

STATE OF NEW YORK

3975

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IN ASSEMBLY

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Introduced by M. of A. KELLES, BICHOTTE HERMELYN, SIMON, EPSTEIN, GONZALEZ-ROJAS, LEVENBERG, SIMONE, SHIMSKY, FORREST, TAPIA, R. CARROLL, STIRPE, DINOWITZ, SHRESTHA, MAMDANI, COLTON, STECK, ROSENTHAL, PAULIN, REYES, HEVESI -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law and the public authorities law, in relation to establishing an economy-wide cap and invest program to support greenhouse gas emissions reductions in the state

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

1 Section 1. Legislative findings and declaration. 1. Pursuant to arti-
2 cle 75 of the environmental conservation law, as added by the Climate
3 Leadership and Community Protection Act, the department of environmental
4 conservation was required to promulgate regulations, by January 1, 2024,
5 to ensure achievement of the statewide greenhouse gas emission limits,
6 as defined and established therein. Among other requirements, the regu-
7 lations promulgated by such department pursuant to section 75-0109 of
8 the environmental conservation law must ensure that the aggregate emis-
9 sions of greenhouse gases from greenhouse gas emission sources will not
10 exceed the statewide greenhouse gas emissions limits established in
11 section 75-0107 of the environmental conservation law; include legally
12 enforceable emissions limits, performance standards, or measures or
13 other requirements to control emissions from greenhouse gas emission
14 sources; prioritize emissions and co-pollutant reductions in disadvan-
15 tagged communities; do not result in a net increase in co-pollutant emis-
16 sions or otherwise disproportionately burden disadvantaged communities;
17 and reflect, in substantial part, the findings of the scoping plan
18 prepared by the Climate Action Council pursuant to section 75-0103 of
19 the environmental conservation law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 25. "Link" or "linkage" means the establishment of a bilateral or
5 multilateral non-binding agreement that connects two or more market-
6 based programs designed to reduce carbon-dioxide equivalent emissions
7 and which:

8 a. articulates a mutual understanding of how participating jurisdic-
9 tions will collaborate to facilitate reductions of carbon-dioxide equiv-
10 alent emissions;

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

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

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

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

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

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

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

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

34 f. At the discretion of the department, require greenhouse gas emis-
35 sion sources to submit compliance items electronically and maintain and
36 utilize electronic signatures for verification purposes.

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

39 5. No later than one year after the effective date of this section,
40 the department shall set statewide greenhouse gas emissions limits for
41 each compliance period for the purpose of determining interim progress
42 in achieving the statewide greenhouse gas emissions limits set forth in
43 section 75-0107 of this article. Such statewide greenhouse gas emissions
44 limits shall be set by the department as interim greenhouse gas emis-
45 sions reduction targets to inform decision-making regarding the need to
46 reduce total allowable greenhouse gas emissions under the cap and invest
47 program, and shall be reviewed annually. If, in the determination of the
48 department, such statewide greenhouse gas emissions limits are set at a
49 level which is insufficient to incentivize state greenhouse gas emis-
50 sions reductions progress necessary to achieve the emissions reduction
51 targets set forth in section 75-0107 of this article, the department
52 shall immediately modify the statewide greenhouse gas emissions limits
53 set pursuant to this subdivision to correct such insufficiency, begin-
54 ning with the next compliance period.

55 6. No later than January first, two thousand twenty-six, the depart-
56 ment shall assess and set site or facility specific caps for each

1 stationary source emitter of greenhouse gas for each compliance period
2 in disadvantaged communities for the purpose of determining interim
3 progress in achieving the statewide greenhouse gas emissions limits set
4 forth in section 75-0107 of this article. Such site or facility specific
5 caps on greenhouse gas emissions shall be set by the department as
6 interim greenhouse gas emissions reduction targets to inform decision-
7 making under the cap and invest program, and shall be reviewed annually.

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

18 8. No later than January first, two thousand twenty-six, the depart-
19 ment shall set sector specific benchmarks and goals for the reduction of
20 greenhouse gas emissions in each compliance period for the purpose of
21 determining interim progress in achieving the statewide greenhouse gas
22 emissions limits set forth in section 75-0107 of this article. Such
23 sector specific goals on greenhouse gas emissions shall be set by the
24 department as interim greenhouse gas emission reduction targets to
25 inform decision-making regarding the need to reduce or eliminate total
26 allowable greenhouse gas emissions under the cap and invest program,
27 including measures to prioritize greenhouse gas emissions and co-pollu-
28 tant reductions in disadvantaged communities, and shall be reviewed
29 annually.

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

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

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

38 § 6. Paragraphs a and b of subdivision 2 of section 75-0111 of the
39 environmental conservation law, as added by chapter 106 of the laws of
40 2019, are amended to read as follows:

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

46 b. The [~~council~~] working group shall also ensure that there are mean-
47 ingful opportunities for public comment for all segments of the popu-
48 lation that will be impacted by the criteria, including persons living
49 in areas that may be identified as disadvantaged communities under the
50 proposed criteria.

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

54 b. An assessment of existing regulations [~~and~~], whether modifications
55 are needed to ensure fulfillment of the statewide greenhouse gas emis-
56 sions limits, and a description of any such modifications the department

1 has made and intends to make pursuant to sections 75-0121 and 75-0125 of
2 this article.

3 § 8. The environmental conservation law is amended by adding six new
4 sections 75-0121, 75-0123, 75-0125, 75-0127, 75-0129 and 75-0131 to read
5 as follows:

6 § 75-0121. Cap and invest program; allocation of allowances.

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

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

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

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

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

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

54 g. The department and the authority shall coordinate with the commis-
55 sion to determine a timeline and related planning process for the
56 retirement of fossil fuel generation facilities or their conversion to

1 renewable energy facilities to ensure the emissions reductions necessary
2 to comply with the statewide greenhouse gas emissions limits established
3 by section 75-0107 of this article.

4 2. The department shall transfer all allowances, as created and issued
5 by the department pursuant to the cap and invest program established by
6 subdivision one of this section, to the greenhouse gas emissions
7 reduction account for auction, sale, or direct allocation thereof in the
8 manner set forth in this article and in subdivision twenty-five of
9 section eighteen hundred fifty-four of the public authorities law;
10 provided, however, that the department shall not allocate permits for
11 zero or de minimis cost.

12 3. a. No later than six months after the effective date of this
13 section, the department shall adopt regulations that establish criteria
14 and methods for determining energy intensity and trade exposure for the
15 purpose of identifying facilities which may be significantly impacted by
16 the cap and invest program such that they may be designated as EITEs in
17 a manner which is consistent with the treatment of EITEs in the scoping
18 plan, including appendix C thereof. The department shall ensure that
19 any designated EITEs attempt strategies to proactively reduce the risk
20 of leakage by relying on incentive-oriented approaches or technical
21 support prior to approving any reduced cost allowances. The development
22 of such regulations shall include at least three public hearings and
23 other efforts to provide meaningful opportunities for public comment
24 from all persons who will be impacted by the scoping plan, including but
25 not limited to, persons working for EITEs and persons living in disad-
26 vantaged communities. Such regulations shall be developed in compliance
27 with the provisions of paragraph b of this subdivision.

28 b. Such regulations shall:

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

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

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

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

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

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

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

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

3 (D) contractual commitment on the part of the facility to avoid leak-
4 age and continue to meet such economic development or economic mainte-
5 nance requirements as determined to be appropriate by the department, in
6 consultation with the authority and the department of economic develop-
7 ment.

8 c. Upon a satisfactory showing by an EITE to the department that such
9 EITE will be significantly negatively impacted by compliance with the
10 cap and invest program so as to result in leakage, the department and
11 the authority may, in a manner not inconsistent with any other provision
12 of this article or the scoping plan, provide for allowances to initially
13 be issued to eligible EITEs at reduced cost. The amount of such reduced
14 cost shall be that amount which is necessary to prevent leakage with
15 respect to the facility, as determined by the department, in consulta-
16 tion with the authority and the department of economic development, as
17 long as the EITE employs best available technology to reduce its emis-
18 sions; provided, however, that the term "best available technology" will
19 not include the use of alternate fuel combustion, or carbon capture and
20 sequestration. For the first compliance period, any allowances issued
21 to an EITE at reduced cost shall not represent more than the minimum
22 amount of allowances necessary to authorize such EITE to emit an amount
23 of carbon dioxide equivalent emissions equal to such EITE's average
24 annual carbon dioxide equivalent emissions for the three years following
25 the effective date of this section as determined by the department. Such
26 amount shall be adjusted downward as necessary to account for the
27 requirement that such EITE employ best available technology to reduce
28 its emissions. In subsequent compliance periods, any allocation to EITEs
29 of allowances at reduced cost shall decline in proportion to the
30 reduction in total available allowances for a given compliance period in
31 accordance with the cap for such compliance period. An EITE shall not
32 be issued an allowance at reduced cost for an amount which is less than
33 the amount paid by such EITE for a reduced cost allowance in the previ-
34 ous compliance period.

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

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

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

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

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

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

55 e. If the actual greenhouse gas equivalent emissions of an EITE exceed
56 the allowances issued to such EITE at reduced cost for that compliance

1 period, such EITE must acquire additional allowances at full price and
2 submit such allowances as necessary to satisfy its compliance obligation
3 during such compliance period.

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

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

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

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

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

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

26 b. No later than six months after the effective date of this section,
27 the department, in consultation with the authority, shall adopt such
28 rules and regulations as it deems necessary to govern the auction or
29 sale of allowances, and may enter into such contracts as may be neces-
30 sary or convenient for such purpose.

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

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

50 § 75-0123. Use of allowances.

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

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

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

§ 75-0125. Price of allowances.

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

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

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

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

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

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

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

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

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

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

1 b. The department and the authority may seek and obtain such informa-
2 tion as may be necessary or convenient for the determination of the
3 pricing of allowances from other state or federal agencies or the feder-
4 ally designated electric bulk system operator.

5 § 75-0127. Linkage with other jurisdictions.

6 1. The department shall determine an equitable and efficient manner to
7 link the cap and invest program with the regional greenhouse gas initi-
8 ative. Such linkage shall provide that any source subject to the
9 regional greenhouse gas initiative and the cap and invest program shall
10 receive interjurisdictional credit for greenhouse gas emissions
11 reductions and amounts paid for allowances acquired under the respective
12 programs through a reduction in the price of an allowance equivalent to
13 the amount paid for an allowance for an equivalent amount of emissions
14 in another participating jurisdiction. In determining such reduction in
15 price, the department shall evaluate the relative cost of allowances
16 with respect to emissions covered by the regional greenhouse gas initi-
17 ative as compared to the cap and invest program, and make such determi-
18 nation in a manner that results in an equal treatment of the cost of
19 allowances relative to covered sources which are not subject to the
20 regional greenhouse gas initiative. No source otherwise subject to the
21 cap and invest program shall be excluded from the cap and invest program
22 because it is subject to the regional greenhouse gas initiative.

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

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

30 (ii) The department has:

31 (A) at least six months prior to any such linkage, released a plan for
32 any proposed linkage which includes (1) a detailed explanation of the
33 department's determinations with respect to this paragraph and para-
34 graphs a, b, and c of subdivision three of this section, and (2) proc-
35 esses for regular review and audit of such linkage;

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

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

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

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

50 3. Any linkage shall provide assurance that:

51 a. It does not compromise, limit, or impinge upon the state's
52 progress, ability, or likelihood of meeting or exceeding the require-
53 ments of this article;

54 b. Credit for greenhouse gas emissions reductions under one program
55 shall not reduce compliance obligations in the other jurisdictional

1 program more than an equivalent amount of greenhouse gas emissions
2 reductions in such program; and

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

5 4. If the department determines that linkage with another similar
6 program made pursuant to subdivision two of this section no longer meets
7 the requirements set forth in paragraph a of such subdivision and para-
8 graphs a, b, and c of subdivision three of this section, the department
9 shall take immediate action to ensure compliance with such paragraphs.
10 If such compliance is not achieved within one year of such determination
11 of non-compliance, the department shall discontinue such linkage within
12 one hundred eighty days thereafter.

13 5. Any linkage shall require approval of the legislature.

14 § 75-0129. Enforcement; penalties.

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

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

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

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

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

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

48 § 75-0131. Program review.

49 1. No later than two years after the effective date of this section
50 and every two years thereafter, the department, in consultation with the
51 authority, shall, after notice and provision for the opportunity to
52 comment, issue a comprehensive review of the cap and invest program
53 established pursuant to section 75-0121 of this article.

54 2. The review shall, at minimum, include:

55 a. Whether the state is on track to meet the statewide greenhouse gas
56 emissions limits established in section 75-0107 of this article.

1 b. An assessment of existing regulations established in sections
2 75-0121, 75-0123, 75-0125, 75-0127 and 75-0129 of this article and
3 whether modifications are needed to ensure fulfillment of the statewide
4 greenhouse gas emissions limits.

5 c. An overview of social benefits from the regulations or other meas-
6 ures, including reductions in greenhouse gas emissions and co-pollu-
7 tants, diversification of energy sources, and other benefits to the
8 economy, environment, and public health.

9 d. An overview of compliance costs for regulated entities and for the
10 department and other state agencies.

11 e. Whether regulations or other greenhouse gas reduction measures
12 undertaken are equitable, minimize costs and maximize the total benefits
13 to the state, and encourage early action.

14 f. Whether activities undertaken to comply with state regulations
15 disproportionately burden disadvantaged communities as identified pursu-
16 ant to section 75-0111 of this article.

17 g. An assessment of local benefits and impacts of any reductions in
18 co-pollutants related to reductions in statewide and local greenhouse
19 gas emissions.

20 h. Recommendations for future regulatory and policy action.

21 3. In preparing the review, the department shall, at a minimum,
22 consult with the council and the climate justice working group estab-
23 lished pursuant to section 75-0111 of this article.

24 4. The review shall be published and posted on the department's
25 website.

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

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

38 28. To establish, administer, implement, and support the greenhouse
39 gas emissions reduction account as defined in section 75-0101 of the
40 environmental conservation law, consistent with article seventy-five of
41 the environmental conservation law, and pursuant to regulations adopted
42 pursuant to such article and other existing authority, including by
43 making allowances available from such account for auction or sale pursu-
44 ant to the cap and invest program, as defined by section 75-0101 of the
45 environmental conservation law. Such auction or sale shall be conducted
46 on a quarterly basis and in a manner that, subject to the other require-
47 ments of article seventy-five of the environmental conservation law and
48 regulations adopted pursuant thereto, is efficient, transparent, and
49 provides certainty for participants to the extent practicable, provided
50 that with respect to reserve allowances as defined in section 75-0101 of
51 the environmental conservation law, auctions need not be quarterly. The
52 authority shall establish procedures to guard against the potential for
53 market manipulation, including but not limited to bidder collusion or
54 other improper release or disclosure of any bidding information. A
55 violation of rules with respect to market manipulation shall be subject
56 to a civil penalty of sixty thousand dollars per violation for a first

1 violation, and one hundred twenty thousand dollars for each subsequent
2 violation, and any applicable criminal penalties. The authority shall
3 develop rules and procedures in respect of all such requirements. The
4 proceeds from the auction or sale of allowances and any penalties will
5 be placed into a segregated authority funding account, established
6 pursuant to section eighteen hundred fifty-nine of this title, and shall
7 not be commingled with other authority funds. Except as otherwise set
8 forth in this title, the authority may use a portion of such proceeds
9 for administrative costs, auction or sale, design and support costs, and
10 program design, implementation, and evaluation costs directly related to
11 implementing the cap and invest program, provided that such amounts
12 shall not exceed the greater of ten million dollars or one percent of
13 such aggregate annual proceeds.

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

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

32 31. The authority shall annually issue to the governor and the legis-
33 lature, and post on its website, beginning the next fiscal year succeed-
34 ing the first allocation of funds from the climate and community
35 protection fund, a report detailing the use of such funds, including
36 information regarding the programs to which such funds are appropriated,
37 recipients of funds pursuant to such programs, and outcomes of such
38 programmatic spending.

39 § 10. Any and all funds received pursuant to sections 75-0121,
40 75-0123, 75-0125, 75-0127, and 75-0129 of the environmental conservation
41 law or subdivisions 27, 28, 29, 30, and 31 of section 1854 of the public
42 authorities law must be allocated pursuant to state law only to the New
43 York Climate Action Fund, and the state comptroller and office of budget
44 will ensure that no funds are used for any purpose not in compliance
45 with and in furtherance of the goals in the Climate Leadership and
46 Community Protection Act of 2019.

47 § 11. Severability. If any provision of this article is, for any
48 reason, declared unconstitutional or invalid, in whole or in part, by
49 any court of competent jurisdiction, such portion shall be deemed sever-
50 able, and such unconstitutionality or invalidity shall not affect the
51 validity of the remaining portions of this article, which remaining
52 portions shall continue in full force and effect.

53 § 12. This act shall take effect immediately.