

SENATE No.

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>

SENATE No.

[Pin Slip]

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.

10 "Climate change adaptive infrastructure project", an infrastructure project designed to
11 avoid, moderate, repair or adapt to negative impacts of climate change, or to assist communities,
12 households and businesses in preparing for future climate change-driven disruptions. Such

13 projects include but are not limited to restoring coastal wetlands and developing other nature-
14 based solutions and coastal protections; upgrading storm water drainage systems; making
15 defensive upgrades to roads, bridges, subways, and transit systems; preparing for and recovering
16 from hurricanes and other extreme weather events; undertaking preventive health care programs
17 and providing medical care to treat illness or injury caused by the effects of climate change;
18 relocating, elevating, or retrofitting sewage treatment plants vulnerable to flooding; installing
19 energy efficient cooling systems and other weatherization and energy efficiency upgrades and
20 retrofits in public and private buildings, including schools and public housing; upgrading parts of
21 the electrical grid to increase stability and resilience, including supporting the creation of self-
22 sufficient clean energy microgrids; addressing urban heat island effects through green spaces,
23 urban forestry, and other interventions; and responding to toxic algae blooms, loss of agricultural
24 topsoil, and other climate-driven ecosystem threats to forests, farms fisheries, and food systems.

25 “Commissioner”, commissioner of the department of environmental protection.

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

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

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

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

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

43 "Department", department of environmental protection.

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

47 "Environmental justice population", a neighborhood that meets 1 or more of the
48 following criteria: (i) the annual median household income is not more than 65 per cent of the
49 statewide annual median household income; (ii) minorities comprise 40 per cent or more of the
50 population; (iii) 25 per cent or more of households lack English language proficiency; or (iv)
51 minorities comprise 25 per cent or more of the population and the annual median household
52 income of the municipality in which the neighborhood is located does not exceed 150 per cent of
53 the statewide annual median household income; provided, however, that for a neighborhood that
54 does not meet said criteria, but a geographic portion of that neighborhood meets at least 1
55 criterion, the secretary may designate that geographic portion as an environmental justice

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

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

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

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

70 "Fund", the climate change adaptation superfund.

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

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

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

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

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

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

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

95 SECTION 2. The Climate Change Adaptation Cost Recovery Program.

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

98 b. The purposes of the program shall be the following

99 1. to secure compensatory payments from responsible parties based on a standard of strict
100 liability to provide a source of revenue for climate change adaptive infrastructure projects within
101 the state;

102 2. To determine proportional liability of responsible parties;

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

105 4. To accept and collect payment from responsible parties;

106 5. To identify climate change adaptive infrastructure projects;

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

108 7. To allocate funds in such a way as to achieve a goal that at least forty percent of the
109 qualified expenditures from the program, but not less than thirty-five percent of such
110 expenditures shall go to climate change adaptive infrastructure projects that directly benefit
111 environmental justice populations

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

115 (d) With respect to each responsible party, the cost recovery demand shall be equal to an
116 amount that bears the same ratio to seventy-five billion dollars as the responsible party's
117 applicable share of covered greenhouse gas emissions bears to the aggregate applicable shares of
118 covered greenhouse gas emissions of all responsible parties.

119 (e) The applicable share of covered greenhouse gas emissions taken into account under
120 this section for any responsible party shall be the amount by which the covered greenhouse gas
121 emissions attributable to such responsible party exceeds one billion metric tons.

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

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

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

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

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

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

148 (k) If there is any addition to the original amount of the cost recovery demand for failure
149 to timely pay any installment required under this subdivision, a liquidation or sale of
150 substantially all the assets of the responsible party, including in a proceeding under u.s. code:
151 title 11 or similar case, a cessation of business by the responsible party, or any similar
152 circumstance, then the unpaid balance of all remaining installments shall be due on the date of
153 such event, or in the case of a proceeding under u.s. code: title 11 or similar case, on the day
154 before the petition is filed. The preceding sentence shall not apply to the sale of substantially all
155 of the assets of a responsible party to a buyer if such buyer enters into an agreement with the
156 department under which such buyer is liable for the remaining installments due under this
157 subdivision in the same manner as if such buyer were the responsible party.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

207 (r) Any state entity or municipality receiving at least twenty-five million dollars
208 (\$25,000,000) from funds allocated pursuant to this article for a project costing greater than fifty
209 million dollars (\$50,000,000) shall require use of apprenticeship agreements as defined by article
210 twenty-three of the labor law, with pre-apprenticeship direct entry providers registered with the
211 department of labor.

212 (s). Any state entity or municipality receiving at least twenty-five million dollars
213 (\$25,000,000) from funds allocated pursuant to this article for a project which involves the
214 construction, reconstruction, alteration, maintenance, moving, demolition, excavation,
215 development or other improvement of any building, structure or land, shall be subject to the
216 prevailing wage law

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

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

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

238 (u)(1) The department shall conduct an independent evaluation of the climate change
239 adaptation cost recovery program. the purpose of this evaluation is to determine the effectiveness
240 of the program in achieving its purposes

241 (2) Such evaluation shall be provided to the governor, the temporary president of the
242 senate and the speaker of the assembly on or before January first of the second calendar year

243 following the year in which this article is enacted into law, and annually on or before september
244 thirtieth thereafter.

245 SECTION 3. Climate Change Adaptation Fund.

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

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

254 SECTION 4. Applicability of Chapter

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

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