

1 S.259

2 An act relating to climate change cost recovery

3 It is hereby enacted by the General Assembly of the State of Vermont:

4 Sec. 1. SHORT TITLE

5 This act may be cited as the “Climate Superfund Act.”

6 Sec. 2. 10 V.S.A. chapter 24A is added to read:

7 CHAPTER 24A. CLIMATE SUPERFUND COST RECOVERY PROGRAM

8 § 596. DEFINITIONS

9 As used in this chapter:

10 (1) “Agency” means the Agency of Natural Resources.

11 (2) “Climate change adaptation project” means a project designed to
12 respond to, avoid, moderate, repair, or adapt to negative impacts caused by
13 climate change and to assist human and natural communities, households, and
14 businesses in preparing for future climate-change-driven disruptions. Climate
15 change adaptation projects include implementing nature-based solutions and
16 flood protections; home buyouts; upgrading stormwater drainage systems;
17 making defensive upgrades to roads, bridges, railroads, and transit systems;
18 preparing for and recovering from extreme weather events; undertaking
19 preventive health care programs and providing medical care to treat illness or
20 injury caused by the effects of climate change; relocating, elevating, or
21 retrofitting sewage treatment plants and other infrastructure vulnerable to

1 flooding; installing energy efficient cooling systems and other weatherization
2 and energy efficiency upgrades and retrofits in public and private buildings,
3 including schools and public housing, designed to reduce the public health
4 effects of more frequent heat waves and forest fire smoke; upgrading parts of
5 the electrical grid to increase stability and resilience, including supporting the
6 creation of self-sufficient microgrids; and responding to toxic algae blooms,
7 loss of agricultural topsoil, crop loss, and other climate-driven ecosystem
8 threats to forests, farms, fisheries, and food systems.

9 (3) “Climate Superfund Cost Recovery Program” means the program
10 established by this chapter.

11 (4) “Coal” means bituminous coal, anthracite coal, and lignite.

12 (5)(A) “Controlled group” means two or more entities treated as a single
13 employer under:

14 (i) 26 U.S.C. § 52(a) or (b), without regard to 26 U.S.C.

15 § 1563(b)(2)(C); or

16 (ii) 26 U.S.C. § 414(m) or (o).

17 (B) For purposes of this chapter, entities in a controlled group are
18 treated as a single entity for purposes of meeting the definition of responsible
19 party and are jointly and severally liable for payment of any cost recovery
20 demand owed by any entity in the controlled group.

1 (6) “Cost recovery demand” means a charge asserted against a
2 responsible party for cost recovery payments under the Program for payment to
3 the Fund.

4 (7) “Covered greenhouse gas emissions” means the total quantity of
5 greenhouse gases released into the atmosphere during the covered period,
6 expressed in metric tons of carbon dioxide equivalent, resulting from the use of
7 fossil fuels extracted or refined by an entity.

8 (8) “Covered period” means the period that began on January 1, 1995
9 and ended on December 31, 2024.

10 (9) “Crude oil” means oil or petroleum of any kind and in any form,
11 including bitumen, oil sands, heavy oil, conventional and unconventional oil,
12 shale oil, natural gas liquids, condensates, and related fossil fuels.

13 (10) “Entity” means any individual, trustee, agent, partnership,
14 association, corporation, company, municipality, political subdivision, or other
15 legal organization, including a foreign nation, that holds or held an ownership
16 interest in a fossil fuel business during the covered period.

17 (11) “Environmental justice focus population” has the same meaning as
18 in 3 V.S.A. § 6002.

19 (12) “Fossil fuel” means coal, petroleum products, and fuel gases.

20 (13) “Fossil fuel business” means a business engaging in the extraction
21 of fossil fuels or the refining of petroleum products.

1 (14) “Fuel gases” or “fuel gas” means:

2 (A) methane;

3 (B) natural gas;

4 (C) liquified natural gas; and

5 (D) manufactured fuel gases.

6 (15) “Fund” means the Climate Superfund Cost Recovery Program Fund
7 established pursuant to section 599 of this title.

8 (16) “Greenhouse gas” has the same meaning as in section 552 of this
9 title.

10 (17) “Nature-based solutions” means projects that utilize or mimic
11 nature or natural processes and functions and that may also offer
12 environmental, economic, and social benefits while increasing resilience.
13 Nature-based solutions include both green and natural infrastructure.

14 (18) “Notice of cost recovery demand” means the written
15 communication from the Agency informing a responsible party of the amount
16 of the cost recovery demand payable to the Fund.

17 (19) “Petroleum product” means any product refined or re-refined from:

18 (A) synthetic or crude oil; or

19 (B) crude oil extracted from natural gas liquids or other sources.

20 (20) “Program” means the Climate Superfund Cost Recovery Program
21 established under this chapter.

1 (21) “Qualifying expenditure” means an authorized payment from the
2 Fund to pay reasonable expenses associated with the administration of the
3 Fund and the Program and as part of the support of a climate change adaptation
4 project, including its operation, monitoring, and maintenance.

5 (22) “Responsible party” means any entity or a successor in interest to
6 an entity that during any part of the covered period was engaged in the trade or
7 business of extracting fossil fuel or refining crude oil and is determined by the
8 Agency attributable to for more than one billion metric tons of covered
9 greenhouse gas emissions during the covered period. The term responsible
10 party does not include any person who lacks sufficient connection with the
11 State to satisfy the nexus requirements of the U.S. Constitution.

12 (23) “Strategy” means the Resilience Implementation Strategy adopted
13 by the Agency.

14 § 597. THE CLIMATE SUPERFUND COST RECOVERY PROGRAM

15 There is hereby established the Climate Superfund Cost Recovery Program
16 administered by the Climate Action Office of the Agency of Natural
17 Resources. The purposes of the Program shall be all of the following:

18 (1) to secure compensatory payments from responsible parties based on
19 a standard of strict liability to provide a source of revenue for climate change
20 adaptation projects within the State;

21 (2) to determine proportional liability of responsible parties;

1 (3) to impose cost recovery demands on responsible parties and issue
2 notices of cost recovery demands;

3 (4) to accept and collect payment from responsible parties;

4 (5) to develop, adopt, implement, and update the Strategy that will
5 identify and prioritize climate change adaptation projects; and

6 (6) to disperse funds to implement climate change adaptation projects
7 identified in the Strategy.

8 § 598. LIABILITY OF RESPONSIBLE PARTIES

9 (a)(1) A responsible party shall be strictly liable for a share of the costs of
10 climate change adaptation projects and all qualifying expenditures supported
11 by the Fund.

12 (2) For purposes of this section, entities in a controlled group:

13 (A) shall be treated by the Agency as a single entity for the purposes
14 of identifying responsible parties; and

15 (B) are jointly and severally liable for payment of any cost recovery
16 demand owed by any entity in the controlled group.

17 (b) With respect to each responsible party, the cost recovery demand shall
18 be equal to an amount that bears the same ratio to the cost to the State of
19 Vermont and its residents, as calculated by the State Treasurer pursuant to
20 section 599c of this title, from the emission of covered greenhouse gases
21 during the covered period as the responsible party's applicable share of

1 covered greenhouse gas emissions bears to the aggregate applicable shares of
2 covered greenhouse gas emissions resulting from the use of fossil fuels
3 extracted or refined during the covered period.

4 (c) If a responsible party owns a minority interest of 10 percent or more in
5 another entity, the responsible party's applicable share of covered greenhouse
6 gas emissions shall be increased by the applicable share of covered greenhouse
7 gas emissions for the entity in which the responsible party holds a minority
8 interest multiplied by the percentage of the minority interest held by the
9 responsible party.

10 (d) The Agency shall use the U.S. Environmental Protection Agency's
11 Emissions Factors for Greenhouse Gas Inventories as applied to the best
12 publicly available fossil fuel volume data for the purpose of determining the
13 amount of covered greenhouse gas emissions attributable to any entity from the
14 fossil fuels attributable to the entity.

15 (e) The Agency may adjust the cost recovery demand amount of a
16 responsible party who refined petroleum products or who is a successor in
17 interest to an entity that refines petroleum products if the responsible party
18 establishes to the satisfaction of the Agency that:

19 (1) a portion of the cost recovery demand amount was attributable to the
20 refining of crude oil extracted by another responsible party; and

1 (2) the crude oil extracted by the other entity was accounted for when
2 the Agency determined the cost recovery demand amount for the other entity
3 of a successor in interest of the other entity.

4 (f) The Agency shall issue the cost recovery demands required under this
5 section not later than six months following the adoption of the rules required
6 under subdivision 599a(b)(2) of this title.

7 (g)(1) Except as provided in subdivision (2) of this subsection, a
8 responsible party shall pay the cost recovery demand amount in full not later
9 than six months following the Secretary's issuance of the cost recovery
10 demand.

11 (2)(A) A responsible party may elect to pay the cost recovery demand
12 amount in nine annual installments in accordance with this subdivision (2).

13 (B) The first installment shall be paid not later than six months
14 following the Secretary's issuance of the cost recovery demand and shall be
15 equal to 20 percent of the total cost recovery demand amount.

16 (C) Each subsequent installment shall be paid one year from the
17 initial payment each subsequent year and shall be equal to 10 percent of the
18 total cost recovery demand amount. The Secretary, at the Secretary's
19 discretion, may adjust the amount of a subsequent installment payment to
20 reflect increases or decreases in the Consumer Price Index.

1 (D)(i) The unpaid balance of all remaining installments shall become
2 due immediately if:

3 (I) the responsible party fails to pay any installment in a timely
4 manner, as specified in Agency rules;

5 (II) except as provided in subdivision (ii) of this subdivision
6 (g)(2)(D), there is a liquidation or sale of substantially all the assets of the
7 responsible party; or

8 (III) the responsible party ceases to do business.

9 (ii) In the case of a sale of substantially all the assets of a
10 responsible party, the remaining installments shall not become due
11 immediately if the buyer enters into an agreement with the Agency under
12 which the buyer assumes liability for the remaining installments due under this
13 subdivision (2) in the same manner as if the buyer were the responsible party.

14 (h) The Agency shall deposit cost recovery payments collected under this
15 chapter to the Climate Superfund Cost Recovery Program Fund established
16 under section 599 of this title.

17 (i) A responsible party aggrieved by the issuance of a notice of cost
18 recovery demand shall exhaust administrative remedies by filing a request for
19 reconsideration with the Secretary within 15 days following issuance of the
20 notice of cost recovery demand. A request for reconsideration shall state the
21 grounds for the request and include supporting documentation. The Secretary

1 shall notify the responsible party of the final decision by issuing a subsequent
2 notice of cost recovery demand. A responsible party aggrieved by the issuance
3 of a final notice of cost recovery demand may bring an action pursuant to Rule
4 74 of the Vermont Rules of Civil Procedure in the Civil Division of the
5 Superior Court of Washington County.

6 (j) Nothing in this section shall be construed to supersede or diminish in
7 any way existing remedies available to a person of the State at common law or
8 under statute.

9 § 599. CLIMATE SUPERFUND COST RECOVERY PROGRAM FUND

10 (a) There is created the Climate Superfund Cost Recovery Program Fund to
11 be administered by the Secretary of Natural Resources to provide funding for
12 climate change adaptation projects in the State. The Fund shall consist of:

13 (1) cost recovery payments distributed to the Fund under section 598 of
14 this title;

15 (2) monies from time to time appropriated to the Fund by the General
16 Assembly; and

17 (3) other gifts, donations, or other monies received from any source,
18 public or private, dedicated for deposit into the Fund and approved by the
19 Secretary of Administration.

20 (b) The Fund may be used only:

21 (1) to pay:

1 (A) qualified expenditures for climate change adaptation projects
2 identified by the Agency in the Strategy; and

3 (B) reasonable administrative expenses of the Program, including the
4 cost to the State Auditor associated with hiring technical expertise necessary to
5 complete the audits required under section 599b of this title;

6 (2) to implement climate adaptation action identified in the State Hazard
7 Mitigation Plan; and

8 (3) to implement the Community Resilience and Disaster Mitigation
9 Grant Program established pursuant to 20 V.S.A. §§ 48 and 49.

10 (c) Notwithstanding any contrary provisions of 32 V.S.A. chapter 7,
11 subchapter 5, unexpended balances and interest earned by the Fund shall be
12 retained in the Fund from year to year.

13 § 599a. REPORTS; RULEMAKING

14 (a) On or before January 15, 2025, the Agency, in consultation with the
15 State Treasurer, shall submit a report to the General Assembly detailing the
16 feasibility and progress of carrying out the requirements of this chapter,
17 including any recommendations for improving the administration of the
18 Program.

19 (b) The Agency shall adopt rules necessary to implement the requirements
20 of this chapter, including:

1 (1) adopting methodologies using the best available science and publicly
2 available data to identify responsible parties and determine their applicable
3 share of covered greenhouse gas emissions;

4 (2) requirements for registering entities that are responsible parties and
5 issuing notices of cost recovery demands under the Program; and

6 (3) the Resilience Implementation Strategy, which shall include:

7 (A) practices utilizing nature-based solutions intended to stabilize
8 floodplains, riparian zones, lake shoreland, wetlands, and similar lands;

9 (B) practices to adapt infrastructure to the impacts of climate change;

10 (C) practices needed to build out early warning mechanisms and
11 support fast, effective response to climate-related threats;

12 (D) practices that support economic and environmental sustainability
13 in the face of changing climate conditions; and

14 (E) criteria and procedures for prioritizing climate change adaptation
15 projects eligible to receive monies from the Climate Superfund Cost Recovery
16 Program.

17 (c) In adopting the Strategy, the Agency shall:

18 (1) consult with the Environmental Justice Advisory Council;

19 (2) in consultation with other State agencies and departments, including
20 the Department of Public Safety's Division of Vermont Emergency
21 Management, assess the adaptation needs and vulnerabilities of various areas

1 vital to the State's economy, normal functioning, and the health and well-being
2 of Vermonters;

3 (3) identify major potential, proposed, and ongoing climate change
4 adaptation projects throughout the State;

5 (4) identify opportunities for alignment with existing federal, State,
6 and local funding streams;

7 (5) consult with stakeholders, including local governments, businesses,
8 environmental advocates, relevant subject area experts, and representatives of
9 environmental justice focus populations;

10 (6) consider components of the Vermont Climate Action Plan required
11 under section 592 of this title that are related to adaptation or resilience, as
12 defined in section 590 of this title; and

13 (7) conduct public engagement in areas and communities that have the
14 most significant exposure to the impacts of climate change, including
15 disadvantaged, low-income, and rural communities and areas.

16 (d) Nothing in this section shall be construed to limit the existing authority
17 of a State agency, department, or entity to regulate greenhouse gas emissions
18 or establish strategies or adopt rules to mitigate climate risk and build
19 resilience to climate change.

1 § 599b. CLIMATE CHANGE COST RECOVERY PROGRAM AUDIT

2 Beginning on January 1, 2031 and every five years thereafter, the State
3 Auditor shall evaluate the operation and effectiveness of the Climate
4 Superfund Cost Recovery Program. The Auditor shall make recommendations
5 to the Agency on ways to increase program efficacy and cost-effectiveness.
6 The Auditor shall submit the results of the audit to the Senate Committees on
7 Natural Resources and Energy and on Judiciary and the House Committees on
8 Environment and Energy and on Judiciary. The State Auditor shall be
9 reimbursed from the Climate Superfund Cost Recovery Program Fund for any
10 costs associated with hiring technical expertise necessary to complete the
11 audits required under this section.

12 § 599c. STATE TREASURER REPORT ON THE COST TO VERMONT OF
13 COVERED GREENHOUSE GAS EMISSIONS

14 On or before January 15, 2026, the State Treasurer, after consultation with
15 the Interagency Advisory Board to the Climate Action Office, and with any
16 other person or entity whom the State Treasurer decides to consult for the
17 purpose of obtaining and utilizing credible data or methodologies that the State
18 Treasurer determines may aid the State Treasurer in making the assessments
19 and estimates required by this section, shall submit to the Senate Committees
20 on Appropriations, on Finance, on Agriculture, and on Natural Resources and
21 Energy and the House Committees on Appropriations; on Ways and Means; on

1 Agriculture, Food Resiliency, and Forestry; and on Environment and Energy
2 an assessment of the cost to the State of Vermont and its residents of the
3 emission of covered greenhouse gases for the period that began on January 1,
4 1995 and ended on December 31, 2024. The assessment shall include:

5 (1) a summary of the various cost-driving effects of covered greenhouse
6 gas emissions on the State of Vermont, including effects on public health,
7 natural resources, biodiversity, agriculture, economic development, flood
8 preparedness and safety, housing, and any other effect that the State Treasurer,
9 in consultation with the Climate Action Office, determines is relevant;

10 (2) a categorized calculation of the costs that have been incurred and are
11 projected to be incurred in the future within the State of Vermont of each of the
12 effects identified under subdivision (1) of this section; and

13 (3) a categorized calculation of the costs that have been incurred and are
14 projected to be incurred in the future within the State of Vermont to abate the
15 effects of covered greenhouse gas emissions from between January 1, 1995
16 and December 31, 2024 on the State of Vermont and its residents.

17 Sec. 3. IMPLEMENTATION

18 (a) On or before July 1, 2025, the Agency of Natural Resources pursuant to
19 3 V.S.A. § 837 shall file with the Interagency Committee on Administrative
20 Rules the proposed rule for the adoption of the Resilience Implementation
21 Strategy required pursuant to 10 V.S.A § 599a(b)(3). On or before January 1,

1 2026, the Agency of Natural Resources shall adopt the final rule establishing
2 the Resilience Implementation Strategy required pursuant to 10 V.S.A
3 § 599a(b)(3).

4 (b) On or before July 1, 2026, the Agency of Natural Resources pursuant to
5 3 V.S.A. § 837 shall file with the Interagency Committee on Administrative
6 Rules the proposed rules required pursuant to 10 V.S.A. § 599a(b)(1) and
7 (b)(2). On or before January 1, 2027, the Agency of Natural Resources shall
8 adopt the final rule rules required pursuant to 10 V.S.A. § 599a(b)(1) and
9 (b)(2).

10 Sec. 4. APPROPRIATIONS

11 (a) The sum of \$300,000.00 is appropriated from the General Fund to the
12 Agency of Natural Resources in fiscal year 2025 for the purpose of
13 implementing the requirements of this act, including for personal services for
14 the position created pursuant to Sec. 5 of this act; costs associated with
15 providing administrative, technical, and legal support in carrying out the
16 requirements of this act and the Program; hiring consultants and experts; and
17 for other necessary costs and expenses.

18 (b) The sum of \$300,000.00 is appropriated from the General Fund to the
19 Office of the State Treasurer in fiscal year 2025 for the purposes of hiring
20 consultants or third-party services to assist in the completion of the assessment
21 required by 10 V.S.A. § 599c of the cost to the State of Vermont and its

1 residents of the emission of covered greenhouse gases. Notwithstanding the
2 authorized uses of the Climate Superfund Cost Recovery Program Fund
3 pursuant to 10 V.S.A. § 599(b), the first \$300,000.00 deposited into the
4 Climate Superfund Cost Recovery Program Fund shall be used to reimburse
5 the General Fund for the funds appropriated to the Office of the State Treasurer
6 under this section.

7 Sec. 5. AGENCY OF NATURAL RESOURCES; POSITION

8 One three-year limited service position is created in the Agency of Natural
9 Resources for the purpose of implementing this act.

10 Sec. 6. 10 V.S.A. § 8003(a) is amended to read:

11 8003. APPLICABILITY

12 (a) The Secretary may take action under this chapter to enforce the
13 following statutes and rules, permits, assurances, or orders implementing the
14 following statutes, and the Board may take such action with respect to
15 subdivision (10) of this subsection:

16 * * *

17 (31) 10 V.S.A. chapter 124, relating to the trade in covered animal parts
18 or products; ~~and~~

19 (32) 10 V.S.A. chapter 164B, relating to collection and management of
20 covered household hazardous products; and

1 (33) 10 V.S.A. chapter 24A relating to the Climate Superfund Cost

2 Recovery Program.

3 Sec. 7. EFFECTIVE DATE

4 This act shall take effect on July 1, 2024.