

The Legal Intelligencer

Neighboring States Have Either Passed or Proposed Climate Superfund Laws— Is Pennsylvania Next?

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In May 2024, Vermont Gov. Phil Scott signed into law Vermont’s Climate Superfund Act. The law authorizes the state of Vermont to recover financial damages from fossil fuel companies.

At the time of its enactment, it was the first law of its kind in the United States. More recently, some of Pennsylvania’s neighboring states have taken steps to institute their own climate change laws aimed at imposing damages on fossil fuel companies that states allege are responsible for climate impacts.

Just a few weeks ago, New York enacted the “New York Climate Change Superfund Act,” becoming the second state to put into law such a statute.

New Jersey’s proposed legislation is still behind New York and Vermont, but it has its own version of the climate change law making its way through the state’s Legislature. The “New Jersey Climate Superfund Act” was introduced in September 2024 and in December 2024, the New Jersey Senate Environment and Energy Committee voted to approve the bill.



Courtesy photos

L-R: Marc Rollo, Charles Dennen and Grace Baccare of Archer & Greiner.

Other states, such as California, Massachusetts and Maryland, have proposed their own climate superfund laws. None of these states have enacted the proposals into law but could serve as a sign that additional climate superfund laws could be proposed across the country in the near future. Could Pennsylvania be among them?

Below, we explore the status and substance of the climate superfund laws of Pennsylvania’s neighbors, New York and New Jersey.

New York Climate Change Superfund Act

On Dec. 26, 2024, New York Gov. Kathy Hochul signed into law the “New York Climate Change Superfund Act.” The New York Climate Change Superfund Act is the second of its kind enacted in the country, after Vermont.

The bill was originally proposed in the New York Senate as S02129B by Sen. Liz Kreuger and in the New York Assembly as A03351-B by Assemblyman Jeffrey Dinowitz.

The New York Climate Change Superfund Act establishes a climate change adaptation cost recovery program. The program, which will be overseen by the New York State Department of Environmental Conservation (NYSDEC) and enforced by the NYSDEC, the Department of Tax and Finance, and the Office of the New York State Attorney General, requires companies that have contributed significantly to the buildup of climate-warming greenhouse gases in the atmosphere to bear a share of the costs of needed infrastructure investments to adapt to climate change.

The New York Climate Change Superfund Act will require “cost recovery demand” payments from “responsible parties,” which are defined as “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 NYSDEC to be responsible for more than one billion tons of covered greenhouse gas emissions.” The “covered period” according to the New York Climate Change Superfund Act is Jan. 1, 2000 to Dec. 31, 2018.

The definition of “responsible party” excepts any person lacking “sufficient connection with

the state to satisfy the nexus” of the U.S. Constitution.

Although it was recently enacted into law, the New York Climate Change Superfund Act is likely to face legal challenges. In the same way that the New York Legislature followed Vermont’s lead in enacting legislation, industry may follow Vermont’s lead in challenging the statute—the U.S. Chamber of Commerce and American Petroleum Institute recently filed a lawsuit against the state of Vermont, arguing that their version of the climate superfund law is an overreach of state power.

New Jersey Climate Superfund Act

On Sept. 12, 2024, New Jersey’s version of the Climate Superfund Act (the New Jersey Climate Superfund Act) was introduced in the New Jersey Senate as S-3545 by Sen. John McKeon. An identical bill sponsored by Assemblyman John Allen as A-4696 is also pending in the New Jersey General Assembly.

The bill, if enacted, would impose liability on certain fossil fuel companies for certain damages caused by climate change. The bill would also establish a program within the New Jersey Department of Environmental Protection (NJDEP) to collect compensatory payments from the fossil fuel companies and distribute them—in the form of grants—to climate change adaptation and resilience projects.

The bill applies to “responsible parties,” which are defined as entities or successors that were engaged in the trade or business of extracting fossil fuel or refining crude oil and are determined by the NJDEP to be responsible for more than one billion metric tons of covered greenhouse gas emissions during the “covered period.” The “covered period” begins on

Jan. 1, 1995 and will end on the last day of the calendar year during which the act takes effect.

The definition of “responsible party” does not include any entity that is not required to pay New Jersey sales tax. Qualified nonprofit organizations and New Jersey State agencies, instrumentalities, political subdivisions and authorities, and federal agencies and instrumentalities are among those generally exempt from paying New Jersey sales tax.

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: secure compensatory payments from responsible parties based on a standard of strict liability; determine the proportional liability of responsible parties; impose cost recovery demands

on responsible parties and issue notices of cost recovery demands; accept and collect payment from responsible parties; and disperse funds to implement climate change adaptation projects.

On Dec. 12, 2024, the New Jersey Senate Environment and Energy Committee advanced the New Jersey Climate Superfund Act 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.

Pennsylvania

Thus far, Pennsylvania has not proposed its own version of a climate superfund law. But if the actions of its neighbors are any indication, that may not be the case for much longer. New York recently followed Vermont’s lead in enacting a climate superfund law, and New Jersey may not be far behind; Maryland also has its own proposed version. It would not be a surprise to see Pennsylvania follow the lead of its neighboring states with its own version of a climate superfund law.

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