

1 S.259

2 Senator Sears moves that the bill be amended by striking out all after the
3 enacting clause and inserting in lieu thereof the following:

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
22 flooding; installing energy efficient cooling systems and other weatherization

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

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

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

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

13 (i) 26 U.S.C. § 52(a) or (b), without regard to 26 U.S.C.
14 § 1563(b)(2)(C); or

15 (ii) 26 U.S.C. § 414(m) or (o).

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

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

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

5 (8) “Covered period” means the period that began on January 1, **1995**
6 and ended on December 31, **2023**.

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

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

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

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

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

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

20 (A) methane;

21 (B) natural gas;

22 (C) liquified natural gas; and

1 (D) manufactured fuel gases.

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

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

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

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

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

14 (A) synthetic or crude oil; or

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

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

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

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

8 (23) “Strategy” means the Resilience Implementation Strategy adopted
9 by the Agency.

10 § 597. THE CLIMATE SUPERFUND COST RECOVERY PROGRAM

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

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

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

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

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

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

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

3 § 598. LIABILITY OF RESPONSIBLE PARTIES

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

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

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

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

12 (b) With respect to each responsible party, the cost recovery demand shall
13 be equal to an amount that bears the same ratio to the cost to the State of
14 Vermont and its residents, as calculated by the State Treasurer pursuant to
15 section 599c of this title, from the emission of covered greenhouse gases
16 during the covered period as the responsible party's applicable share of
17 covered greenhouse gas emissions bears to the aggregate applicable shares of
18 covered greenhouse gas emissions resulting from the use of fossil fuels
19 extracted or refined during the covered period.

20 (c) If a responsible party owns a minority interest of 10 percent or more in
21 another entity, the responsible party's applicable share of **covered** greenhouse
22 gas emissions **shall be increased by** the applicable share of **covered** greenhouse

1 gas emissions for the entity in which the responsible party holds a minority
2 interest multiplied by the percentage of the minority interest held by the
3 responsible party.

4 (d) The Agency shall use the U.S. Environmental Protection Agency’s
5 Emissions Factors for Greenhouse Gas Inventories as applied to the best
6 publicly available fossil fuel volume data for the purpose of determining the
7 amount of covered greenhouse gas emissions attributable to any entity from the
8 fossil fuels attributable to the entity.

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

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

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

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

21 (g)(1) Except as provided in subdivision (2) of this subsection, a
22 responsible party shall pay the cost recovery demand amount in full not later

1 than six months following the Secretary's issuance of the cost recovery
2 demand.

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

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

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

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

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

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

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

21 (ii) In the case of a sale of substantially all the assets of a
22 responsible party, the remaining installments shall not become due

1 immediately if the buyer enters into an agreement with the Agency under
2 which the buyer assumes liability for the remaining installments due under this
3 subdivision (2) in the same manner as if the buyer were the responsible party.

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

7 (i) A responsible party aggrieved by the issuance of a notice of cost
8 recovery demand shall exhaust administrative remedies by filing a request for
9 reconsideration with the Secretary within 15 days following issuance of the
10 notice of cost recovery demand. A request for reconsideration shall state the
11 grounds for the request and include supporting documentation. The Secretary
12 shall notify the responsible party of the final decision by issuing a subsequent
13 notice of cost recovery demand. A responsible party aggrieved by the issuance
14 of a final notice of cost recovery demand may bring an action pursuant to Rule
15 74 of the Vermont Rules of Civil Procedure in the Civil Division of the
16 Superior Court of Washington County.

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

1 § 599. CLIMATE SUPERFUND COST RECOVERY PROGRAM FUND

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

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

7 (2) monies from time to time appropriated to the Fund by the General
8 Assembly; and

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

12 (b) The Fund may be used only:

13 (1) to pay:

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

16 (B) reasonable administrative expenses of the Program; and

17 (2) to implement climate adaptation action identified in the State Hazard
18 Mitigation Plan.

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

1 § 599a. REPORTS; RULEMAKING

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

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

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

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

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

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

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

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

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

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

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

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

6 (2) in consultation with other State agencies and departments, including
7 the Department of Public Safety’s Division of Vermont Emergency
8 Management, assess the adaptation needs and vulnerabilities of various areas
9 vital to the State’s economy, normal functioning, and the health and well-being
10 of Vermonters;

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

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

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

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

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

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

8 § 599b. CLIMATE CHANGE COST RECOVERY PROGRAM AUDIT

9 Once every five years, the State Auditor shall evaluate the operation and
10 effectiveness of the Climate Superfund Cost Recovery Program. The Auditor
11 shall make recommendations to the Agency on ways to increase program
12 efficacy and cost-effectiveness. The Auditor shall submit the results of the
13 audit to the Senate Committees on Natural Resources and Energy and on
14 Judiciary and the House Committees on Environment and Energy and on
15 Judiciary.

16 § 599c. STATE TREASURER REPORT ON THE COST TO VERMONT OF
17 COVERED GREENHOUSE GAS EMISSIONS

18 On or before January 15, 2026, the State Treasurer, after consultation with
19 the Interagency Advisory Board to the Climate Action Office, and with any
20 other person or entity whom the State Treasurer decides to consult for the
21 purpose of obtaining and utilizing credible data or methodologies that the State
22 Treasurer determines may aid the State Treasurer in making the assessments

1 and estimates required by this section, shall submit to the Senate Committees
2 on Appropriations, on Finance, on Agriculture, and on Natural Resources and
3 Energy and the House Committees on Appropriations; on Ways and Means; on
4 Agriculture, Food Resiliency, and Forestry; and on Environment and Energy
5 an assessment of the cost to the State of Vermont and its residents of the
6 emission of covered greenhouse gases for the period that began on January 1,
7 1995 and ended on December 31, 2023. The assessment shall include:

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

13 (2) 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 of each of the
15 effects identified under subdivision (1) of this section; and

16 (3) a categorized calculation of the costs that have been incurred and are
17 projected to be incurred in the future within the State of Vermont to abate the
18 effects of covered greenhouse gas emissions from between January 1, 1995
19 and December 31, 2023 on the State of Vermont and its residents.

1 **Sec. 3. IMPLEMENTATION**

2 (a) On or before July 1, 2025, the Agency of Natural Resources shall adopt
3 the Resilience Implementation Strategy required pursuant to 10 V.S.A.
4 § 599a(b)(3).

5 (b) On or before July 1, 2026, the Agency of Natural Resources shall adopt
6 the rules required pursuant to 10 V.S.A. § 599a(b)(1) and (b)(2).

7 **Sec. 4. APPROPRIATION**

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

15 **Sec. 5. AGENCY OF NATURAL RESOURCES; POSITIONS**

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

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

19 **8003. APPLICABILITY**

20 (a) The Secretary may take action under this chapter to enforce the
21 following statutes and rules, permits, assurances, or orders implementing the

1 following statutes, and the Board may take such action with respect to

2 subdivision (10) of this subsection:

3 * * *

4 (31) 10 V.S.A. chapter 124, relating to the trade in covered animal parts

5 or products; and

6 (32) 10 V.S.A. chapter 164B, relating to collection and management of

7 covered household hazardous products; and

8 (33) 10 V.S.A. chapter 24A relating to the Climate Superfund Cost

9 Recovery Program.

10 Sec. 7. EFFECTIVE DATE

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