

[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)**

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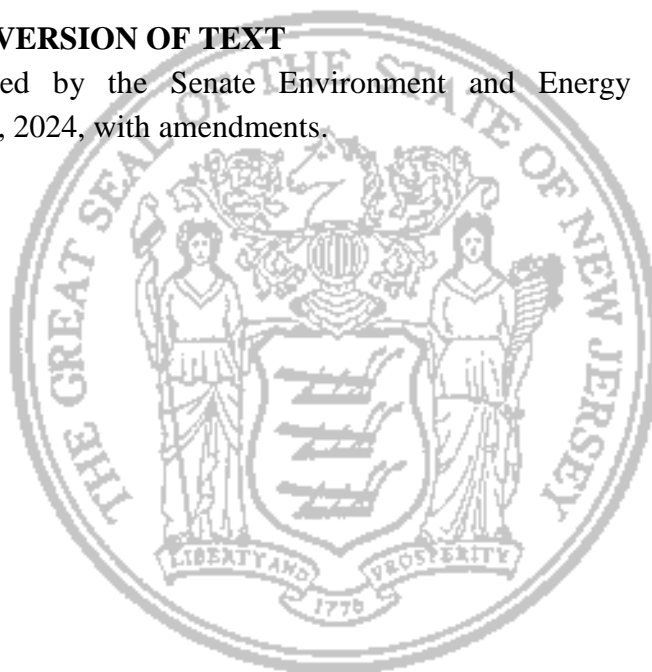
**Senators Timberlake, McKnight, Greenstein, Cryan, Burgess and Mukherji**

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



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

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:**

**<sup>1</sup>Senate 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 criteria<sup>1</sup>, in consultation with the Department of  
23 Environmental Protection,<sup>1</sup> 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.