

[First Reprint]

SENATE, No. 3545

STATE OF NEW JERSEY

221st LEGISLATURE

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:

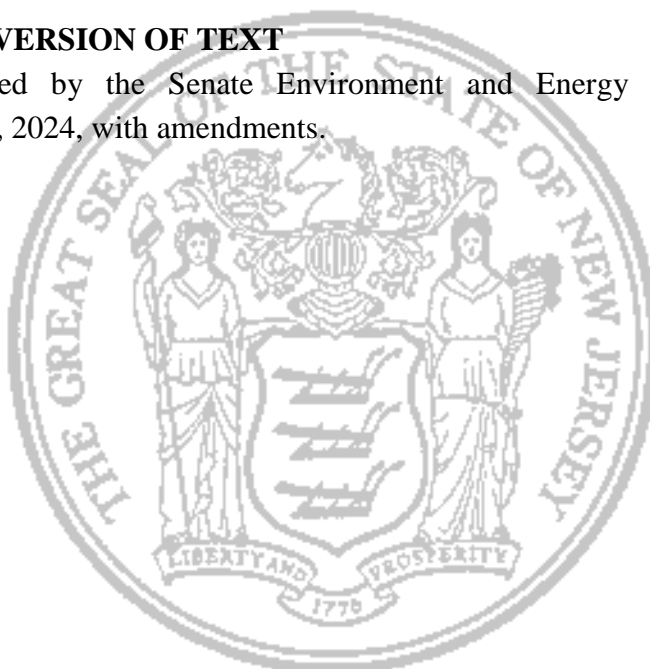
**Senators Timberlake, McKnight, Greenstein, Cryan, Burgess, Mukherji,
Cruz-Perez, Johnson, Diegnan, Zwicker and Gopal**

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 reported by the Senate Environment and Energy Committee on December 12, 2024, with amendments.



(Sponsorship Updated As Of: 3/24/2025)

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

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. This act shall be known and may be cited as the "Climate
8 Superfund Act."

9
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.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SEN committee amendments adopted December 12, 2024.

1 "Covered greenhouse gas emissions" means the total quantity of
2 greenhouse gases released into the atmosphere during the covered
3 period, expressed in metric tons of carbon dioxide equivalent,
4 resulting from the use of fossil fuels extracted or refined by an
5 entity.

6 "Covered period" means the time period beginning on January 1,
7 1995 and ending on the last day of the calendar year during which
8 this act takes effect.

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

13 "Department" means the Department of Environmental
14 Protection.

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

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

21 "Fossil fuel business" means a business engaging in the
22 extraction
23 of fossil fuels or the refining of petroleum products.

24 "Fuel gas" means methane, natural gas, liquefied natural gas, and
25 any manufactured fuel gas.

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

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

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

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

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

45 "Responsible party" means an entity or a successor in interest to
46 an entity that during any part of the covered period was engaged in
47 the trade or business of extracting fossil fuel or refining crude oil
48 and is determined by the department to be responsible more than
49 one billion metric tons of covered greenhouse gas emissions, except

1 that "responsible party" does not include any entity that is not
2 required to pay New Jersey sales tax.

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

15 b. The assessment shall include:

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

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

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

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

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

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

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

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

45 (3) impose cost recovery demands on responsible parties and
46 issue

47 notices of cost recovery demands;

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

1 (5) disperse funds to implement climate change adaptation
2 projects.

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

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

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

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

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

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

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

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

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

47 (a) the first installment shall be paid no later than six months
48 following the department's issuance of the cost recovery demand

1 and shall be equal to 20 percent of the total cost recovery demand
2 amount;

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

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

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

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

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

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

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

43 b. The fund shall be credited with:

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

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

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

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

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

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

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

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

22 (3) establish criteria¹, in consultation with the Department of
23 Environmental Protection,¹ for the evaluation and prioritization of
24 program grant applications;

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

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

35

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

41

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

47

48 9. This act shall take effect immediately.