

**SENATE, No. 3545**

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**STATE OF NEW JERSEY**

**221st LEGISLATURE**

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INTRODUCED SEPTEMBER 12, 2024

**Sponsored by:**

**Senator JOHN F. MCKEON**

**District 27 (Essex and Passaic)**

**Senator BOB SMITH**

**District 17 (Middlesex and Somerset)**

**Co-Sponsored by:**

**Senators Timberlake, McKnight, Greenstein, Cryan, Burgess and Mukherji**

**SYNOPSIS**

"Climate Superfund Act"; imposes liability on certain fossil fuel companies for certain damages caused by climate change and establishes program in DEP to collect and distribute compensatory payments.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/12/2024)**

1 AN ACT concerning damages caused by climate change and  
2 supplementing Title 26 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

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7 1. This act shall be known and may be cited as the "Climate  
8 Superfund Act."

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10 2. As used in this act:

11 "Climate change adaptation project" means a project designed to  
12 respond to, avoid, moderate, repair, or adapt to negative impacts  
13 caused by climate change and to assist human and natural  
14 communities, households, and businesses to prepare for future  
15 climate-change-driven disruptions. "Climate change adaptation  
16 projects" include, but are not limited to: flood protection projects;  
17 home buyouts; upgrades of stormwater drainage systems; defensive  
18 upgrades to roads, bridges, railroads, and transit systems;  
19 preparation for, and recovery from, extreme weather events;  
20 preventive health care programs and providing medical care to treat  
21 illness or injury caused by the effects of climate change; relocation,  
22 elevation, or retrofits of sewage treatment plants and other  
23 infrastructure vulnerable to flooding; installation of energy efficient  
24 cooling systems and other weatherization and energy efficiency  
25 upgrades and retrofits in public and private buildings, including  
26 schools and public housing, designed to reduce the public health  
27 effects of more frequent heat waves and forest fire smoke; upgrades  
28 to the electrical grid to increase stability and resilience, including  
29 the creation of self-sufficient microgrids; and response to toxic  
30 algae blooms, loss of agricultural topsoil, crop loss, and other  
31 climate-driven ecosystem threats to forests, farms, fisheries, and  
32 food systems.

33 "Coal" means bituminous coal, anthracite coal, and lignite.

34 "Commissioner" means the Commissioner of Environmental  
35 Protection.

36 "Controlled group" means two or more entities treated as a single  
37 employer pursuant to:

38 (1) 26 U.S.C. s.52(a) or (b), without regard to 26 U.S.C.  
39 s.1563(b)(2)(C); or

40 (2) 26 U.S.C. s.414(m) or (o).

41 "Cost recovery demand" means a charge imposed upon a  
42 responsible party for cost recovery payments under the Climate  
43 Superfund Cost Recovery Program established pursuant to section 5  
44 of this act for payment into the Climate Superfund Cost Recovery  
45 Program Fund established pursuant to section 6 of this act.

46 "Covered greenhouse gas emissions" means the total quantity of  
47 greenhouse gases released into the atmosphere during the covered  
48 period, expressed in metric tons of carbon dioxide equivalent,

1 resulting from the use of fossil fuels extracted or refined by an  
2 entity.

3 "Covered period" means the time period beginning on January 1,  
4 1995 and ending on the last day of the calendar year during which  
5 this act takes effect.

6 "Crude oil" means oil or petroleum of any kind and in any form,  
7 including bitumen, oil sands, heavy oil, conventional and  
8 unconventional oil, shale oil, natural gas liquids, condensates, and  
9 related fossil fuels.

10 "Department" means the Department of Environmental  
11 Protection.

12 "Entity" means any individual, trustee, agent, partnership,  
13 association, corporation, company, municipality, political  
14 subdivision, or other legal organization, including a foreign nation,  
15 that holds or held an ownership interest in a fossil fuel business  
16 during the covered period.

17 "Fossil fuel" means coal, petroleum products, and fuel gases.

18 "Fossil fuel business" means a business engaging in the  
19 extraction  
20 of fossil fuels or the refining of petroleum products.

21 "Fuel gas" means methane, natural gas, liquefied natural gas, and  
22 any manufactured fuel gas.

23 "Greenhouse gas" means the same as the term is defined in  
24 section 3 of P.L.2007, c.112 (C.26:2C-39).

25 "Notice of cost recovery demand" means the written  
26 communication from the department informing a responsible party  
27 of the amount of the cost recovery demand payable into the Climate  
28 Superfund Cost Recovery Program Fund established pursuant to  
29 section 6 of this act.

30 "Overburdened community" means the same as the term is  
31 defined in section 2 of P.L.2020, c.92 (C.13:1D-158).

32 "Petroleum product" means any product refined or re-refined  
33 from: (1) synthetic or crude oil; or (2) crude oil extracted from  
34 natural gas liquids or other sources.

35 "Qualifying expenditure" means an authorized payment from the  
36 Climate Superfund Cost Recovery Program Fund established  
37 pursuant to section 6 of this act to pay for: (1) a climate change  
38 adaptation project, including its operation, monitoring, and  
39 maintenance; or (2) reasonable expenses associated with the  
40 administration of the Climate Superfund Cost Recovery Program  
41 established pursuant to section 5 of this act.

42 "Responsible party" means an entity or a successor in interest to  
43 an entity that during any part of the covered period was engaged in  
44 the trade or business of extracting fossil fuel or refining crude oil  
45 and is determined by the department to be responsible more than  
46 one billion metric tons of covered greenhouse gas emissions, except  
47 that "responsible party" does not include any entity that is not  
48 required to pay New Jersey sales tax.

1       3. a. No later than two years after the effective date of this act,  
2 the State Treasurer, in consultation with the department, and with  
3 any other person or entity whom the State Treasurer decides to  
4 consult for the purpose of obtaining and utilizing credible data or  
5 methodologies that the State Treasurer determines may aid the State  
6 Treasurer in making the assessments and estimates required by this  
7 section, shall submit to the Senate Environment and Energy  
8 Committee and the Assembly Environment, Natural Resources and  
9 Solid Waste Committee, or their successor committees, an  
10 assessment of the damages to the State and its residents that have  
11 resulted from covered greenhouse gas emissions.

12       b. The assessment shall include:

13       (1) a summary of the various cost-driving effects of covered  
14 greenhouse gas emissions on the State, including effects on public  
15 health, natural resources, biodiversity, agriculture, economic  
16 development, flood preparedness and safety, housing, and any other  
17 effect that the State Treasurer determines is relevant;

18       (2) a categorized calculation of the costs that have been incurred  
19 within the State of each of the effects identified in paragraph (1) of  
20 this subsection; and

21       (3) a categorized calculation of the costs that have been incurred  
22 to abate the effects of covered greenhouse gas emissions on the  
23 State and its residents.

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25       4. a. Each responsible party shall be strictly liable to the State  
26 for damages that resulted from covered greenhouse gas emissions,  
27 as determined by the State Treasurer pursuant to section 3 of this  
28 act. Each responsible party shall make compensatory payments to  
29 the State according to its proportional liability, as determined by the  
30 department pursuant to section 5 of this act.

31       b. Responsible parties that are entities in a controlled group  
32 shall be treated as a single entity for identification purposes, but  
33 shall be jointly and severally liable for the payment of any cost  
34 recovery demand owed by any entity in the controlled group.

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36       5. a. There is established the Climate Superfund Cost Recovery  
37 Program in the Department of Environmental Protection. The  
38 purposes of the program shall be to:

39       (1) secure compensatory payments from responsible parties  
40 based on a standard of strict liability;

41       (2) determine the proportional liability of responsible parties;

42       (3) impose cost recovery demands on responsible parties and  
43 issue

44 notices of cost recovery demands;

45       (4) accept and collect payment from responsible parties; and

46       (5) disperse funds to implement climate change adaptation  
47 projects.

1       b. With respect to each responsible party, the cost recovery  
2 demand shall be equal to an amount that bears the same ratio to the  
3 cost to the State and its residents, as calculated by the State  
4 Treasurer pursuant to section 3 of this act, from the emission of  
5 covered greenhouse gases as the responsible party's applicable share  
6 of covered greenhouse gas emissions bears to the aggregate  
7 applicable shares of covered greenhouse gas emissions resulting  
8 from the use of fossil fuels extracted or refined during the covered  
9 period.

10       c. If a responsible party owns a minority interest of 10 percent  
11 or more in another entity, the responsible party's applicable share of  
12 covered greenhouse gas emissions shall be increased by the  
13 applicable share of covered greenhouse gas emissions for the entity  
14 in which the responsible party holds a minority interest multiplied  
15 by the percentage of the minority interest held by the responsible  
16 party.

17       d. The department shall use the United States Environmental  
18 Protection Agency's Emissions Factors for Greenhouse Gas  
19 Inventories, as applied to the best publicly available fossil fuel  
20 volume data for the purpose of determining the amount of covered  
21 greenhouse gas emissions attributable to any entity from the fossil  
22 fuels attributable to the entity.

23       e. The department may adjust the cost recovery demand amount  
24 of a responsible party who refined petroleum products or who is a  
25 successor in interest to an entity that refines petroleum products if  
26 the responsible party establishes to the satisfaction of the  
27 department that:

28       (1) a portion of the cost recovery demand amount was  
29 attributable to the refining of crude oil extracted by another  
30 responsible party; and

31       (2) the crude oil extracted by the other entity was accounted for  
32 when the department determined the cost recovery demand amount  
33 for the other responsible party or a successor in interest of the other  
34 responsible party.

35       f. The department shall issue the cost recovery demands  
36 required under this section no later than six months following the  
37 adoption of the rules and regulations required under section 8 of  
38 this act.

39       g. (1) Except as provided in paragraph (2) of this subsection, a  
40 responsible party shall pay the cost recovery demand amount in full  
41 no later than six months following the department's issuance of the  
42 cost recovery demand.

43       (2) A responsible party may elect to pay the cost recovery  
44 demand amount in nine annual installments, provided that:

45       (a) the first installment shall be paid no later than six months  
46 following the department's issuance of the cost recovery demand  
47 and shall be equal to 20 percent of the total cost recovery demand  
48 amount;

1 (b) each subsequent installment shall be paid one year from the  
2 initial payment each subsequent year and shall be equal to 10  
3 percent of the total cost recovery demand amount. The  
4 commissioner, at the commissioner's discretion, may adjust the  
5 amount of a subsequent installment payment to reflect increases or  
6 decreases in the Consumer Price Index;

7 (c) the unpaid balance of all remaining installments shall become  
8 due immediately if the responsible party fails to pay any installment  
9 in a timely manner, if there is a liquidation or sale of all, or  
10 substantially all, the assets of the responsible party, or if the  
11 responsible party ceases to do business; and

12 (d) in the case of a sale of all, or substantially all, the assets of a  
13 responsible party, the remaining installments shall not become due  
14 immediately if the buyer enters into an agreement with the  
15 department under which the buyer assumes liability for the  
16 remaining installments due under this section in the same manner as  
17 if the buyer were the responsible party.

18 h. The department shall deposit cost recovery payments into the  
19 Climate Superfund Cost Recovery Program Fund established by  
20 section 6 of this act.

21 i. A responsible party aggrieved by the issuance of a notice of  
22 cost recovery demand shall exhaust administrative remedies by  
23 filing a request for reconsideration with the department within 15  
24 days following issuance of the notice of cost recovery demand. A  
25 request for reconsideration shall state the grounds for the request  
26 and include supporting documentation. The department shall issue  
27 a subsequent notice of cost recovery demand or a retraction, which  
28 shall be considered final agency action on the matter for the  
29 purposes of the "Administrative Procedure Act," P.L.1968, c.410  
30 (C.52:14B-1 et seq.), and shall be subject only to review by a court  
31 of competent jurisdiction.

32 j. Nothing in this section shall be construed to supersede or  
33 diminish in any way existing remedies available to a person or the  
34 State at common law or under statute.

35  
36 6. a. There is established in the Department of Environmental  
37 Protection a special, nonlapsing fund to be known as the "Climate  
38 Superfund Cost Recovery Program Fund." Monies in the fund shall  
39 be held separately and be dedicated solely for the purpose of  
40 making qualifying expenditures.

41 b. The fund shall be credited with:

42 (1) cost recovery payments distributed to the fund pursuant to  
43 section 1 of this act;

44 (2) any other moneys appropriated by the Legislature or  
45 otherwise made available to the fund for the purposes of this act;

46 (3) other gifts, donations, or other monies received from any  
47 source, public or private, dedicated for deposit into the fund and  
48 approved by the State Treasurer; and

1 (4) any interest earnings or other investment income earned or  
2 received on the moneys in the fund.

3 c. All moneys appropriated or otherwise made available to the  
4 fund shall be dedicated for the purposes of the fund. Pending use,  
5 moneys in the fund may be invested and reinvested in the same  
6 manner as other moneys of the department in the manner provided  
7 by law. All earnings received from the investment or deposit of  
8 such moneys shall be paid into and become a part of the fund and be  
9 available for use pursuant to this act.

10 d. The department shall establish a grant program to disperse  
11 funds from the Climate Superfund Cost Recovery Program Fund to  
12 project sponsors of climate change adaptation and resilience  
13 projects. In order to effectuate the grant program, the department  
14 shall:

15 (1) establish eligibility criteria for a program grant award;

16 (2) adopt guidelines and procedures for the submission of grant  
17 applications, including, but not limited to, guidelines and  
18 procedures addressing the form and manner in which such  
19 applications are to be submitted;

20 (3) establish criteria, in consultation with the Department of  
21 Environmental Protection, for the evaluation and prioritization of  
22 program grant applications;

23 (4) identify the project costs that are eligible for financing  
24 through the use of program grant funding, and identify the specific  
25 factors that will be considered, by the department, in determining  
26 the appropriate dollar amount of each grant award issued under the  
27 program; and

28 (5) identify the terms and conditions for the awarding of a  
29 program grant, and for the use of program grant funds awarded,  
30 pursuant to this section, including, at a minimum, conditions  
31 requiring the recipient of a grant award to report relevant  
32 information, to the department, regarding the recipient's  
33 expenditure of grant funds awarded thereto under the program.

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35 7. No later than five years after the effective date of this act, and  
36 annually thereafter, the commissioner shall issue a written report to  
37 the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-  
38 19.1), summarizing the activities of the Climate Superfund Cost  
39 Recovery Program.

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41 8. No later than two years after the State Treasurer completes  
42 the report required by section 3 of this act, the Department of  
43 Environmental Protection shall, in accordance with the  
44 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
45 seq.), adopt rules and regulations to implement this act.

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47 9. This act shall take effect immediately.

STATEMENT

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This bill, to be known as the "Climate Superfund Act," would establish that certain fossil fuel companies are liable for certain damages caused to the State and its residents by the harmful effects of climate change. The bill would also establish a program in the Department of Environmental Protection (DEP) to collect compensatory payments from the fossil fuel companies and distribute them, in the form of grants, to climate change adaptation and resilience projects.

Specifically, the bill would apply to fossil fuel companies that fall under the definition of "responsible party" established in the bill, namely an entity or a successor in interest to an entity that was engaged in the trade or business of extracting fossil fuel or refining crude oil and is determined by the DEP to be responsible for more than one billion metric tons of greenhouse gas emissions between January 1, 1995 (the year on which the first United Nations Conference of Parties climate change conference was held) and the last day of the calendar year on which the bill takes effect.

The bill would require the State Treasurer to prepare and submit to the Legislature, within two years of the bill's enactment, an assessment of the damages to the State and its residents that have resulted from greenhouse gas emissions since 1995. The bill would establish that each responsible party is strictly liable for the damages, and would require each responsible party to make compensatory damages to the State. In addition, responsible parties that are in a "controlled group" under certain federal laws specified in the bill (e.g. a parent corporation with one or more subsidiary corporations) would be jointly and severally liable for the damages. The DEP would then be required to calculate the proportional share of damages attributable to each responsible party, based on the proportion of total greenhouse gas emissions for which the party is responsible. The DEP would be required to collect compensatory payments from each responsible party that are equal to the party's proportional share of the damages. The bill would establish various provisions regarding the collection and payment of these compensatory payments, as enumerated in section 5 of the bill.

The bill would require the DEP to deposit the compensatory payments into the "Climate Superfund Cost Recovery Program Fund," established under section 6 of the bill. The DEP would also be required to develop and implement a grant program to distribute the funds collected to climate change adaptation and resilience projects. The DEP would also be permitted to use moneys in the fund to administer the Climate Superfund Cost Recovery Program, which is established by the bill. The bill would require the DEP to issue annual reports on the program beginning five years after the



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1 bill's enactment. Finally, the bill would require the DEP to adopt  
2 rules and regulations to implement the bill's provisions no later than  
3 two years after the State Treasurer produces the assessment of  
4 damages required by the bill.