

New York To Promote Climate Smart Project

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This year's New York State budget offered numerous headline grabbing changes, yet one of the less-heralded portions has the highest potential to reshape the state's responsiveness to changing climactic conditions. As part of the state transportation, economic development, and environmental conservation Article VII budget legislation ("TED Bill"), the Legislature passed Title 15 of Part U, creating a new climate change mitigation and adaptation account in the Environmental Protection Fund. This Title provides a new way for New York State municipalities to receive state assistance funding of up to \$2,000,000 for "climate smart community projects" and other projects aimed at increasing resiliency, covering any costs incurred after April 1, 2016.

"Climate smart community projects" are considered projects ranging from the restoration of riparian areas and the construction of long-stalled infrastructure projects to studies assessing the future impacts of rising sea levels. The projects must demonstrate either: (1) an ability to identify, mitigate, and adapt to climate change vulnerability and risk, or (2) the potential to reduce greenhouse gas emissions outside the power sector. The Act allows for a more holistic approach, giving the state a tool to support projects that reduce New York's contribution to climate change and those that help reduce climate-related damage to vital state infrastructure.

Under the terms of the law, the Commissioner of New York's Department of Environmental Conservation is granted substantial discretion over the contours of the program, delineating how projects qualify for this grant money, setting appropriate standards for climate mitigation projects and determining what level of resiliency is required for future infrastructure projects. If a municipality is in the process of developing a project that could potentially qualify as a "climate smart community project," they can submit an application to the commissioner demonstrating the urgency of the project, how it will advance the state's climate goals, and the methods by which the other costs of the project can be covered. The commissioner can then accept or deny the project, providing funding amounts of up to half of the total project cost or two million dollars (whichever is less). Moving into the future, the fund will be replenished as part of the annual budget.

Title 15 also creates a separate mechanism for encouraging clean vehicle technology that increases subsidies for both clean vehicle infrastructure and the purchase of municipal fleet vehicles. The statute requires the DEC to develop, in consultation with the New York State Energy Research Development Agency (NYSERDA), appropriate values for the rebates for both infrastructure (e.g. electric car charging stations) and vehicle replacement purchases. For vehicles to qualify for the rebate, they must be four wheeled passenger vehicles which, when unmodified, are "propelled at

least in part by an electric motor and associated power electronics . . . that draws electricity from a hydrogen fuel cell” or plug-in batteries. Unlike the grants for the climate resiliency program, which can ostensibly continue indefinitely, the rebates under the clean vehicle program must be made prior to April 1, 2023.

Overall, Title 15 of the TED Bill provides a useful avenue for municipalities to modernize in the face of changing weather conditions; however, the per project funding is relatively modest and how broadly this program will impact future projects depends entirely on the scope and complexity of the rules DEC promulgates to execute the statute.

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