

1 S.259

2 Introduced by Senators Watson, Sears, Bray, Champion, 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, ~~2019-2023~~ would be  
15 assessed a cost recovery demand for the entity's share of fossil fuel extraction  
16 or refinement contributing to greenhouse gas-related costs in Vermont. An  
17 entity would only be assessed a cost recovery demand if the Agency  
18 determined that the entity's products were responsible for more than one  
19 billion metric tons of covered greenhouse gas emissions. Any cost recovery  
20 payments received by the Agency would be deposited into the Climate

1 Superfund Cost Recovery Program Fund to provide funding for climate change  
2 ~~adaptive or resilience infrastructure~~responsive actions or 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~~responsive action or project”  
14 means an ~~infrastructure~~-action or project designed to ~~respond to~~, avoid,  
15 moderate, repair, or adapt to negative impacts caused by climate change and to  
16 assist communities, households, and businesses in preparing for future climate-  
17 change-driven disruptions. Climate change ~~adaptive infrastructure~~responsive  
18 actions or projects include implementing nature-based solutions and flood  
19 protections; upgrading stormwater drainage systems; making defensive  
20 upgrades to roads, bridges, railroads, and transit systems; preparing for and

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

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

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

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

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

19 § 1563(b)(2)(C); or

20 (ii) 26 U.S.C. § 414(m) or (o).

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

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

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

12          (8) “Covered period” means the period that began on January 1, 2000  
13          and ended on December 31, ~~2019~~2023.

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

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

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

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

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

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

7               (A) methane;

8               (B) natural gas;

9               (C) liquified natural gas; and

10              (D) manufactured fuel gases.

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

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

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

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

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

2                   (A) synthetic or crude oil; or

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

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

6           (21) “Qualifying expenditure” means an authorized payment from the  
7 Fund in support of a climate change ~~adaptive infrastructure~~ responsive action or  
8 project, including its operation and maintenance.

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

16   § 597. THE CLIMATE SUPERFUND COST RECOVERY PROGRAM

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

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

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

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

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

8           (5) to identify climate change adaptive infrastructure projects; and

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

10       § 598. LIABILITY OF RESPONSIBLE PARTIES

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

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

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

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

19       (b) With respect to each responsible party, the cost recovery demand shall  
20       be equal to an amount that bears the same ratio to the cost to the State of  
21       Vermont and its residents, as calculated by the State Treasurer pursuant to

1 Section 3 of this Act, from the emission of covered greenhouse gases during  
2 the covered period as the responsible party's applicable share of covered  
3 greenhouse gas emissions bears to the aggregate applicable shares of covered  
4 greenhouse gas emissions resulting from the use of fossil fuels extracted,  
5 produced, or refined during the covered period.

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

12 (d) The Agency shall use the U.S. Environmental Protection Agency's  
13 Emissions Factors for Greenhouse Gas Inventories and/or an alternative of  
14 comparable analytical rigor for the purpose of determining the amount of  
15 covered greenhouse gas emissions attributable to any entity from the fossil  
16 fuels attributable to the entity.

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



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

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

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

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

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

13           (C) Each subsequent installment shall be paid on or before September  
14           30 each subsequent year and shall be equal to 10 percent of the total cost  
15           recovery demand amount. The Secretary, at the Secretary's discretion, may  
16           adjust the amount of a subsequent installment payment to reflect increases or  
17           decreases in the Consumer Price Index.

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

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

1                   (II) except as provided in subdivision (ii) of this subdivision  
2                   (f)(2)(D), there is a liquidation or sale of substantially all the assets of the  
3                   responsible party; or

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

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

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

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

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

19                  § 599. CLIMATE SUPERFUND COST RECOVERY PROGRAM FUND

20                  (a) There is created the Climate Superfund Cost Recovery Program Fund to  
21                  be administered by the Secretary of Natural Resources to provide funding for

1 climate change adaptive or resilience infrastructure projects in the State. The

2 Fund shall consist of:

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

5 (2) monies from time to time appropriated to the Fund by the General  
6 Assembly; and

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

10 (b) The Fund may be used only:

11 (1) to pay:

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

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

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

20 (A) pathways for adaptation and building resilience in communities  
21 and the built environment; and

1           (B) pathways for adaptation and building resilience in natural and  
2 working lands.

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

6           § 599a. RULEMAKING

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

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

12           (2) requirements for registering entities that are responsible parties  
13 under the Program;

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

15           (A) how to inform responsible parties of the cost recovery demand  
16 amount;

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

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

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

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

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

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

7                   (B) Grants to private individuals.

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

13           § 599b. CLIMATE CHANGE ADAPTATION MASTER PLAN; AUDIT

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

18                          (1) collaborate 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, including agriculture; biodiversity; ecosystem services;  
3 education; finance; health care; manufacturing; housing and real estate; retail;  
4 tourism, including State and municipal parks; transportation; and municipal  
5 and local government;

6 (3) identify major potential, proposed, and ongoing climate change  
7 adaptive infrastructure projects throughout the State;

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

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

13 (6) provide opportunities for public engagement in all regions of the  
14 State.

15 (b) Once every five years, the State Auditor shall evaluate the operation  
16 and effectiveness of the Climate Superfund Cost Recovery Program and audit  
17 the Plan. The Auditor shall make recommendations to the Agency on ways to  
18 increase program efficacy and cost-effectiveness. The Auditor shall submit the  
19 results of the audit to the Senate Committees on Natural Resources and Energy  
20 and on Judiciary and the House Committees on Environment and Energy and  
21 on Judiciary.

1       Sec. 3. STATE TREASURER REPORT ON THE COST TO VERMONT OF  
2                   COVERED GREENHOUSE GAS EMISSIONS

3           On or before January 15, 2025, the State Treasurer, after consultation with  
4           the Secretary of Administration; the Secretary of Natural Resources; the  
5           Secretary of Transportation; the Secretary of Agriculture, Food and Markets;  
6           the Commissioner of Health; the Commissioner of Taxes; ~~and~~ the Director of  
7           the Division of Vermont Emergency Management, and with any other person  
8           or entity whom the State Treasurer decides to consult for the purpose of  
9           obtaining and utilizing credible data and/or methodologies that the State  
10          Treasurer determines may aid the State Treasurer in making the assessments  
11          and estimates required by this Section, shall submit to the Senate Committees  
12          on Appropriations, on Finance, on Agriculture, and on Natural Resources and  
13          Energy and the House Committees on Appropriations; on Ways and Means; on  
14          Agriculture, Food Resiliency, and Forestry; and on Environment and Energy  
15          an assessment of the cost to the State of Vermont and its residents of the  
16          emission of greenhouse gases for the period that began on January 1, 2000 and  
17          ended on December 31, ~~2019~~2023. The assessment shall include:

18               (1) a summary of the various cost-driving effects of covered greenhouse  
19               gas emissions on the State of Vermont, including effects on public health,  
20               natural resources, biodiversity, agriculture, economic development, flood

1 preparedness and safety, ~~housing,~~ and any other effect that the State Treasurer  
2 determines is relevant;

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

6 (3) a ~~categorized~~ ~~n~~-estimate of the costs that have been incurred and  
7 those projected to be incurred within ~~to the State of Vermont~~ ~~of to abate the~~  
8 effects of ~~covered the emission of~~ greenhouse ~~gases~~ gas emissions between  
9 January 1, 2000 and December 31, ~~2019~~2023 on the State of Vermont and its  
10 residents.

11 Sec. 4. IMPLEMENTATION

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

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

17 Sec. 5. EFFECTIVE DATE

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