New York Considers First-in-the-Nation Bill to Charge Fossil Fuel Companies for Climate Change Destruction

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Known as the Climate Change Super Fund, the legislation was included in the Senate's one-house budget proposal, but didn't make it into the Assembly's proposition. Lawmakers are pushing for the bill to make it into the final budget due April 1.


Jeanmarie Evelly.

When State Assemblyman Jeffery Dinowitz and Senator Liz Krueger introduced New York's Climate Change Super Fund bill last spring, they had a clear message: it's time to put a price tag on the fossil fuel industry's contribution to climate change.

The bill would require the most prolific oil and gas producers to pay $3 billion dollars a year for the next 25 years for their share of total greenhouse gas emissions.

The money, $75 billion in total, would be poured into infrastructure adaptation projects to protect the state from the effects of global warming. Dinowitz calls the bill a "game changer"—the first in the country to make the fossil fuel industry contribute financially to climate change adaptation and mitigation efforts, a cost that usually falls on taxpayers.

"You do the damage, you gotta fix it," Dinowitz told *City Limits*. "In addition to raising money [the bill] will create an incentive for these companies to improve their evil ways and really do the right thing."

The bill was included in the Senate's one-house budget proposal, but was left out of the Assembly's own spending proposition. Dinowitz is still hopeful, however, that the bill will move forward and make it into the final budget, due on April 1. Gov. Kathy Hochul's office did not immediately respond to a request for comment about her stance on the legislation.

"The bill is still on the table, we just have to keep fighting for it," Dinowitz said.

The American Petroleum Institute (API), the largest U.S. trade association for the oil and natural gas industry, sent a statement to New York State legislators saying its members "strongly oppose this bill" and called for it to be removed from the state's final budget.

Similar legislation at the federal level failed to pass in 2021, despite the backing of democratic politicians like Bernie Sanders and Elizabeth Warren.

New York's version does not zero in on companies that have done business specifically in New York. But it does say it would exclude any parties that lack "sufficient connection with the state," a point of contention which experts believe the fossil fuel industry is sure to push back on.

The legislation states it would include companies that were "engaged in the trade or business of extracting fossil fuels" between 2000 and 2018, and whose total greenhouse gas emissions worldwide exceeds 1 billion metric tons.

Fossil fuels—which include oil, coal and natural gas—are carbon-rich deposits that are extracted and burned to produce energy, releasing greenhouse gasses into the air that trap heat in our atmosphere, causing global warming.

"New York State faces billions of dollars in damages over the next three decades from baked-in climate-driven weather events," Krueger, who sponsored the bill in the State Senate, said in an email. The fossil fuel industry made the mess, she added. "They are the ones, not New Yorkers, who should foot the bill to clean it up."

Polluters pay

The bill seeks to hold companies accountable by applying the "polluters pay" principle: those responsible for polluting should be financially liable for the harm they cause.

Last September, the U.S Army Corps of Engineers released a report saying it would cost $52 billion to build 12 movable sea barriers along New York Harbor to protect it from storm surges and manage flood risks related to global warming." In the same way that [companies] can be held responsible if they dump toxins into the ground or into drinking water supplies, they can be on the hook for damaging the atmosphere," said Blair Horner, executive director of the research hub New York Public Interest Research Group (NYPIRG).

Horner has been advocating for the bill since it was introduced last year. The legislation is modeled after a federal superfund, which Horner says contemplates damages caused by "past pollution" that is being dealt with now.

"If we're successful, I think [the bill] sends a clear message to the country that there is a way to offset the enormous costs of dealing with climate change," Horner added.

The New York State Department of Environmental Conservation (DEC) would administer the fund and be tasked with drawing up the list of companies that would pay for it, based on public industry reports detailing their fossil fuel outputs. A scientific peer-reviewed method will then be used to estimate how many metric tons of greenhouse gasses from those fuels ended up in the atmosphere on an annual basis.

This scientific method was devised by scientist Richard Heede, co-founder of the Climate Accountability Institute, a research group dedicated to studying the fossil fuel industry's contribution to climate change. Heede also helped put together the federal version of the legislation, and has for nearly 20 years been building a database that tracks the production of the largest fossil fuel companies in the world, calculating their greenhouse gas emissions.

He looked at records dating back to 1751, the year that fossil fuel production began, and found that the 108 fossil fuel and cement companies included in the database are responsible for over 69 percent of global greenhouse gas emissions since then. Of those, the 20 largest investor-owned and state-owned fossil fuel companies emitted 30 percent of the world's emissions.

"It's basically inarguable that the companies knew that there was an issue with their product," Richard Heede told City Limits. "Instead of dealing with it and opening a public discussion, they invested in climate denial to delay action so they could make more [money] for more years."

And make money they did. ExxonMobil, for instance, amassed record earnings in 2022 that came out to $55.7 billion, according to their yearly company report.

"They have an obvious economic incentive to keep the carbon age rolling along. They're not facing the reality that fossil fuel use will have to decline towards zero by mid century," Heede said.

In a statement the American Petroleum Institute (API) sent to New York State lawmakers opposing the Fund, the trade group disputed the idea "that emissions by companies over the past 70 years can be determined with great accuracy."

"That is simply not true. At best the state can only estimate emissions; and these estimates are imprecise and not accurate enough to base a prorated share of a $75 billion dollar penalty," API said.

While a list of companies that might get billed under the New York State Climate Change Superfund is yet to exist, experts who spoke to City Limits said it would likely include major oil companies like ExxonMobil, Chevron, Shell, and British Petroleum. Data that Heede shared with City Limits on these companies' greenhouse emissions shows all four are all well above the law's benchmark of 1 billion metric tons.

According to Heede's data, between 2000 and 2022, ExxonMobil emitted 14.6 billion tons of greenhouse gasses, 1.79 percent of the global total. Shell isn't too far behind, clocking in at 13.2 billion tons, 1.62 percent of the world total.

But given that greenhouse gas emissions have a global footprint, proving that New York deserves compensation for damages will be local lawmakers' greatest challenge.

Lawyer Rachel Rothschild, who provided legal research for New York's superfund bill, said fossil fuel companies will most likely fight the legislation by claiming carbon emissions are an international problem, not a state issue.

"One argument they will make to avoid liability is that the superfund law violates their due process rights because they have no connection to New York," Rothschild told City Limits.

And the API made it clear in their statement to lawmakers that members of the industry will indeed be making that argument. "There will be situations where certain companies, including foreign companies, can suggest they have an insufficient connection with New York," API said.

Rothschild says the state can counter that argument by proving companies have business ties in New York through how they've directed sales, marketing and products to the state. Lawmakers could also make a case, she said, that since fossil fuel companies have known for decades their emissions are causing "environmental harm" in all states, including New York, "it is entirely fair to subject them to liability in the state for climate change harms."

But the fossil fuel industry indicates it will push back. In their emailed statement, API characterized the legislation as an overreach, calling it "harsh and oppressive" for holding select companies "responsible for the actions of society at large."

"This is a matter of federal and international law, not state law," the group said.