

SENATE No. 481**The Commonwealth of Massachusetts**

PRESENTED BY:

James B. Eldridge

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing a climate change superfund and promoting polluter responsibility.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	
<i>Steven Owens</i>	<i>29th Middlesex</i>	<i>1/26/2023</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/1/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/1/2023</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>2/2/2023</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/6/2023</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>2/7/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/9/2023</i>
<i>Adam Gomez</i>	<i>Hampden</i>	<i>2/22/2023</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>3/3/2023</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>3/10/2023</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>3/16/2023</i>
<i>Liz Miranda</i>	<i>Second Suffolk</i>	<i>4/21/2023</i>
<i>Marc R. Pacheco</i>	<i>Third Bristol and Plymouth</i>	<i>5/18/2023</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>5/18/2023</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	<i>11/29/2023</i>
<i>Edward J. Kennedy</i>	<i>First Middlesex</i>	<i>12/11/2023</i>
<i>Manny Cruz</i>	<i>7th Essex</i>	<i>12/11/2023</i>

<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>12/12/2023</i>
<i>Pavel Payano</i>	<i>First Essex</i>	<i>1/5/2024</i>

SENATE No. 481

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 481) of James B. Eldridge, Steven Owens, Lindsay N. Sabadosa, Vanna Howard and other members of the General Court for legislation to establish a climate change superfund and promoting polluter responsibility. Environment and Natural Resources.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act establishing a climate change superfund and promoting polluter responsibility.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by inserting after Chapter 21O the
2 following chapter:-

3 CHAPTER 21P

4 CLIMATE CHANGE ADAPTATION COST RECOVERY ACT

5 Section 1. Definitions.

6 For purposes of this chapter, the following terms shall have the following meanings
7 unless the context clearly requires otherwise:

8 "Applicable payment date", July first of the calendar year following the year in which this
9 chapter is enacted into law.

"Climate change adaptive infrastructure project", an infrastructure project designed to avoid, moderate, repair or adapt to negative impacts of climate change, or to assist communities, households and businesses in preparing for future climate change-driven disruptions. Such projects include but are not limited to restoring coastal wetlands and developing other nature-based solutions and coastal protections; upgrading storm water drainage systems; making defensive upgrades to roads, bridges, subways, and transit systems; preparing for and recovering from hurricanes and other extreme weather events; undertaking preventive health care programs and providing medical care to treat illness or injury caused by the effects of climate change; relocating, elevating, or retrofitting sewage treatment plants vulnerable to flooding; installing energy efficient cooling systems and other weatherization and energy efficiency upgrades and retrofits in public and private buildings, including schools and public housing; upgrading parts of the electrical grid to increase stability and resilience, including supporting the creation of self-sufficient clean energy microgrids; addressing urban heat island effects through green spaces, urban forestry, and other interventions; and responding to toxic algae blooms, loss of agricultural topsoil, and other climate-driven ecosystem threats to forests, farms fisheries, and food systems.

"Commissioner", commissioner of the department of environmental protection.

"Controlled group", two or more entities treated as a single employer under section 52(a) or (b) or section 414(m) or (o) of the internal revenue code. Subsections (a) and (b) of section 52, section 1563 of the internal revenue code shall be applied without regard to subsection(b)(2)(c). For purposes of this article, entities in a controlled group are treated as a single entity for purposes of meeting the definition of responsible party and are jointly and severally liable for payment of any cost recovery demand owed by any entity in the controlled group.

"Cost recovery demand", a charge asserted against a responsible party for cost recovery payments under the program for payment to the fund.

"Covered greenhouse gas emissions", with respect to any entity, the total quantity of greenhouse gasses released into the atmosphere during the covered period, expressed in metric tons of carbon dioxide equivalent, resulting from the use of fossil fuels or petroleum products extracted, produced, refined, or sold by such entity.

"Covered period", the period that began January first, two thousand and ended on December thirty-first, two thousand eighteen.

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

"Department", department of environmental protection.

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

"Environmental justice population", a neighborhood that meets 1 or more of the following criteria: (i) the annual median household income is not more than 65 per cent of the statewide annual median household income; (ii) minorities comprise 40 per cent or more of the population; (iii) 25 per cent or more of households lack English language proficiency; or (iv) minorities comprise 25 per cent or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150 per cent of

the statewide annual median household income; provided, however, that for a neighborhood that does not meet said criteria, but a geographic portion of that neighborhood meets at least 1 criterion, the secretary may designate that geographic portion as an environmental justice population upon the petition of at least 10 residents of the geographic portion of that neighborhood meeting any such criteria; provided further, that the secretary may determine that a neighborhood, including any geographic portion thereof, shall not be designated an environmental justice population upon finding that: (A) the annual median household income of that neighborhood is greater than 125 per cent of the statewide median household income; (B) a majority of persons age 25 and older in that neighborhood have a college education; (C) the neighborhood does not bear an unfair burden of environmental pollution; and (D) the neighborhood has more than limited access to natural resources, including open spaces and water resources, playgrounds and other constructed outdoor recreational facilities and venues.

"Fossil fuel", coal, petroleum products and fuel gasses.

"Fossil fuel business", a business engaging in the extraction of fossil fuels or the refining of petroleum products.

"Fuel gasses", shall include but not be limited to methane, natural gas, liquefied natural gas, and manufactured fuel gasses.

"Fund", the climate change adaptation superfund.

"Greenhouse gas", any chemical or physical substance that is emitted into the air and that the department may reasonably anticipate will cause or contribute to climate change including, but not limited to, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride.

“Nature-based solutions”, projects that utilize or mimic nature or natural processes and functions and that may also offer environmental, economic, and social benefits, while increasing resilience. Nature-based solutions include both green and natural infrastructure.

"Notice of cost recovery demand", the written communication informing a responsible party of the amount of the cost recovery demand payable to the fund.

"Petroleum products", a product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle, boat or aircraft. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing or fuel oil used for heating purposes.

"Program", the climate change adaptation cost recovery program.

"Qualifying expenditure", an authorized payment from the fund in support of a climate change adaptive infrastructure project, including its operation and maintenance, as defined by the department.

"Responsible party", any entity or a successor in interest to such entity described herein, which, during any part of the covered period, was engaged in the trade or business of extracting fossil fuel or refining crude oil and is determined by the department to be responsible for more than one billion tons of covered greenhouse gas emissions. The term responsible party shall not include any person who lacks sufficient connection with the state to satisfy the nexus requirements of the United States Constitution.

SECTION 2. The Climate Change Adaptation Cost Recovery Program.

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

b. The purposes of the program shall be the following

1. 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;

2. To determine proportional liability of responsible parties;

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

4. To accept and collect payment from responsible parties;

5. To identify climate change adaptive infrastructure projects;

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

7. 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 directly benefit environmental justice populations

(c)(1) A responsible party shall be strictly liable, without regard to fault, for a share of the costs of climate change adaptive infrastructure projects, including their operation and maintenance, supported by the fund.

(d) With respect to each responsible party, the cost recovery demand shall be equal to an amount that bears the same ratio to seventy-five billion dollars 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.

(e) 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.

(f) Where an entity owns a minority interest in another entity of ten percent or more, the calculation of the entity's applicable share of greenhouse gas emissions taken into account under this section shall include the applicable share of greenhouse gas emissions taken into account under this section by the entity in which the responsible party holds a minority interest, multiplied by the percentage of the minority interest held.

(g) In determining the amount of greenhouse gas emissions attributable to any entity, an amount equivalent to nine hundred forty-two and one-half metric tons of carbon dioxide equivalent shall be treated as released for every million pounds of coal attributable to such entity; an amount equivalent to four hundred thirty-two thousand one hundred eighty metric tons of carbon dioxide equivalent shall be treated as released for every million barrels of crude oil attributable to such entity; and an amount equivalent to fifty-three thousand four hundred forty metric tons of carbon dioxide equivalent shall be treated as released for every million cubic feet of fuel gasses attributable to such entity.

(h) The commissioner may adjust the cost recovery demand amount of a responsible party refining petroleum products, or its successor, if such responsible party establishes to the

satisfaction of the commissioner that a portion of the cost recovery demand amount was attributable to the refining of crude oil extracted by another responsible party, or its successor that accounted for such crude oil in determining its cost recovery demand amount.

(i) Payment of a cost recovery demand shall be made in full on the applicable payment date unless a responsible party elects to pay in installments pursuant to paragraph j of this subdivision.

(j) A responsible party may elect to pay the cost recovery demand amount in twenty-four annual installments, ten percent of the total due in the first installment and the balance to be paid in equal installments over the remaining years. If an election is made under this paragraph, the first installment shall be paid on the applicable payment date and each subsequent installment shall be paid on the same date as the applicable payment date in each succeeding year.

(k) If there is any addition to the original amount of the cost recovery demand for failure to timely pay any installment required 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 remaining installments 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 the remaining installments due under this subdivision in the same manner as if such buyer were the responsible party.

(l) Within one year of the effective date of this article, the department shall promulgate such regulations as are necessary to carry out this article, including but not limited to:

(i) Adopting methodologies using the best available science to determine responsible parties and their applicable share of covered greenhouse gas emissions consistent with the provisions of this article;

(ii) Registering entities that are responsible parties under the program;

(iii) Issuing notices of cost recovery demand to responsible parties informing them of the cost recovery demand amount; how and where cost recovery demands can be paid; the potential consequences of nonpayment and late payment; and information regarding their rights to contest an assessment;

(iv) Accepting payments from, pursuing collection efforts against, and negotiating settlements with responsible parties; and

(v) Adopting procedures for identifying and selecting climate change adaptive infrastructure projects eligible to receive qualifying expenditures, including legislative budget appropriations, issuance of requests for proposals from localities and not-for-profit and community organizations, grants to private individuals, or other methods as determined by the department, and for dispersing moneys from the fund for qualifying expenditures. When considering projects intended to stabilize tidal shorelines, the department shall encourage using nature-based solutions. Total qualifying expenditures shall be allocated in such a way as to ensure at least forty percent of the qualified expenditures from the program shall go to climate change adaptive infrastructure projects that benefit environmental justice populations.

(m). Within two years of the effective date of this article, the department shall complete a statewide climate change adaptation master plan for the purpose of guiding the dispersal of funds in a timely, efficient, and equitable manner to all regions of the state in accordance with the provisions of this chapter. In completing such plan, the department shall:

(i) Collaborate with the secretary of state, department of housing and community development, the department of agriculture, the department of energy resources, and the department of public utilities.

(ii) Assess the adaptation needs and vulnerabilities of various areas vital to the state's economy, normal functioning, and the health and well-being of residents, including but not limited to: agriculture, biodiversity, ecosystem services, education, finance, healthcare, manufacturing, housing and real estate, retail, tourism (including state and municipal parks), transportation, and municipal and local government.

(iii) Identify major potential, proposed, and ongoing climate change adaptive infrastructure projects throughout the state;

(iv) Identify opportunities for alignment with existing federal, state, and local funding streams;

(v) Consult with stakeholders, including local governments, businesses, environmental advocates, relevant subject area experts, and representatives of disadvantaged communities;

(vi) Provide opportunities for public engagement in all regions of the state.

(n) The department and the attorney general are hereby authorized to enforce the provisions of this article.

(o) The department shall provide an opportunity to be heard to any responsible parties that seek to contest a cost recovery demand determinations made in favor of a petitioner after such hearing shall be final and conclusive.

(p) Moneys received from cost recovery demands shall be deposited in the climate change adaptation super fund

(q) Projects funded pursuant to this article shall require compliance with prevailing wage requirements pursuant to section two hundred twenty of the labor law.

(r) Any state entity or municipality receiving at least twenty-five million dollars (\$25,000,000) from funds allocated pursuant to this article for a project costing greater than fifty million dollars (\$50,000,000) shall require use of apprenticeship agreements as defined by article twenty-three of the labor law, with pre-apprenticeship direct entry providers registered with the department of labor.

(s). Any state entity or municipality receiving at least twenty-five million dollars (\$25,000,000) from funds allocated pursuant to this article for a project which involves the construction, reconstruction, alteration, maintenance, moving, demolition, excavation, development or other improvement of any building, structure or land, shall be subject to the prevailing wage law

(t).(1) Any municipality or state entity, or a third party acting on behalf and for the benefit of the municipality or state entity, in each contract for construction, reconstruction, alteration, repair, improvement or maintenance of a project receiving funds under this article that is a public work, shall ensure that such contract contains a provision that the structural iron and structural steel used or supplied in the performance of the contract or any subcontract thereto and

that is permanently incorporated into the public work, shall be produced or made in whole or substantial part in the United States, its territories or possessions. In the case of a structural iron or structural steel product, all manufacturing must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving the refinement of steel additives. For the purposes of this subdivision, "permanently incorporated" shall mean an iron or steel product that is required to remain in place at the end of the project contract, in a fixed location, affixed to the public work to which it was incorporated. Iron and steel products that are capable of being moved from one location to another are not permanently incorporated into a public work.

(2) The provisions of paragraph (a) of this subdivision shall not apply if the head of the department, agency, or municipal entity constructing the public work, in his or her sole discretion, determines that the provisions would not be in the public interest, would result in unreasonable costs, or that obtaining such steel or iron in the United States would increase the cost of the contract by an unreasonable amount, or such iron or steel, including without limitation structural iron and structural steel, cannot be produced or made in the United States in sufficient and reasonably available quantities and of satisfactory quality.

(u)(1) The department shall conduct an independent 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

(2) Such evaluation shall be 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.

SECTION 3. Climate Change Adaptation Fund.

(a) There is hereby established within the Department of Environmental Protection a
special revolving fund to be known as the "climate change adaptation fund" for the purpose of
receiving moneys through cost recovery demands and issuing funds for qualifying expenditures
pursuant to the climate change adaptation cost recovery program

(b) No monies shall be expended from the fund for any project except qualifying
expenditures pursuant to the program, including their operation and maintenance, as well as
reasonable costs incurred by the department of environmental conservation for administering the
program.

SECTION 4. Applicability of Chapter

(a) Nothing in this act shall be deemed to preclude the pursuit of a civil action or other
remedy by any person. The remedies provided in this act are in addition to those provided by
existing statutory or common law.

(b) If any word, phrase, clause, sentence, paragraph, section, or part of this act shall be
adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect,
impair, or invalidate the remainder thereof, but shall be confined in its operation to the word,
phrase, clause, sentence, paragraph, section, or part thereof directly involved in the controversy
in which such judgment shall have been rendered.