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

1. There is hereby established a climate change adaptation cost recovery program to be administered by the department.

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

a. To secure compensatory payments from responsible parties based on a standard of strict liability to provide a source of revenue for climate change adaptive infrastructure projects within the state. Such payments in aggregate shall total the cost recovery amount and shall be due and payable on the applicable payment date.

b. To determine proportional liability of responsible parties for the cost recovery amount pursuant to subdivision three of this section;

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

d. To accept and collect payment from responsible parties;

e. To identify climate change adaptive infrastructure projects;

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

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

3. a. A responsible party shall be strictly liable, without regard to fault, for a share of the cost recovery amount, which shall be used for the costs of climate change adaptive infrastructure projects, including their operation and maintenance, supported by the fund.

b. With respect to each responsible party, the cost recovery demand shall be equal to an amount that bears the same ratio to the cost recovery amount as the responsible party's applicable share of covered greenhouse gas emissions bears to the aggregate applicable shares of covered greenhouse gas emissions of all responsible parties.

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

d. In determining the amount of greenhouse gas emissions attributable to any entity, the department may: i. require an entity to provide information to the department related to past practices, production, extraction, refining, emissions, or other historical information about such entity necessary or appropriate to enable the department to determine whether such entity is a responsible party and, if so, the amount of such responsible party's covered greenhouse gas emissions; ii. apply consistent emissions factors, consistent with the climate leadership and community protection act pursuant to chapter one hundred six of the laws of two thousand nineteen, to convert extraction and refining data into greenhouse gas emissions; and iii. utilize information received from the department of taxation and finance pursuant to subdivision (a) of section three hundred fourteen of the tax law.

e. i. The department shall issue notices of cost recovery demand to all responsible parties at the times set forth in paragraph a of subdivision four of this section. Payment of a cost recovery demand shall be made in full on the applicable payment date provided that, notwithstanding paragraph a of subdivision two of this section, the department may provide that a responsible party may elect to pay an amount no greater than ninety-two percent of the amount of the cost recovery demand after the applicable payment date. Any such payments permitted to be made after the applicable payment date shall be made within twenty-four years of the applicable payment date, shall be no less frequent than annual beginning in the year following the applicable

payment date, and shall not increase over time.

ii. Any responsible party who fails to make a payment required pursuant to this subdivision shall pay a penalty of fifty per centum of the unpaid payment amount, plus interest on the unpaid payment amount computed in accordance with section 6621(a)(2) of the United States internal revenue code of 1986 (Public Law 99-514, 26 U.S.C. section 1 et seq.) from the date the payment was required to be paid.

f. If there is any addition to the original amount of the final cost recovery demand as of the applicable payment date for failure to timely pay any amount required to be paid under this subdivision, a liquidation or sale of substantially all the assets of the responsible party (including in a proceeding under U.S. Code: Title 11 or similar case), a cessation of business by the responsible party, or any similar circumstance, then the unpaid balance of all unpaid amounts shall be due on the date of such event (or in the case of a proceeding under U.S. Code: Title 11 or similar case, on the day before the petition is filed). The preceding sentence shall not apply to the sale of substantially all of the assets of a responsible party to a buyer if such buyer enters into an agreement with the department under which such buyer is liable for all unpaid amounts due in the same manner as if such buyer were the responsible party.

4. a. Within thirty months of the effective date of this article, the department shall promulgate such regulations as are necessary or appropriate to carry out this article, including but not limited to:

i. provisions for the department to require an entity to provide information to the department related to past practices, production, extraction, refining, emissions, or other historical information about such entity necessary or appropriate to enable the department to determine whether such entity is a responsible party and, if so, the amount of such responsible party's covered greenhouse gas emissions;

ii. adopting uniform and consistent methodologies using the best available information, such as publicly available databases of

historical production data, to determine responsible parties and their applicable share of covered greenhouse gas emissions consistent with the provisions of this article;

iii. registering entities that are responsible parties under the program;

iv. issuing notices of cost recovery demand, no later than June thirtieth of the fourth calendar year following the effective date of this article, for each responsible party's cost recovery demand;

v. establishing a process such that:

(1) a responsible party may file a request for reconsideration of its cost recovery demand with the department within sixty days following service of the notice of cost recovery demand if within the United States, and within ninety days following such service outside the United States, and in doing so shall exhaust administrative remedies;

(2) a request for reconsideration shall state the grounds for the request and include supporting documentation, which may include but is not limited to documentation of the party's covered greenhouse gas emissions and the party's contacts with the state;

(3) the department shall consider whether any such requests for reconsideration, including whether a responsible party refining petroleum products, or who is a successor in interest to such an entity, establishes to the satisfaction of the department that a portion of the cost recovery demand amount was attributable to the refining of crude oil extracted by a responsible party, or who is a successor in interest to such an entity, that was accounted for in determining the cost recovery demand amount of such responsible party, and whether notices of cost recovery demand should be updated, and shall issue updated notices of cost recovery demand, if applicable, which shall include a statement of the grounds of the department's determination, within sixty days following the expiration of all periods for submitting a request for reconsideration under item one of this subparagraph;

(4) if notices of cost recovery demand issued pursuant to item three of this subparagraph result in a new responsible party receiving a notice of cost recovery demand that was not issued a notice of cost

recovery demand by the date required by subparagraph iv of this paragraph, then, in the same manner as set forth in items one, two and three of this subparagraph, such responsible party shall have sixty days from service within the United States, and ninety days from service outside the United States, to file a request for reconsideration, which filing shall exhaust such responsible party's administrative remedies, and the department shall consider such request for reconsideration and issue updated notices of cost recovery demand, if applicable, in the manner contemplated by item three of this subparagraph;

(5) if any updating of notices of cost recovery demand pursuant to such processes for reconsideration results in a new responsible party that was not previously issued a cost recovery demand, such new responsible party shall also be given the opportunity to file a request for reconsideration in the same manner as set forth in item four of this subparagraph, and such process shall continue until no new responsible party results from issuance of notices of cost recovery demand; and

(6) if the processes in this subparagraph result in issuances of notices of cost recovery demand after the applicable payment date, then the applicable payment date shall be the date which is thirty days after the final issuance of notices of cost recovery demand; and

vi. accepting payments from, pursuing collection efforts against, and negotiating settlements with responsible parties.

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

5. The department shall develop procedures to make publicly available, by posting on its website, all data related to fossil fuel extraction and refining by entities which the department obtains pursuant to the program, to the maximum extent practicable.

6. Within eighteen months of the promulgation of the final regulations pursuant to subdivision four of this section, the department shall complete a statewide climate change adaptation and resilience plan,

which shall be publicly available, including at a minimum on the department's website, and updated no less than every three years following the procedures of this subdivision, for the purpose of guiding the dispersal of funds, pursuant to section ninety-seven-m of the state finance law, to all regions of the state in a timely, efficient, and equitable manner in accordance with the provisions of this chapter. In completing such plan, the department shall:

a. collaborate with the department of state, homes and community renewal, the department of agriculture and markets, the New York state energy research and development authority, the department of public service, the department of transportation, the department of health, the division of budget and the division of homeland security and emergency services;

b. assess the adaptation needs of various areas vital to the state's economy, normal functioning, and the health and well-being of New Yorkers, including but not limited to: agriculture, biodiversity, ecosystem services, education, finance, healthcare, manufacturing, housing and land use, retail, tourism (including state and municipal parks), transportation, and municipal and local government.

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

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

e. identify potential municipal, not-for-profit, and community organization grant programs;

f. include in such plan project criteria, project types and recommendations for identifying and selecting climate change adaptive infrastructure projects eligible to receive qualifying expenditures. When considering projects intended to stabilize tidal shorelines, the department shall encourage the use of nature-based solutions;

g. consult with stakeholders, including local governments, businesses, environmental advocates, the federally designated bulk system operator, relevant subject area experts, and representatives of disadvantaged communities; and

h. provide opportunities for public engagement in all regions of the state, including by holding at least two public hearings, one in-person and one virtual, with meaningful opportunities for participation and public comment from all segments of the population, including persons living in disadvantaged communities as identified pursuant to section 75-0111 of this chapter, a minimum of sixty days' public notice in compliance with the provisions of article seven of the public officers law, on a draft of the plan, a summary and analysis of the public comments and a description of any changes made to the plan based on the public comments received.

7. Total qualifying expenditures shall be allocated in such a way as to achieve a goal that at least forty percent of the qualified expenditures from the program, but not less than thirty-five percent of such expenditures, shall go to climate change adaptive infrastructure projects that benefit disadvantaged communities as defined in section 75-0101 of this chapter.

8. The department and the attorney general are hereby authorized to implement and enforce the provisions of this article.

9. Moneys received from cost recovery demands shall be deposited in the climate change adaptation fund established pursuant to section ninety-seven-m of the state finance law.

10. a. The department shall conduct an evaluation of the climate change adaptation cost recovery program. The purpose of this evaluation is to determine the effectiveness of the program in achieving its purposes as defined in subdivision two of this section. Such evaluation shall include, at minimum:

i. a list of all responsible parties and their respective cost

recovery demands, as well as any changes to an entity's status as a responsible party during the preceding program year;

ii. an accounting of all cost recovery demands made to responsible parties, actual monies collected, and penalties or other collection measures taken during the preceding program year;

iii. an accounting of all expenditures from the climate change adaptation fund established pursuant to section ninety-seven-m of the state finance law, including at a minimum:

(1) expenditures that benefit disadvantaged communities as defined in section 75-0101 of this chapter;

(2) expenditures by project type;

(3) expenditures by percentage of overall funding used for grant programs for municipalities and not-for-profit and community organizations; and

(4) expenditures for administration and implementation support;

iv. a review of climate change adaptive infrastructure projects' status, including the number of projects that have been completed and those projects which have been identified and remain unfunded;

v. a summary of the geographic distribution of climate change adaptive infrastructure projects; and

vi. identification of future spending needs.

b. Such evaluation shall be made public on the department's website and provided to the governor, the temporary president of the senate and the speaker of the assembly on or before January first of the second calendar year following the year in which this article is enacted into law, and annually on or before September thirtieth thereafter.

11. The department shall publish all information, requests for proposals, application forms, procedures and guidelines relating to climate change adaptive infrastructure projects on its website and in a manner that is accessible to the public and all potential recipients.