SENATE DOCKET, NO. 1674 FILED ON: 1/16/2025

SENATE . . . . . No. 588

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.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
James B. Eldridge	*Middlesex and Worcester*	
Steven Owens	*29th Middlesex*	*1/27/2025*
Mike Connolly	*26th Middlesex*	*2/11/2025*
Patricia D. Jehlen	*Second Middlesex*	*2/27/2025*
Sal N. DiDomenico	*Middlesex and Suffolk*	*2/27/2025*
Paul W. Mark	*Berkshire, Hampden, Franklin and Hampshire*	*2/27/2025*
John F. Keenan	*Norfolk and Plymouth*	*2/27/2025*
Vanna Howard	*17th Middlesex*	*3/24/2025*
Manny Cruz	*7th Essex*	*3/24/2025*
Joan B. Lovely	*Second Essex*	*4/18/2025*
Lydia Edwards	*Third Suffolk*	*4/18/2025*
Joanne M. Comerford	*Hampshire, Franklin and Worcester*	*4/18/2025*
Jason M. Lewis	*Fifth Middlesex*	*4/18/2025*
Adam J. Scanlon	*14th Bristol*	*5/28/2025*
William J. Driscoll, Jr.	*Norfolk, Plymouth and Bristol*	*6/11/2025*
Liz Miranda	*Second Suffolk*	*6/11/2025*
Adam Gómez	*Hampden*	*6/11/2025*

Robyn K. Kennedy	*First Worcester*	*7/8/2025*
Paul R. Feeney	*Bristol and Norfolk*	*7/31/2025*
Michael O. Moore	*Second Worcester*	*7/31/2025*
Leigh Davis	*3rd Berkshire*	*8/7/2025*
Dylan A. Fernandes	*Plymouth and Barnstable*	*9/18/2025*

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SENATE . . . . . No. 588

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 588) of James B. Eldridge, Steven Owens, Mike Connolly, Patricia D. Jehlen and other members of the General Court for legislation to create a Climate Adaptation Superfund. Environment and Natural Resources.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court
(2025-2026)

An Act establishing a climate change superfund.

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

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

CHAPTER 21P

CLIMATE CHANGE ADAPTATION COST RECOVERY ACT

Section 1. Definitions.

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

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

"Climate change adaptation project", a 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 may include but are not limited to upgrading storm water drainage systems; making defensive upgrades to roads, bridges, subways, and transit systems; preparing for and recovering from hurricanes, drought, heat waves, blizzards, severe storms, wildfires, flooding and other extreme weather events; implementing nature-based solutions for coastal and flood protections and otherwise; undertaking preventive health care programs and providing medical care to treat illness or injury caused or aggravated 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.

“Coal”, bituminous coal, anthracite coal, and lignite.

"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 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.

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

"Covered period", the period that began January first, 1995 and ended on December thirty-first, 2024.

"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, and condensates.

“Department”, the Executive Office of Energy and Environmental Affairs or such subsidiary department as may be identified by the Secretary.

"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, crude oil, natural gas, and any other energy source formed from the remains of ancient plants, animals, and/or microorganisms.

"Fossil fuel business", a business engaging in the excavation, pumping, or other extraction of fossil fuels.

"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 from the department 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 adaptation project, including its operation and maintenance, as defined by the department.

"Responsible party", any covered entity or a successor in interest to such covered entity described herein, that (1) is determined by the department to have engaged in the trade or business of extracting fossil fuel during any part of the covered period, in quantities to which more than one billion metric tons of covered greenhouse gas emissions are attributable and (2) is subject to the jurisdiction of the commonwealth for purposes of cost recovery demands because, during any part of the covered period, it (i) did business in Massachusetts, (ii) was registered to do business in Massachusetts, (iii) was appointed an agent of the state, or (iv) otherwise had

sufficient contacts with Massachusetts to give Massachusetts jurisdiction over the responsible party consistent with the nexus requirements of the United States Constitution.

"Secretary", the Secretary of the Executive Office of Energy and Environmental Affairs.

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 adaptation 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 adaptation projects;

(6) To allocate funds to climate change adaptation projects; and

(7) To allocate funds in such a way as to achieve a goal that at least forty per cent of the qualified expenditures from the program shall go to climate change adaptation projects that directly benefit environmental justice populations.

(c) Within one year of the effective date of this Act, the department shall finalize a climate cost study, after first providing public notice and opportunity for public comment on a draft of such study.

(1) That climate cost study shall provide a reasonable estimate of the total costs to the commonwealth and its residents of the emission of greenhouse gases. That total cost estimate shall consider the various kinds of cost-driving effects of covered greenhouse gas emissions, including effects on public health, natural resources, biodiversity, agriculture, economic development, flood preparedness and safety, housing, and any other effect that the department determines is relevant to making such a total cost determination.

(2) The climate cost study shall also provide a reasonable estimate of the costs that have been incurred and are expected to be incurred by the commonwealth through December 31, 2045 to avoid, moderate, repair, or adapt to negative impacts of climate change, including potential qualifying expenditures under this chapter, as reasonable responses to the emission of greenhouse gases.

(3) The climate cost study shall estimate how much of the above total costs at (c)(1) and (c)(2) are attributable to the emission of greenhouse gases arising from the extraction of fossil fuels during the covered period. That estimation shall include consideration of the relative impact on climate change of covered fossil fuel emissions versus other sources of emissions of greenhouse gases, including non-anthropogenic sources.

(4) The climate cost study shall then multiply by eighty per cent the total cost number determined through (c)(3) above.

(5) The department shall periodically update the climate cost study not less frequently than every two years, through January 1, 2046.

(d) A responsible party shall be strictly liable, without regard to fault, for a share of the total costs determined by the most recent version of the climate cost study.

(1) Within 90 days of the effective date of this Act, the department shall determine and publish a list of responsible parties on its internet website. The agency may update the list from time to time, as appropriate.

(2) Within 60 days of the completion of the initial climate cost study, the agency shall determine and assess a cost recovery demand for each responsible party.

(3) Within 60 days of an update of the climate cost study, the agency shall update and adjust, as necessary, a cost recovery demand made pursuant to subdivision (d)(2). If an update to the climate cost study results in an adjustment of a responsible party's cost recovery demand, the department shall issue a revised written notice of cost recovery demand notifying the responsible party of the adjusted payment.

(e) The department shall determine the amount of the cost recovery demand for each responsible party by doing all of the following:

(1) Determine the total amount of covered emissions, based on (A) publicly available data on the operations and production of the fossil fuel industry and (B) a scientifically peer-reviewed methodology for determining emissions factors for greenhouse gas inventories.

(2) Determine the total amount of covered emissions attributable to each responsible party, using the same data and methodology used for (e)(1).

(3) Subtract one billion metric tons from each quantity determined through (e)(2) above; that amount shall be known as the responsible party's adjusted emissions amount.

(4) Calculate the total of all adjusted emissions amounts determined at (e)(3).

(5) Calculate the ratio of each responsible party's adjusted emissions amount to the total of all adjusted emissions amounts determined at (e)(4), to determine each responsible party's liability percentage.

(6) Calculate the ratio of the total amount calculated at (e)(4) to the total amount determined at (e)(1).

(7) Multiply that ratio by the dollar number determined at (c)(4), to determine the total recoverable amount.

(8) Multiply the total recoverable amount calculated at (e)(7) by each responsible party's liability percentage determined at (e)(5), to determine the amount of the cost recovery demand to be issued to each responsible party.

(f) Where a responsible party owns a minority interest in another covered entity of ten per cent or more, the calculation of the responsible party'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 covered entity in which the responsible party holds a minority interest, multiplied by the percentage of the minority interest held.

(g) 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.

(h) The department shall issue a written notice of cost recovery demand notifying each responsible party of its cost recovery demand.

(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 subsection (j) of this subdivision.

(j) A responsible party may elect to pay the cost recovery demand amount in twenty-four annual installments, ten per cent 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) A responsible party aggrieved by a final decision of the department under this act may seek relief consistent with chapter 30A.

(l) 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.

(m) 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 procedures for:

(1) Determining responsible parties and their applicable share of covered greenhouse gas emissions consistent with the provisions of this article;

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

(3) 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;

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

(5) Identifying and selecting climate change adaptation 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 allocating 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 per cent of the qualified expenditures from the program shall go to climate change adaptation projects that benefit environmental justice populations.

(n) 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:

(1) Collaborate with the secretary of state, department of housing and community development, the department of agriculture, the department of energy resources, the department of public utilities, and the Office of Environmental Justice and Equity.

(2) 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.

(3) Identify major potential, proposed, and ongoing climate change adaptation projects throughout the state;

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

(5) Consult with stakeholders, including local governments, businesses, environmental advocates, relevant subject area experts, and representatives of environmental justice communities and of relevant labor organizations;

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

(o) The department and the attorney general are hereby authorized to enforce the provisions of this article and to assess penalties for late payment of the cost recovery demands or the initial assessment. The late penalty shall accrue daily, assessed at the rate of 10 per cent per annum on the amount remaining due.

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

(q) Projects funded pursuant to this article shall require compliance with prevailing wage requirements pursuant to chapter 149.

(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) may require use of apprenticeship agreements.

(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 chapter 149..

(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 the first paragraph 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 and recommend improvements to 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 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 for administering the program, including .

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) This act does not preempt, supersede, or displace any state law or local ordinance, regulation, policy, or program that does any of the following: (i) limit, set, or enforce standards

for emissions of greenhouse gases; (ii) monitor, report, or keep records of emissions of greenhouse gases; (iii) collect revenue through fees or levy taxes; or (iv) conduct or support investigations.

(c) 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.