



New Jersey “Climate Superfund Act” Clears Senate Committee

Client Advisories

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On December 12, 2024, the New Jersey Senate Environment and Energy Committee advanced the “Climate Superfund Act,” a bill moving through the New Jersey Legislature which, if enacted, would impose liability on certain fossil fuel companies for certain damages caused by climate change. The bill also establishes a program within the New Jersey Department of Environmental Protection (“NJDEP”) to collect and distribute compensatory payments. The bill was originally introduced in the New Jersey Senate as S-3545 on September 12, 2024, by Senator John McKeon. An identical bill sponsored by Assemblyman John Allen as A-4696 is also pending in the New Jersey General Assembly.

The Senate version of the bill can be found [here](#), while the Assembly version of the bill can be found [here](#).

“Responsible parties” are defined in the bill as entities or successors that (1) were engaged in the trade or business of extracting fossil fuel or refining crude oil and (2) are determined by the NJDEP to be responsible for more than one billion metric tons of covered greenhouse gas emissions during the time period beginning on January 1, 1995 and ending on the last day of the calendar year during which the act takes effect (the “covered period”).

The bill would require the State Treasurer to prepare and submit to the Legislature, within two years of the bill’s enactment, an assessment of the damages to the State and its residents that have resulted from greenhouse gas emissions since 1995, and would establish that each responsible party is strictly liable for the damages and responsible to pay compensatory damages to the State. The NJDEP would then be required to calculate the proportional share of damages attributable to each responsible party, based on the proportion of total greenhouse gas emissions for which the party is responsible, and collect compensatory payments from each responsible party that are equal to the party’s proportional share of the damages.

Additionally, the NJDEP would be required to deposit the compensatory payments that it collects into a “Climate Superfund Cost Recovery Program,” the purposes of which is to: (1) secure compensatory payments

from responsible parties based on a standard of strict liability; (2) determine the proportional liability of responsible parties; (3) impose cost recovery demands on responsible parties and issue notices of cost recovery demands; (4) accept and collect payment from responsible parties; and (5) disperse funds to implement climate change adaptation projects.

The NJDEP would also be required to develop and implement a grant program to distribute the funds collected to climate change adaptation and resilience projects.

The Senate Environmental and Energy Committee approved the bill with amendments in a 3-2 vote, and referred the bill to the Senate Budget and Appropriations Committee. Assuming the bill clears the appropriate Senate Committees, it will go to the Senate floor for a vote. The identical Assembly version of the bill will follow a similar path, starting with the Assembly Environment, Natural Resources, and Solid Waste Committee. If the Senate and Assembly agree on the bill by simple majority vote in each House, the bill would go to Governor Murphy for approval.

New Jersey's proposed Climate Superfund Act is similar to legislation that has been enacted in Vermont and New York and is being considered in states such as Massachusetts and Maryland.

Archer will continue to monitor the progress of the proposed bills in the Senate and Assembly, as well as its likelihood of passage if the bill reaches Governor Murphy's desk.

For questions or concerns regarding New Jersey's Climate Superfund Act, please contact Marc Rollo at mrollo@archerlaw.com or 856-354-3061, Charles Dennen at cdennen@archerlaw.com or 856-673-3932, or Grace Baccare at gbaccare@archerlaw.com or 856-673-3902.

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