

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 Judiciary

7 Date: January 12, 2024

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
15 a 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
12 Natural 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,

1 ~~preparing for and recovering from extreme weather events; undertaking~~
2 preventive health care programs and providing medical care to treat illness or
3 injury caused by the effects of climate change; relocating, elevating, or
4 retrofitting sewage treatment plants and other infrastructure vulnerable to
5 flooding; installing energy efficient cooling systems and other weatherization
6 and energy efficiency upgrades and retrofits in public and private buildings,
7 including schools and public housing, designed to reduce the public health
8 effects of more frequent heat waves and forest fire smoke; upgrading parts of
9 the 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(iii) or (v).~~

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
7 to 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
11 of 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.

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 5 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~~
12 ~~Fund 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 project, including~~
8 ~~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 Vermont from the
21 emission of covered greenhouse gases during the covered period as the

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

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

11 (d) The Agency shall use the U.S. Environmental Protection Agency's
12 Emissions Factors for Greenhouse Gas Inventories for the purpose of
13 determining the amount of greenhouse gas emissions attributable to any entity
14 from the 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)(1) Except as provided in subdivision (2) of this subsection, a
5 responsible party shall pay the cost recovery demand amount in full on or
6 before October 1, 2026.

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

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

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

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

18 (I) the responsible party fails to pay any installment in a timely
19 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 § 599. CLIMATE SUPERFUND COST RECOVERY PROGRAM FUND

17 (a) There is created the Climate Superfund Cost Recovery Program Fund
18 to be administered by the Secretary of Natural Resources to provide funding
19 for climate change adaptive or resilience infrastructure projects in the State.

20 The Fund shall consist of.

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

3 (2) monies from time to time appropriated to the Fund by the General
4 Assembly; and

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

8 (b) The Fund may be used only:

9 (1) to pay:

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

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

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

18 (A) pathways for adaptation and building resilience in communities
19 and the built environment; and

20 (B) pathways for adaptation and building resilience in natural and
21 working lands.

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

4 § 599a. RULEMAKING

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

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

10 (2) requirements for registering entities that are responsible parties
11 under the Program;

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

13 (A) how to inform responsible parties of the cost recovery demand
14 amount;

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

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

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

19 (4) requirements for accepting payments from, pursuing collection

20 efforts against, and negotiating settlements with responsible parties, and

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

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

5 (B) Grants to private individuals.

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

11 § 599b. CLIMATE CHANGE ADAPTATION MASTER PLAN; AUDIT

12 (a) The Agency shall complete the state-wide Climate Change Adaptation
13 Master Plan for the purpose of guiding the dispersal of funds under this
14 chapter in a timely, efficient, and equitable manner to all regions of the State.

15 In completing the Plan, the Agency shall:

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

17 (2) in consultation with other State agencies and departments, including
18 the Department of Public Safety's Division of Vermont Emergency
19 Management, assess the adaptation needs and vulnerabilities of various areas
20 vital to the State's economy, normal functioning, and the health and well-being
21 of Vermonters, including agriculture, biodiversity, ecosystem services,

1 ~~education; finance; health care; manufacturing; housing and real estate; retail;~~
2 tourism, including State and municipal parks; transportation; and municipal
3 and local government;

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

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

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

11 (6) provide opportunities for public engagement in all regions of the
12 State.

13 (b) Once every five years, the State Auditor shall evaluate the operation
14 and effectiveness of the Climate Superfund Cost Recovery Program and audit
15 the Plan. The Auditor shall make recommendations to the Agency on ways to
16 increase program efficacy and cost-effectiveness. The Auditor shall submit the
17 results of the audit to the Senate Committees on Natural Resources and Energy
18 and on Judiciary and the House Committees on Environment and Energy and
19 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, shall submit to the Senate~~
8 ~~Committees on Appropriations, on Finance, on Agriculture, and on Natural~~
9 ~~Resources and Energy and the House Committees on Appropriations; on Ways~~
10 ~~and Means; on Agriculture, Food Resiliency, and Forestry; and on~~
11 ~~Environment and Energy an assessment of the cost to the State of Vermont of~~
12 ~~the emission of greenhouse gases for the period that began on January 1, 2000~~
13 ~~and ended on December 31, 2019. The assessment shall include:~~

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

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

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

1 ~~Sec. 4. IMPLEMENTATION~~

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

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

7 Sec. 5. EFFECTIVE DATE

8 ~~This act shall take effect on July 1, 2024.~~

Sec. 1. SHORT TITLE

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

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

CHAPTER 24A. CLIMATE SUPERFUND COST RECOVERY PROGRAM

§ 596. DEFINITIONS

As used in this chapter:

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

(2) “Climate change adaptation project” means a project designed to respond to, avoid, moderate, repair, or adapt to negative impacts caused by climate change and to assist human and natural communities, households, and businesses in preparing for future climate-change-driven disruptions. Climate change adaptation projects include implementing nature-based solutions and flood protections; home buyouts; upgrading stormwater drainage systems; making defensive upgrades to roads, bridges, railroads, and transit systems; preparing for and recovering from extreme weather events; undertaking preventive health care programs and providing medical care to treat illness or injury caused by the effects of climate change; relocating, elevating, or retrofitting sewage treatment plants and other infrastructure vulnerable to flooding; installing energy efficient cooling systems and other weatherization and energy efficiency upgrades and retrofits in public and private buildings, including schools and public housing, designed to reduce the public health effects of more frequent heat waves and forest fire smoke; upgrading parts of the electrical grid to increase stability and resilience, including supporting the

creation of self-sufficient microgrids; and responding to toxic algae blooms, loss of agricultural topsoil, crop loss, and other climate-driven ecosystem threats to forests, farms, fisheries, and food systems.

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

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

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

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

(ii) 26 U.S.C. § 414(m) or (o).

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

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

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

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

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

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

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

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

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

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

(A) methane;

(B) natural gas;

(C) liquified natural gas; and

(D) manufactured fuel gases.

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

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

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

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

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

(A) synthetic or crude oil; or

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

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

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

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

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

§ 597. THE CLIMATE SUPERFUND COST RECOVERY PROGRAM

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

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

(2) to determine proportional liability of responsible parties;

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

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

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

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

§ 598. LIABILITY OF RESPONSIBLE PARTIES

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

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

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

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

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

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

interest multiplied by the percentage of the minority interest held by the responsible party.

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

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

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

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

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

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

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

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

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

(C) Each subsequent installment shall be paid one year from the initial payment each subsequent year and shall be equal to 10 percent of the total cost recovery demand amount. The Secretary may charge reasonable interest on each installment payment or a payment delayed for any other reason and, at the Secretary's discretion, may adjust the amount of a

subsequent installment payment or a payment delayed for any other reason to reflect increases or decreases in the Consumer Price Index.

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

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

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

(III) the responsible party ceases to do business.

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

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

(i) A responsible party aggrieved by the issuance of a notice of cost recovery demand shall exhaust administrative remedies by filing a request for reconsideration with the Secretary within ~~15~~ 30 days following issuance of the notice of cost recovery demand. A request for reconsideration shall state the grounds for the request and include supporting documentation. The Secretary shall notify the responsible party of the final decision by issuing a subsequent notice of cost recovery demand. A responsible party aggrieved by the issuance of a final notice of cost recovery demand may bring an action pursuant to Rule 74 of the Vermont Rules of Civil Procedure in the Civil Division of the Superior Court of Washington County.

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

(j) Nothing in this section shall be construed to supersede or diminish in any way any other remedies available to a person, as that term is defined in 1 V.S.A. § 128, at common law or under statute.

§ 599. CLIMATE SUPERFUND COST RECOVERY PROGRAM FUND

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

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

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

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

(b) The Fund may be used only:

(1) to pay:

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

(B) reasonable administrative expenses of the Program; and

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

(b) The Fund may be used only:

(1) to pay:

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

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

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

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

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

§ 599a. REPORTS; RULEMAKING

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

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

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

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

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

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

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

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

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

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

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

(1) consult with the Environmental Justice Advisory Council;

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

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

(4) identify opportunities for alignment with existing federal, State,

and local funding streams;

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

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

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

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

~~§ 599b. CLIMATE CHANGE COST RECOVERY PROGRAM AUDIT~~

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

§ 599b. CLIMATE CHANGE COST RECOVERY PROGRAM AUDIT

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

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

On or before January 15, 2026, the State Treasurer, after consultation with the Interagency Advisory Board to the Climate Action Office, and with any other person or entity whom the State Treasurer decides to consult for the

purpose of obtaining and utilizing credible data or methodologies that the State Treasurer determines may aid the State Treasurer in making the assessments and estimates required by this section, shall submit to the Senate Committees on Appropriations, on Finance, on Agriculture, and on Natural Resources and Energy and the House Committees on Appropriations; on Ways and Means; on Agriculture, Food Resiliency, and Forestry; and on Environment and Energy an assessment of the cost to the State of Vermont and its residents of the emission of covered greenhouse gases for the period that began on January 1, 1995 and ended on December 31, 2024. The assessment shall include:

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

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

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

Sec. 3. IMPLEMENTATION

(a) On or before July 1, 2025, the Agency of Natural Resources pursuant to 3 V.S.A. § 837 shall file with the Interagency Committee on Administrative Rules the proposed rule for the adoption of the Resilience Implementation Strategy required pursuant to 10 V.S.A § 599a(b)(3). On or before January 1, 2026, the Agency of Natural Resources shall adopt the final rule establishing the Resilience Implementation Strategy required pursuant to 10 V.S.A § 599a(b)(3).

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

Sec. 4. APPROPRIATIONS

(a) The sum of \$300,000.00 is appropriated from the General Fund to the Agency of Natural Resources in fiscal year 2025 for the purpose of

implementing the requirements of this act, including for personal services for the position created pursuant to Sec. 5 of this act; costs associated with providing administrative, technical, and legal support in carrying out the requirements of this act and the Program; hiring consultants and experts; and for other necessary costs and expenses.

(b) The sum of \$300,000.00 is appropriated from the General Fund to the Office of the State Treasurer in fiscal year 2025 for the purposes of hiring consultants or third-party services to assist in the completion of the assessment required by 10 V.S.A. § 599c of the cost to the State of Vermont and its residents of the emission of covered greenhouse gases. Notwithstanding the authorized uses of the Climate Superfund Cost Recovery Program Fund pursuant to 10 V.S.A. § 599(b), the first \$300,000.00 deposited into the Climate Superfund Cost Recovery Program Fund shall be used to reimburse the General Fund for the funds appropriated to the Office of the State Treasurer under this section.

Sec. 5. AGENCY OF NATURAL RESOURCES; POSITION

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

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

8003. APPLICABILITY

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

* * *

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

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

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

~~Sec. 7. EFFECTIVE DATE~~

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

Sec. 7. EFFECTIVE DATES

This act shall take effect July 1, 2024, except that, notwithstanding 1 V.S.A. §§ 213 and 214, the liability of responsible parties for cost recovery demands under 10 V.S.A. chapter 24A shall apply retroactively to the covered period beginning January 1, 1995.