or estimated greenhouse gas emissions quantities asso-
29 ciated with the production of such good.

30 2. "Carbon-based fuel" means coal, a petroleum product, natural gas,
31 methane, municipal solid waste (or any other feedstocks used for waste-
32 to-energy conversions), or biomass that may be a source of greenhouse
33 gas emissions through combustion and fugitive emissions.

34 3. "Carbon dioxide equivalent" and "CO₂e" mean the amount of carbon
35 dioxide by mass that would produce the same global warming impact as a
36 given mass of another greenhouse gas over an integrated twenty-year
37 timeframe after emission, based on the best available science.

38 4. "Regulated air contaminant" shall have the same meaning as in
39 subdivision twenty-two of section 19-0107 of the environmental conserva-
40 tion law.

41 5. "Disadvantaged communities" shall have the same meaning as in
42 section 75-0101 of the environmental conservation law.

43 6. "Downstate region" means the counties of Richmond, Kings, Queens,
44 New York, Bronx, Westchester, Nassau and Suffolk.

45 7. "Emissions leakage" means an increase in emissions outside of the
46 state, as a result of, or in correlation with, the implementation of
47 measures within the state to limit such emissions.

48 8. "Fugitive emissions" means those emissions of a greenhouse gas that
49 are released during extraction, transportation of fuel, during process-
50 ing, and due to leaks during industrial processes or at solid waste and
51 wastewater management sites.

52 9. "Greenhouse gas" shall have the same meaning as in subdivision nine
53 of section 19-1301 of the environmental conservation law.

54 10. "Greenhouse gas emission source" or "source" means any anthropo-
55 genic source or category of anthropogenic sources of greenhouse gas
56 emissions.

1 11. "Industrial processes" means those processes that include fossil
2 fuel extraction, the operation of fuel processing plants, pipeline oper-
3 ations and other fuel transport, the operation of fuel refineries, and
4 other processes involved in the extraction, refinement or transport of
5 carbon-based fuels.

6 12. "Life cycle analysis" means a method for calculating greenhouse
7 gas emissions that encompasses emissions that are released or seques-
8 tered during all phases of a fuel or other product's life, including
9 those emissions released during extraction, processing, transport,
10 distribution, combustion (or some other form of consumption), and
11 disposal. Such term shall include CO₂e that is sequestered during
12 biological processes, pertaining to biomass fuel.

13 13. "Petroleum product" means all petroleum derivatives, whether in
14 bond or not, which are commonly burned to produce heat, electricity, or
15 motion, or which are commonly processed to produce synthetic gas for
16 burning, including without limitation, propane, gasoline, unleaded gaso-
17 line, kerosene, heating oil, diesel fuel, kerosene based jet fuel, and
18 number 4, number 5 and residual oil for utility and non-utility uses,
19 but not including, petroleum feedstocks to plastics production or other
20 manufacturing.

21 14. "Upstate region" means all New York counties other than Nassau,
22 Suffolk, Richmond, Kings, Queens, New York, Bronx and Westchester.

23 § 3040. Imposition of carbon pollution fee. There is hereby imposed
24 upon any applicable entity, as specified under section three thousand
25 forty-two of this article, a fee in an amount determined under section
26 three thousand forty-one of this article, on:

27 1. any carbon-based fuel sold, used, or brought into the state by an
28 applicable entity as defined in section three thousand forty-two of this
29 article; and

30 2. any fugitive emissions of methane emitted in the state by an appli-
31 cable entity.

32 § 3041. Amount of fee. 1. The amount of the fee imposed by section
33 three thousand forty of this article, per short ton of carbon dioxide
34 equivalent content that would be emitted through the combustion of such
35 product, as determined by the department of environmental conservation,
36 in consultation with the New York state energy research and development
37 authority, pursuant to this article, shall be equal to the following:

38 (a) during calendar year two thousand twenty-six, twenty-five dollars;

39 (b) during calendar years two thousand twenty-seven through two thou-
40 sand twenty-nine, an amount equal to the sum of:

41 (i) the amount in effect under this subdivision for the preceding
42 calendar year, and

43 (ii) a five percent increase to the amount assessed in the previous
44 year;

45 (c) during calendar years two thousand thirty through two thousand
46 thirty-five, an amount equal to the sum of:

47 (i) the fee assessed under this subdivision for the preceding calendar
48 year, and:

49 (A) two percent of the previous year's fee if the most recent five-
50 year environmental integrity metric, described under paragraph (a) of
51 subdivision two of this section, is less than minus five percent;

52 (B) five percent of the previous year's fee if the most recent five-
53 year environmental integrity metric, described under paragraph (a) of
54 subdivision two of this section, is greater than or equal to minus five
55 percent and less than five percent;

1 (C) seven percent of the previous year's fee if the most recent five-
2 year environmental integrity metric, described under paragraph (a) of
3 subdivision two of this section, is greater than or equal to five
4 percent and less than ten percent; or

5 (D) ten percent of the previous year's fee if the most recent five-
6 year environmental integrity metric, described under paragraph (a) of
7 subdivision two of this section, is greater than or equal to ten
8 percent; and

9 (ii) the department of environmental conservation shall also assess a
10 cost-of-living, or inflation, adjustment using the United States Bureau
11 of Labor Statistics Consumer Price Index or, if that index is not avail-
12 able, another index adopted by the commissioner;

13 (d) during calendar years two thousand thirty-six through two thousand
14 fifty-five, an amount equal to the sum of:

15 (i) the fee assessed under this subdivision for the preceding calendar
16 year, and:

17 (A) two percent of the previous year's fee if the most recent five-
18 year environmental integrity metric, described under paragraph (a) of
19 subdivision two of this section, is less than minus five percent, and
20 the most recent cumulative environmental integrity metric, described
21 under paragraph (b) of subdivision two of this section, is less than
22 minus one percent;

23 (B) five percent of the previous year's fee if:

24 I. the most recent five-year environmental integrity metric, described
25 under paragraph (a) of subdivision two of this section, is greater than
26 or equal to minus five percent and less than five percent, and the most
27 recent cumulative environmental integrity metric, described under para-
28 graph (b) of subdivision two of this section, is less than two percent;
29 or

30 II. the most recent five-year environmental integrity metric,
31 described under paragraph (a) of subdivision two of this section, is
32 less than five percent, and the most recent cumulative environmental
33 integrity metric, described under paragraph (b) of subdivision two of
34 this section, is greater than or equal to minus one percent and less
35 than two percent;

36 (C) seven percent of the previous year's fee if:

37 I. the most recent five-year environmental integrity metric, described
38 under paragraph (a) of subdivision two of this section, is greater than
39 or equal to five percent and less than ten percent, and if the most
40 recent cumulative environmental integrity metric, described under para-
41 graph (b) of subdivision two of this section, is less than three
42 percent; or

43 II. the most recent five-year environmental integrity metric,
44 described under paragraph (a) of subdivision two of this section, is
45 less than ten percent, and the most recent cumulative environmental
46 integrity metric, described under paragraph (b) of subdivision two of
47 this section, is greater than or equal to two percent and less than
48 three percent; or

49 (D) ten percent of the previous year's fee if:

50 I. the most recent five-year environmental integrity metric, described
51 under paragraph (a) of subdivision two of this section, is greater than
52 or equal to ten percent; or

53 II. the most recent cumulative environmental integrity metric,
54 described under paragraph (b) of subdivision two of this section, is
55 greater than or equal to three percent; and

1 (ii) the department of environmental conservation shall also assess a
2 cost-of-living, or inflation, adjustment using the United States Bureau
3 of Labor Statistics Consumer Price Index or, if that index is not avail-
4 able, another index adopted by the commissioner.

5 2. In two thousand twenty-eight, and every year thereafter, the
6 commissioner shall, in consultation with the department of environmental
7 conservation:

8 (a) calculate the five-year environmental integrity metric, which
9 shall equal a fraction, expressed as a percentage:

10 (i) the numerator of which is:

11 (A) the sum of the quantity of actual statewide greenhouse gas emis-
12 sions, measured in short tons CO₂e, in each of the preceding five years,
13 minus

14 (B) the sum of the quantity of target statewide greenhouse gas emis-
15 sions, measured in short tons CO₂e, in each of the preceding five years,
16 pursuant to subdivision four of this section; and

17 (ii) the denominator of which is the sum of the quantity of target
18 statewide greenhouse gas emissions, measured in short tons CO₂e, in each
19 of the preceding five years, pursuant to subdivision four of this
20 section; and

21 (b) calculate the cumulative environmental integrity metric, which
22 shall equal a fraction, expressed as a percentage:

23 (i) the numerator of which is:

24 (A) the sum of the quantity of actual statewide greenhouse gas emis-
25 sions, measured in short tons CO₂e, in each of the preceding years that
26 are after two thousand eighteen, minus

27 (B) the sum of the quantity of target statewide greenhouse gas emis-
28 sions, measured in short tons CO₂e, in each of the preceding years that
29 are after two thousand eighteen, pursuant to subdivision four of this
30 section; and

31 (ii) the denominator of which is the sum of the quantity of target
32 statewide greenhouse gas emissions, measured in short tons CO₂e, in each
33 of the preceding years that are after two thousand eighteen, pursuant to
34 subdivision four of this section; and

35 (c) publish the amounts calculated in paragraphs (a) and (b) of this
36 subdivision not later than July first in that year.

37 3. The department of environmental conservation shall calculate and
38 publish the amount of the fee in current dollars for each year, no later
39 than July first in that year.

40 4. For the purposes of calculating the five-year environmental integ-
41 riety metric and the cumulative environmental integrity metric under
42 subdivision two of this section, the department of environmental conser-
43 vation shall refer to the following statewide greenhouse gas emissions
44 targets:

45 (a) for the year two thousand twenty-five, eighty-five percent of two
46 thousand eighteen emissions;

47 (b) for each year after two thousand twenty-five and before two thou-
48 sand thirty-one, less than in the preceding year by four percent of two
49 thousand eighteen emissions;

50 (c) for each year after two thousand thirty and before two thousand
51 forty-six, less than in the preceding year by three percent of two thou-
52 sand eighteen emissions; and

53 (d) for each year after two thousand forty-five, less than in the
54 preceding year by two percent of two thousand eighteen emissions.

55 § 3042. Applicable entities. For the purposes of this article, the
56 term "applicable entity" means:

1 1. for the purposes of any coal sold, used, or entered into the state:
2 (a) the vendor of such coal at the first point of sale, in cases where
3 the sale of coal occurs in the state; and

4 (b) the purchaser of such electricity, in cases where the sale of the
5 electricity occurs outside of the state;

6 5. for the purposes of any municipal solid waste (or any other feeds-
7 tocks used for waste-to-energy conversions) sold, used, or entered into
8 the state:

9 (a) the vendor of such municipal solid waste (or any other feedstocks
10 used for waste-to-energy conversions) at the first point of sale, in
11 cases where the sale of municipal solid waste (or any other feedstocks
12 used for waste-to-energy conversions) occurs in the state; and

13 (b) the purchaser of such municipal solid waste (or any other feeds-
14 tocks used for waste-to-energy conversions), in cases where the sale of
15 the municipal solid waste (or any other feedstocks used for waste-to-en-
16 ergy conversions) occurs outside of the state;

17 6. for the purposes of any biomass sold, used, or entered into the
18 state:

19 (a) the vendor of such biomass at the first point of sale, in cases
20 where the sale of biomass occurs in the state; and

21 (b) the purchaser of such biomass, in cases where the sale of the
22 biomass occurs outside of the state; and

23 7. for the purposes of any fugitive emissions of methane released in
24 the state, the owner of the property that is the source of such fugitive
25 emissions, including stationary sources and mobile sources, and includ-
26 ing pipeline operators, fuel distributors, transportation companies and
27 other entities.

28 § 3043. Calculation of emissions factors. 1. Not later than one year
29 after the effective date of this article, the New York state energy
30 research and development authority, in collaboration with the department
31 of environmental conservation, shall, for each carbon-based fuel identi-
32 fied in this article and for various sources of electricity consumed in
33 the state, calculate greenhouse gas emissions factors, in carbon dioxide
34 equivalent.

35 2. Emissions factors associated with combustion or other consumption
36 of the carbon-based fuels identified in this article shall be calculated
37 according to life-cycle analysis methods, which at a minimum shall
38 incorporate:

39 (a) any greenhouse gases released at the point of combustion or other
40 consumption; and

41 (b) up-steam fugitive emissions of methane released during the
42 extraction, processing, refining, transport, or distribution of natural
43 gas products and petroleum products before the point of consumption in
44 New York.

45 3. The New York state energy research and development authority, in
46 collaboration with the department of environmental conservation, shall
47 calculate, for various sources of electricity consumed in the state,
48 greenhouse gas emissions factors, in carbon dioxide equivalent per kilo-
49 watt-hour, associated with the combustion of each carbon-based fuel
50 identified in this article for the purposes of generating electricity.
51 This calculation should take into account the best available information
52 and science regarding power plant heat rates and other operational
53 parameters that may determine efficiency in the conversion of thermal
54 energy to electrical energy. The CO₂e of each kilowatt-hour of electric-
55 ity delivered in the state shall be determined by taking the weighted
56 average of the coal, petroleum product, natural gas, municipal solid

1 waste (or any other feedstocks used for waste-to-energy conversions), or
2 biomass portions of the fuel mix and multiplying each of those portions
3 separately by the amount of carbon dioxide equivalent emissions created
4 per kilowatt-hour of electricity produced by each such fuel. The calcu-
5 lation of emissions factors under this subdivision shall take into
6 account all electricity consumed in the state, which shall include any
7 electricity produced within the state and outside of the state.

8 § 3044. Exemptions and deductions. 1. The owner of any electric
9 generating facility that is covered by the CO2 budget trading program (6
10 NYCRR part 242) established by the department of environmental conserva-
11 tion shall be entitled to deduct from the fee imposed by this article an
12 amount equal to the amount it paid to purchase CO2 emission allowance to
13 comply with the CO2 budget trading program; provided, however, that the
14 amount so deducted may be no greater than the total amount of the fee as
15 calculated in this article.

16 2. Any applicable entity subject to a fee under this article, shall be
17 entitled to deduct from the fee imposed by this article an amount equal
18 to the amount it paid for the same year on account of a federal law or
19 regulation that imposes a direct price (including through cap-and-trade,
20 or a carbon tax or carbon fee mechanisms) on the same greenhouse gas
21 emissions from carbon-based fuels; provided, however, that the amount so
22 deducted may be no greater than the total amount of the fee as calcu-
23 lated in this article.

24 3. The department of environmental conservation may exempt certain
25 sources of greenhouse gas emissions found to produce de minimis quanti-
26 ties of such emissions. In order to exempt sources of greenhouse gas
27 emissions under this subdivision, the department of environmental
28 conservation, in partnership with the New York state energy research and
29 development authority, shall first promulgate a rule, or rules, outlin-
30 ing the specific requirements for being classified as a de minimis
31 source, including, at a minimum, identifying the quantities of green-
32 house gases that would make a source a de minimis source. In promulgat-
33 ing such rule, or rules, the department of environmental conservation
34 shall provide meaningful opportunities for public comment, including
35 from persons living in disadvantaged communities.

36 § 3045. Emissions leakage mitigation policy. 1. Not later than one
37 year after the effective date of this article, the department of envi-
38 ronmental conservation, in partnership with the New York state energy
39 research and development authority and the commissioner of labor, shall
40 prepare and approve a scoping plan outlining recommendations for policy
41 measures to reduce emissions leakage associated with the implementation
42 of this article.

43 (a) The draft scoping plan shall be developed in consultation with
44 stakeholders.

45 (b) The department of environmental conservation shall provide mean-
46 ingful opportunities for public comment from all persons who will be
47 impacted by the plan, including persons working in energy intensive and
48 trade exposed industries and persons living in disadvantaged communi-
49 ties.

50 (c) The measures and actions considered in such scoping plan shall at
51 a minimum include:

52 (i) imposing a border carbon adjustment fee;

53 (ii) the implementation of a border carbon adjustment for vulnerable
54 industries and companies;

55 (iii) the implementation of an output-based carbon pollution fee
56 rebate program for vulnerable industries and companies;

1 (iv) quantitative methods for designating vulnerable industries or
2 companies, such as energy intensive and trade exposed industries; and
3 (v) policies for mitigating any impacts to consumers and workers
4 caused by the implementation of policies under this section, including
5 through the use of revenues from a possible border carbon adjustment fee
6 for reducing such impacts.

7 (d) Not later than one year after the effective date of this article,
8 the department of environmental conservation shall submit the final
9 scoping plan to the governor, the speaker of the assembly and the tempo-
10 rary president of the senate and post such plan on its website.

11 2. Not later than two years after the effective date of this article,
12 the department of environmental conservation, after public workshops,
13 representatives of regulated entities, and other stakeholders, shall,
14 after no less than two public hearings, promulgate rules and regulations
15 to implement a policy to reduce emissions leakage associated with the
16 implementation of this article.

17 (a) The regulations promulgated may include:

18 (i) a border carbon adjustment fee for vulnerable trade exposed energy
19 intensive industries and companies to reduce emissions;

20 (ii) an output-based carbon pollution fee and rebate program for
21 vulnerable industries and companies;

22 (iii) quantitative methods for designating vulnerable industries or
23 companies, such as energy intensive and trade exposed industries; and

24 (iv) policies for mitigating any impacts to consumers and workers
25 caused by the implementation of policies under this section, including
26 through the use of revenues from a possible border carbon adjustment fee
27 for reducing such impacts.

28 (b) In promulgating these regulations, the department of environmental
29 conservation shall:

30 (i) design and implement all regulations in a manner that seeks to be
31 equitable, to minimize costs and to maximize the total benefits to New
32 York state;

33 (ii) ensure that activities undertaken to comply with the regulations
34 do not disproportionately burden disadvantaged communities; and

35 (iii) minimize emissions leakage.

36 3. Any funds collected pursuant to a policy arising from this section
37 shall be appropriated by the department of environmental conservation
38 pursuant to the mandated proportions in section three thousand forty-six
39 of this article.

40 § 3046. Creation of funds within the department of environmental
41 conservation. 1. (a) Within ninety days following the effective date of
42 this article, the commissioner, in coordination with the comptroller,
43 shall establish a fund within the department of environmental conserva-
44 tion to be known as the "community just transition fund", consisting of
45 such amounts as may be appropriated or credited to such fund and thir-
46 ty-three percent of the total amount of fees received under section
47 three thousand forty of this article during such year.

48 (b) The community just transition fund shall be administered by the
49 department of environmental conservation for the purposes enumerated in
50 the climate and community investment act.

51 2. (a) Within ninety days following the effective date of this arti-
52 cle, the commissioner, in coordination with the comptroller, shall
53 establish a fund within the department of environmental conservation to
54 be known as the "climate jobs and infrastructure fund", consisting of
55 such amounts as may be appropriated or credited to such fund and thirty

1 percent of the total amount of fees received under section three thou-
2 sand forty of this article during such year.

3 (b) The climate jobs and infrastructure fund shall be administered by
4 the department of environmental conservation for the purposes enumerated
5 in the climate and community investment act.

6 3. (a) Within ninety days of the effective date of this article, the
7 commissioner, in coordination with the comptroller, shall establish a
8 fund within the department of environmental conservation to be known as
9 the "low-income and small business and household energy rebate fund",
10 consisting of such amounts as may be appropriated or credited to such
11 fund and thirty percent of the total amount of fees received under
12 section three thousand forty of this article during such year.

13 (b) The low-income and small business and household energy rebate fund
14 shall be administrated by the department of environmental conservation
15 for the purposes enumerated in the climate and community investment act.

16 4. (a) Within ninety days of the effective date of this article, the
17 commissioner, in coordination with the comptroller, shall establish a
18 fund within the department of environmental conservation to be known as
19 the "worker and community assurance fund", consisting of such amounts as
20 may be appropriated or credited to such fund as follows:

21 (i) in the first fiscal year in which any fees under this article are
22 collected, no less than five hundred million dollars shall be trans-
23 ferred to the worker and community assurance fund; and

24 (ii) seven percent of the total amount of fees received under section
25 three thousand forty of this article during such year.

26 (b) The worker and community assurance fund shall be administered by
27 the department of environmental conservation for the purposes enumerated
28 in the climate and community investment act.

29 5. No proceeds received through the implementation of the fee estab-
30 lished under this article shall fund government operations of the state,
31 other than to pay for reasonable administrative costs associated with
32 implementing the climate and community investment act.

33 6. No proceeds received through the implementation of the fee estab-
34 lished under this article shall fund police, prisons or related infras-
35 tructure.

36 § 3047. Reporting. 1. No later than three years following the effec-
37 tive date of this article, and every two years thereafter, the depart-
38 ment of environmental conservation, in partnership with the comptroller,
39 and the New York state energy research and development authority, shall
40 produce a report on the implementation of this article. Such report
41 shall include but not be limited to:

42 (a) the total annual revenues associated with the implementation of
43 this article;

44 (b) the effectiveness of the fee established under section three thou-
45 sand forty of this article to reduce greenhouse gas emissions statewide,
46 including an analysis of reductions by geographic subdivisions of the
47 state;

48 (c) the amount of estimated emissions leakage that may be occurring in
49 correlation with the implementation of the fee established under section
50 three thousand forty of this article, the effectiveness of any policies
51 that have been implemented to address emissions leakage, and recommenda-
52 tions for improving policies to mitigate emissions leakage;

53 (d) an overview of social benefits from the fees and other policies
54 established pursuant to this article, including benefits to the economy,
55 environment, and public health, including the health of women, youth and
56 children;

1 (e) an overview of the distribution of costs and benefits of the poli-
2 cies promulgated under this article, across different communities and
3 sectors of the state economy;

4 (f) an overview of compliance costs for regulated entities;

5 (g) an overview of administrative costs for the department of environ-
6 mental conservation and other state agencies; and

7 (h) recommendations for future regulatory and policy action, and, in
8 general, pertaining to measures for reducing greenhouse emissions in the
9 state.

10 2. Before finalizing the report described in subdivision one of this
11 section, the department of environmental conservation shall ensure that
12 there are meaningful opportunities for public participation, including
13 by:

14 (a) allowing at least one hundred twenty days for the submission of
15 public comment, following the date of the publication of a draft report;
16 and

17 (b) holding at least four regional public hearings, including two
18 meetings in the upstate region and two meetings in the downstate region,
19 with emphasis on maximizing participation and accessibility for members
20 of disadvantaged communities.

21 3. The final report shall be submitted to the governor, the temporary
22 president of the senate, the speaker of the assembly, the minority lead-
23 er of the senate and the minority leader of the assembly, and shall be
24 posted on the website of the department of environmental conservation.

ARTICLE 43

HOUSEHOLD AND SMALL BUSINESS ENERGY REBATE

Section 3050. Definitions.

28 3051. Establishment of the household and small business energy
29 rebate program.

30 3052. Administration by the department of environmental conser-
31 vation.

32 3053. Allocation of funds.

33 3054. Qualifying households.

34 3055. Rebate amount and report.

35 3056. Delivery of funds.

36 3057. Reassessment of allocations.

37 3058. Small business tax credit.

38 3059. Public service commission investigation.

39 § 3050. Definitions. For the purposes of this article, the following
40 terms shall have the following meanings:

41 1. "Eligible low-income household" means, with respect to a given
42 calendar year, any household in New York state whose gross income does
43 not exceed one hundred fifty percent of the poverty line, regardless of
44 citizenship or term of insurance.

45 2. "Eligible moderate-income household" means, with respect to a given
46 calendar year, any household in New York state whose gross income
47 exceeds one hundred fifty percent of the poverty line, but does not
48 exceed the median household income for the county in which they reside,
49 regardless of citizenship or term of insurance.

50 3. "Eligible small business" means a business, cooperative, or not-
51 for-profit corporation which is resident in this state, and employs
52 fifty or less persons (including a sole proprietorship), and with
53 respect to businesses, is independently owned and operated and not domi-
54 nant in its field.

1 4. "Fund" or "rebate fund" means the low-income and small business and
2 household energy rebate fund established under subdivision three of
3 section three thousand forty-six of this chapter.

4 5. "Poverty line" shall have the same meaning as in section 673(2) of
5 the federal community services block grant act (46 USC section 9902).

6 6. "Program" means the household and small business energy rebate
7 program established under this article.

8 § 3051. Establishment of the household and small business energy
9 rebate program. There is hereby established within the department of
10 environmental conservation, the "household and small business energy
11 rebate program". The purposes of the program include:

12 1. disbursement of funds from the household and small business energy
13 rebate fund; for the benefit of the most vulnerable populations, to
14 offset the increased cost of living associated with the implementation
15 of the climate pollution fee created pursuant to article forty-two of
16 this chapter and other regulatory measures established as part of the
17 state's climate mitigation efforts; and

18 2. reducing the already severe energy burden on low- and moderate-in-
19 come families.

20 § 3052. Administration by the department of environmental conserva-
21 tion. Within six months of the effective date of this article, the
22 department of environmental conservation is hereby authorized and
23 directed to establish and operate the program. The department of envi-
24 ronmental conservation shall implement the program in consultation with
25 the office of temporary and disability assistance and the departments of
26 health and labor. The department of environmental conservation shall be
27 authorized and directed to: use monies made available for the program
28 pursuant to article forty-two of this chapter to achieve the purposes of
29 the program; and exercise such other powers as are necessary for the
30 proper administration of such program, including issuing rules and regu-
31 lations consistent with this article.

32 § 3053. Allocation of funds. Funds from the household and small busi-
33 ness energy rebate fund shall be disbursed under the program to eligible
34 households and small businesses. The department of environmental conser-
35 vation shall collect and then distribute directly to eligible households
36 the entire amount of funds dedicated to the rebate fund. Eligible house-
37 holds shall be notified that they are automatically being enrolled based
38 on their tax filing status or receipt of public benefits. The department
39 of environmental conservation, in coordination with the commissioner,
40 the public service commission, the New York state office of temporary
41 and disability assistance, and the department, will make determinations
42 as to which households and small businesses are eligible for the rebate
43 and establish an appeals process within the department of environmental
44 conservation as to such determinations. The department of environmental
45 conservation shall also establish an opportunity for individual resi-
46 dents of the state who are not required to file income taxes to apply
47 for rebates under this article.

48 § 3054. Qualifying households. A rebate will be available to eligible
49 low-income households, moderate-income households, and additional house-
50 holds, provided that rebates shall only be provided to such additional
51 households upon a determination by the department of environmental
52 conservation that there are adequate funds. Notwithstanding the preced-
53 ing sentence, the rebate shall be available to a maximum of sixty
54 percent of the households in New York state. Households shall qualify
55 regardless of citizenship. The department of environmental conservation
56 will cooperate with the department and the office of temporary and disa-

1 bility assistance to identify households and place them in the following
2 four household categories:

3 1. eligible moderate-income households containing New York city resi-
4 dents;

5 2. eligible low-income households containing New York city residents
6 in which the household income is below one hundred fifty percent of the
7 poverty line or who are receiving any means-tested government assistance
8 aimed at low-income individuals or households;

9 3. eligible moderate-income households containing residents outside of
10 New York city; and

11 4. eligible low-income households containing residents outside of New
12 York city with a household income below one hundred fifty percent of the
13 poverty line or receiving any means-tested government assistance
14 programs aimed at low-income individuals or households.

15 § 3055. Rebate amount and report. 1. The department of environmental
16 conservation shall determine the appropriate amount of the rebate,
17 consistent with the standards set forth in this section. Each eligible
18 household will receive a share of the total allocated rebate funds so
19 that:

20 (a) all eligible households in New York city shall receive the same
21 amount,

22 (b) all eligible households outside of New York city shall receive the
23 same amount and that amount shall be at least fifty percent more than
24 the rebate amount applicable to New York city households, and

25 (c) the total amount provided for rebates must not exceed the annual
26 revenue in the rebate fund.

27 2. The department of environmental conservation shall annually assess
28 and report to the legislature and the governor at least the following
29 information: the number of households in each rebate category in section
30 three thousand fifty-four of this article; the number of households who
31 select each delivery mechanism set forth in section three thousand
32 fifty-six of this article; and how the number of households compare to:

33 (a) the incremental increase in the cost of living associated with the
34 implementation of the fee established pursuant to article forty-two of
35 this chapter and other regulatory measures established under article
36 forty-two of this chapter;

37 (b) other estimated increases in the cost of living associated with
38 the transition to a low-carbon economy; and

39 (c) existing energy burdens.

40 § 3056. Delivery of funds. 1. The department of environmental conser-
41 vation, in partnership with the the New York state energy research and
42 development authority, the public service commission and the office of
43 temporary and disability assistance shall determine appropriate mech-
44 anisms for delivering rebates under this article. These departments
45 shall within the bounds of the law share necessary expertise and data.
46 That mechanism shall ensure that:

47 (a) Eligible moderate-income households in the first and third house-
48 hold categories set forth in section three thousand fifty-four of this
49 article shall receive a direct payment redeemable tax credit.

50 (b) Eligible low-income households in the second and fourth household
51 categories set forth in section three thousand fifty-four of this arti-
52 cle shall receive their rebate through mechanisms that will not consti-
53 tute income for purposes of any means-tested government assistance
54 programs that they may be receiving. Unless an eligible low-income
55 household opts out of such benefit under this section, the benefit shall
56 be:

1 (i) a transit voucher for use receiving services through the Metropol-
2 itan Transportation Authority, Access-a-Ride, or other public transit
3 service for households in the second household category under section
4 three thousand fifty-four of this article.

5 (ii) utility assistance or a weatherization grant for the fourth
6 household category under section three thousand fifty-four of this arti-
7 cle.

8 (iii) another form that complies with this subdivision.

9 2. All qualifying households may opt out of the default option for
10 delivery of the rebate, and can choose to receive their benefit amount
11 in the form of one of the following four options: (a) utility assist-
12 ance; (b) a weatherization grant; (c) a voucher for use with their local
13 transit authority; (d) a redeemable tax credit; or (e) a direct payment
14 if the authority offers such option.

15 3. The department of environmental conservation shall make reasonable
16 efforts to deliver funds as frequently as practical, and to distribute a
17 portion of the rebate at least quarterly.

18 § 3057. Reassessment of allocations. 1. Beginning in two thousand
19 twenty-five and every five years thereafter, the department of environ-
20 mental conservation, in coordination with the department, the office of
21 temporary and disability assistance, the public service commission and
22 the New York state energy research and development authority shall
23 perform an assessment, which shall include, at a minimum, the following
24 information: (a) the statewide energy burden for small businesses, and
25 households by geography and income; (b) whether such energy burden has
26 stayed level or decreased since the effective date of this section; (c)
27 the uptake of energy efficiency and renewable energy in each income
28 category; and (d) an estimated impact on energy burden or another equiv-
29 alent estimate of the proportion of household income spent on energy.
30 Based on such information and any additional information that the
31 department determines is appropriate, the department shall determine
32 whether the present rebate amount is appropriate or whether it is appro-
33 priate to reduce the rebate benefit amount.

34 2. Following any assessment under subdivision one of this section
35 where the impact of the fee established is found not to increase house-
36 hold spending, or where the energy burden has fallen, the rebate shall
37 be reduced by at least ten percent and the funds reallocated in equal
38 amounts to the community just transition fund established pursuant to
39 subdivision one of section three thousand forty-six of this chapter and
40 the climate jobs and infrastructure fund established pursuant to subdi-
41 vision two of such section.

42 § 3058. Small business tax credit. 1. Eligible small businesses shall
43 receive a redeemable tax credit to reduce any incremental increase in
44 the cost of doing business associated with the implementation of the fee
45 established pursuant to article forty-two of this chapter and other
46 regulatory measures established under the climate and community invest-
47 ment act or the transition to a low-carbon economy in New York state.

48 2. Any eligible small business that incurs energy or fuel costs in the
49 course of its business, shall be allowed a credit, to be computed as
50 provided in subdivision three of this section, against business income
51 for each year that the fee established pursuant to article forty-two of
52 this chapter is collected.

53 3. The credit authorized by this section shall equal the higher of
54 five hundred dollars a year, or the amount computed for a household
55 rebate.

1 4. The credit created under this section may be claimed even if no
2 taxes are owed by the eligible small business. Such credit may be used
3 to reduce the tax liability of the credit claimant below zero.

4 § 3059. Public service commission investigation. Not later than six
5 months after the effective date of this article, the public service
6 commission shall establish a proceeding to investigate, identify and
7 mitigate any increase in electric or gas rates for qualifying households
8 and eligible small businesses that may be projected to arise under this
9 article and article forty-two of this chapter.

10 § 8. Severability. If any word, phrase, clause, sentence, paragraph,
11 section, or part of this act shall be adjudged by any court of competent
12 jurisdiction to be invalid, such judgment shall not affect, impair, or
13 invalidate the remainder thereof, but shall be confined in its operation
14 to the word, phrase, clause, sentence, paragraph, section, or part ther-
15 eof directly involved in the controversy in which such judgment shall
16 have been rendered.

17 § 9. If any word, phrase, clause, sentence, paragraph, section, or
18 part of this act shall be adjudged to require the department of environ-
19 mental conservation to act outside of their legal powers, such as
20 engaging in the market beyond activities allowed as a market actor, the
21 relevant statutory requirements shall be interpreted so that the powers
22 and duties herein are enforced to the extent allowed by law.

23 § 10. This act shall take effect on the one hundred eightieth day
24 after it shall have become a law and shall apply to any grants, loans,
25 contracts and financial assistance awarded or renewed on or after such
26 effective date. Effective immediately, the addition, amendment and/or
27 repeal of any rule or regulation necessary for the implementation of
28 this act on its effective date are authorized to be made and completed
29 on or before such date.