

1 S.259

2 Introduced by Senators Watson, Sears, Bray, Campion, Chittenden, Clarkson,
3 Cummings, Gulick, Hardy, Harrison, Hashim, Kitchel, Lyons,
4 MacDonald, McCormack, Perchlik, Ram Hinsdale, Vyhovsky,
5 White and Wrenner

6 Referred to Committee on

7 Date:

8 Subject: Judiciary; conservation and development; liability; greenhouse gas
9 emissions

10 Statement of purpose of bill as introduced: This bill proposes to establish the
11 Climate Superfund Cost Recovery Program at the Agency of Natural
12 Resources. Under the Program, an entity or a successor in interest to an entity
13 that was engaged in the trade or business of extracting fossil fuel or refining
14 crude oil between January 1, 2000 and December 31, 2019 would be assessed a
15 cost recovery demand for the entity's share of fossil fuel extraction or
16 refinement contributing to greenhouse gas-related costs in Vermont. An entity
17 would only be assessed a cost recovery demand if the Agency determined that
18 the entity's products were responsible for more than one billion metric tons of
19 covered greenhouse gas emissions. Any cost recovery payments received by
20 the Agency would be deposited into the Climate Superfund Cost Recovery

1 Program Fund to provide funding for climate change adaptive or resilience
2 infrastructure projects in the State.

3 An act relating to climate change cost recovery

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

5 Sec. 1. SHORT TITLE

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

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

8 CHAPTER 24A. CLIMATE SUPERFUND COST RECOVERY PROGRAM

9 § 596. DEFINITIONS

10 As used in this chapter:

11 (1) “Agency” means the Climate Action Office of the Agency of Natural
12 Resources.

13 (2) “Climate change adaptive infrastructure project” means an
14 infrastructure project designed to avoid, moderate, repair, or adapt to negative
15 impacts caused by climate change and to assist communities, households, and
16 businesses in preparing for future climate-change-driven disruptions. Climate
17 change adaptive infrastructure projects include implementing nature-based
18 solutions and flood protections; upgrading stormwater drainage systems;
19 making defensive upgrades to roads, bridges, railroads, and transit systems;
20 preparing for and recovering from extreme weather events; undertaking

1 preventive health care programs and providing medical care to treat illness or
2 injury caused by the effects of climate change; relocating, elevating, or
3 retrofitting sewage treatment plants and other infrastructure vulnerable to
4 flooding; installing energy efficient cooling systems and other weatherization
5 and energy efficiency upgrades and retrofits in public and private buildings,
6 including schools and public housing, designed to reduce the public health
7 effects of more frequent heat waves and forest fire smoke; upgrading parts of
8 the electrical grid to increase stability and resilience, including supporting the
9 creation of self-sufficient microgrids; and responding to toxic algae blooms,
10 loss of agricultural topsoil, and other climate-driven ecosystem threats to
11 forests, farms, fisheries, and food systems.

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

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

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

17 (i) 26 U.S.C. § 52(a) or (b), without regard to 26 U.S.C.
18 § 1563(b)(2)(C); or

19 (ii) 26 U.S.C. § 414(m) or (o).

20 (B) For purposes of this chapter, entities in a controlled group are
21 treated as a single entity for purposes of meeting the definition of responsible

1 party and are jointly and severally liable for payment of any cost recovery
2 demand owed by any entity in the controlled group.

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

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

10 (8) “Covered period” means the period that began on January 1, 2000
11 and ended on December 31, 2019.

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

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

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

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

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

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

4 (A) methane;

5 (B) natural gas;

6 (C) liquified natural gas; and

7 (D) manufactured fuel gases.

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

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

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

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

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

20 (A) synthetic or crude oil; or

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

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

3 (21) “Qualifying expenditure” means an authorized payment from the
4 Fund in support of a climate change adaptive infrastructure project, including
5 its operation and maintenance.

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

13 § 597. THE CLIMATE SUPERFUND COST RECOVERY PROGRAM

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

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

20 (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 identify climate change adaptive infrastructure projects; and

5 (6) to disperse funds to climate change adaptive infrastructure projects.

6 § 598. LIABILITY OF RESPONSIBLE PARTIES

7 (a)(1) A responsible party shall be strictly liable for a share of the costs of
8 climate change adaptive infrastructure projects supported by the Fund,
9 including project operation and maintenance.

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

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

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

15 (b) With respect to each responsible party, the cost recovery demand shall
16 be equal to an amount that bears the same ratio to the cost to Vermont from the
17 emission of covered greenhouse gases during the covered period as the
18 responsible party's applicable share of covered greenhouse gas emissions bears
19 to the aggregate applicable shares of covered greenhouse gas emissions
20 resulting from the use of fossil fuels extracted, produced, or refined during the
21 covered period.

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

7 (d) The Agency shall use the U.S. Environmental Protection Agency's
8 Emissions Factors for Greenhouse Gas Inventories for the purpose of
9 determining the amount of greenhouse gas emissions attributable to any entity
10 from the fossil fuels attributable to the entity.

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

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

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

1 (f)(1) Except as provided in subdivision (2) of this subsection, a
2 responsible party shall pay the cost recovery demand amount in full on or
3 before October 1, 2026.

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

6 (B) The first installment shall be paid on or before October 1, 2026
7 and shall be equal to 20 percent of the total cost recovery demand amount.

8 (C) Each subsequent installment shall be paid on or before September
9 30 each subsequent year and shall be equal to 10 percent of the total cost
10 recovery demand amount. The Secretary, at the Secretary's discretion, may
11 adjust the amount of a subsequent installment payment to reflect increases or
12 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 (f)(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.

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

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

9 (h) A responsible party may request a hearing with the Agency to contest a
10 cost recovery demand made by the Agency under this section. The hearing
11 shall be conducted as a contested case under 3 V.S.A. chapter 25.

12 § 599. CLIMATE SUPERFUND COST RECOVERY PROGRAM FUND

13 (a) There is created the Climate Superfund Cost Recovery Program Fund to
14 be administered by the Secretary of Natural Resources to provide funding for
15 climate change adaptive or resilience infrastructure projects in the State. The
16 Fund shall consist of:

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

19 (2) monies from time to time appropriated to the Fund by the General
20 Assembly; and

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

4 (b) The Fund may be used only:

5 (1) to pay:

6 (A) qualified expenditures for climate change adaptive or resilience
7 infrastructure projects identified by the Agency in accordance with the rules
8 adopted under section 599a of this title; and

9 (B) reasonable administrative costs of the Program; and

10 (2) to implement components of the Vermont Climate Action Plan
11 required under section 592 of this title that are related to adaptation or
12 resilience, as defined in section 590 of this title, with specific focus on
13 implementing provisions related to:

14 (A) pathways for adaptation and building resilience in communities
15 and the built environment; and

16 (B) pathways for adaptation and building resilience in natural and
17 working lands.

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

1 § 599a. RULEMAKING

2 The Agency shall adopt rules necessary to implement the requirements of
3 this chapter, including:

4 (1) adopting methodologies using the best available science to identify
5 responsible parties and determine their applicable share of covered greenhouse
6 gas emissions;

7 (2) requirements for registering entities that are responsible parties
8 under the Program;

9 (3) requirements for issuing notices of cost recovery demand, including:

10 (A) how to inform responsible parties of the cost recovery demand
11 amount;

12 (B) how and where cost recovery demands can be paid;

13 (C) the potential consequences of nonpayment and late payment; and

14 (D) information regarding the rights of a responsible party to contest
15 an assessment;

16 (4) requirements for accepting payments from, pursuing collection
17 efforts against, and negotiating settlements with responsible parties; and

18 (5) procedures for identifying and selecting climate change adaptive
19 infrastructure projects eligible to receive qualifying expenditures, including:

20 (A) Issuance of requests for proposals from localities and not-for-
21 profit and community organizations.

1 (B) Grants to private individuals.

2 (C) Other methods as determined by the Agency for dispersing
3 monies from the Climate Superfund Cost Recovery Program Fund for
4 qualifying expenditures. When considering projects intended to stabilize
5 floodplains, riparian zones, lake shoreland, wetlands, and similar lands, the
6 Agency shall encourage the use of nature-based solutions.

7 § 599b. CLIMATE CHANGE ADAPTATION MASTER PLAN; AUDIT

8 (a) The Agency shall complete the statewide Climate Change Adaptation
9 Master Plan for the purpose of guiding the dispersal of funds under this chapter
10 in a timely, efficient, and equitable manner to all regions of the State. In
11 completing the Plan, the Agency shall:

12 (1) collaborate with the Environmental Justice Advisory Council;

13 (2) in consultation with other State agencies and departments, including
14 the Department of Public Safety's Division of Vermont Emergency
15 Management, assess the adaptation needs and vulnerabilities of various areas
16 vital to the State's economy, normal functioning, and the health and well-being
17 of Vermonters, including agriculture; biodiversity; ecosystem services;
18 education; finance; health care; manufacturing; housing and real estate; retail;
19 tourism, including State and municipal parks; transportation; and municipal
20 and local government;

1 the Commissioner of Health; the Commissioner of Taxes; and the Director of
2 the Division of Vermont Emergency Management, shall submit to the Senate
3 Committees on Appropriations, on Finance, on Agriculture, and on Natural
4 Resources and Energy and the House Committees on Appropriations; on Ways
5 and Means; on Agriculture, Food Resiliency, and Forestry; and on
6 Environment and Energy an assessment of the cost to the State of Vermont of
7 the emission of greenhouse gases for the period that began on January 1, 2000
8 and ended on December 31, 2019. The assessment shall include:

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

13 (2) a calculation of the cost to the State of Vermont of each of the
14 effects identified under subdivision (1) of this section; and

15 (3) an estimate of the cost to Vermont of the effect of the emission of
16 greenhouse gases between January 1, 2000 and December 31, 2019.

17 Sec. 4. IMPLEMENTATION

18 (a) On or before July 1, 2025, the Climate Action Office of the Agency of
19 Natural Resources shall adopt the rules required pursuant to 10 V.S.A. § 599a.

1 (b) On or before July 1, 2026, the Climate Action Office of the Agency of
2 Natural Resources shall adopt the Climate Change Adaptation Master Plan
3 required pursuant to 10 V.S.A. § 599b.

4 Sec. 5. EFFECTIVE DATE

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