

**S.259. An Act Relating Climate Change Cost Recovery**  
Section by Section Summary

**Sec. 1. Short Title**

- The act shall be cited as the Climate Superfund Act.

**Sec. 2. 10 V.S.A. chapter 24A. Establishes the Climate Superfund Cost Recovery Program**

- § 596. Definitions. Provides several key terms integral to the operation of the bill, including:
  - “Climate change adaptation project”, which are those projects that will be funded under the Program, and shall include nature-based solutions, home buyouts, flood protection, upgraded infrastructure, weatherization, and assistance for crop loss (see bill for full list).
  - “Cost recovery demand” means a charge asserted against a responsible party for cost recovery payments by the Program for payment to the Climate Superfund Cost Recovery Program Fund.
  - “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.
  - “Covered period” means the period that began on Jan. 1, 1995 and ended on Dec. 31, 2024.
  - “Fossil fuel business” means a business engaging in extraction of fossil fuels or refining of petroleum products.
  - “Qualifying expenditure” means an authorized payment from the Fund to pay reasonable expenses associated with the administration of the Fund and the Program **and to pay for a climate change adaptation project, including its operation, monitoring, and maintenance.** **House E&E proposes an amendment to clarify that an qualifying expenditure can be payment for a climate change adaptation project.**
  - “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 ANR as attributable to more than one billion metric tons of covered greenhouse gas emissions during the covered period. A responsible party does not include a person who lacks sufficient constitutional connections with the State.
  - “Strategy” means the Resilience Implementation Strategy adopted by ANR.
    - This is a plan ANR is independently developing to prioritize projects to safeguard ecosystems, promote biodiversity, and mitigate impacts of extreme weather events.
- § 597. Climate Superfund Cost Recovery Program (Program). This section establishes the Program in the Climate Action Office at ANR. The purpose of the Program is 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;
  - determine proportional liability of responsible parties;
  - impose cost recovery demands on responsible parties and issue cost recovery demands;
  - accept and collect payment from responsible parties;
  - develop, adopt, implement, and update the Strategy; and
  - disperse funds to implement climate change adaptation projects identified in the Strategy.

- § 598. Liability of Responsible Parties. This section provides that a responsible party is strictly liable for their share of the costs of climate change and qualifying expenditures.
  - Strict liability means that a person/party is liable due to the nature of the activity and not due to any intention or fault. The nature of the activity is deemed so significant as to impose liability.
  - § 598(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 Vermont and its residents, as calculated by the State Treasurer pursuant to 10 V.S.A. § 599c, 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.
    - ❖ In short, this means the responsible party will pay the same ratio of costs to Vermont as the ratio they contributed to greenhouse gas emissions during the covered period.
  - § 598(c): provides that if a responsible party also owns a minority share in another business that is a responsible party, the responsible party’s share of covered emissions shall be increased by the party’s minority share of covered emissions in the other business.
  - § 598(d): ANR shall use U.S. EPA’s Emissions factors for Greenhouse Gas Inventories as applied to publicly available data to determine the amount of covered emission attributable to any entity. **House E&E proposes to strike the word “best” before publicly available data.**
  - § 598(e): ANR can adjust the cost recovery demand of a responsible party who refines petroleum if the party can show that a portion of the demand or all of the relevant crude oil was attributable to another party or included in another party’s cost recovery demand.
  - § 598(f): ANR shall issue the cost recovery demands under the Program not later than 6 months following adoption of the Program rules under 10 V.S.A. § 599a(b)(2).
  - § 598(g): Requires a responsible party to pay a cost recovery demand within 6 months following receipt of the demand or under an installment plan of 9 annual payments.
    - **House E&E proposes an amendment to allow ANR to charge interest on installment payment of late payments and to adjust payment amounts according to the CPI.**
  - § 598(h): Cost recovery payments are deposited in a Special Fund created in § 599.
  - § 598(i): A party who disputes a cost recovery demand can appeal to Superior Court in Washington County, but must first requesting ANR reconsider the party’s cost recovery demand. **House E&E extends from 15 to 30 days the opportunity to seek reconsideration.**
  - § 598(i): The ability of ANR to seek cost recovery demands does not supersede or diminish in any way remediation available to any person in the State at common law or under statute.
- § 599. Climate Superfund Cost Recovery Program Fund. This section creates the special fund that ANR will administer to fund climate change adaptation projects. The Fund shall consist of the cost recovery payments made by responsible parties, appropriations, and any donations to the Fund.
  - The Fund may be used only to pay: qualified expenditures for climate change adaptation projects; reasonable administrative expenses of the Program, costs of auditing the Program, and costs to implement climate adaptation action under the State Hazard Mitigation Plan.
    - ❖ The Hazard Mitigation Plan, produced by Vermont Emergency Management, identifies natural hazards affecting Vermont, assesses risk and vulnerability to hazards, and identifies priority mitigation actions to remove vulnerability and create a more resilient Vermont.

- § 599a. Reports and Rulemaking
  - § 599a(a): requires ANR in consultation with the Treasurer to report to the Legislature on or before Jan. 15, 2025 regarding the feasibility and progress in implementing the Program.
  - § 599a(b): establishes ANR’s rulemaking requirements for the Program.
    - ❖ § 599a(b)(1): Requires ANR to adopt methodologies using available science and publicly available data to identify responsible parties and determine their applicable share of covered greenhouse gas emissions. **House E&E proposes striking the words “the best” before available science;**
    - ❖ § 599a(b)(2): Requires ANR to adopt requirements for registering entities that are responsible parties and issuing notices of cost recovery demands under the Program;
    - ❖ § 599a(b)(3): Requires ANR to adopt the Resilience Implementation Strategy to include:
      - practices utilizing nature-based solutions intended to stabilize floodplains, riparian zones, lake shoreland, wetlands, and similar lands;
      - practices to adapt infrastructure to the impacts of climate change;
      - practices needed to build out early warning mechanisms and support fast, effective response to climate-related threats;
      - practices that support economic and environmental sustainability in the face of changing climate conditions; and
      - criteria and procedures for prioritizing climate change adaptation projects eligible to receive monies from the Climate Superfund Cost Recovery Program.
  - § 599a(c): Directs ANR to consult with interested parties, including the Environmental Justice Advisory Council, in developing the Strategy.
  - § 599a(d): The section does not limit the authority of the State to regulate greenhouse gas emissions or establish strategies to mitigate climate risk and build climate resilience.
- § 599b. Climate Change Cost Recovery Program—Audit. Every 5 years the State Auditor shall evaluate the operation and effectiveness of the Program and shall make recommendations to ANR on ways to increase efficacy and cost-effectiveness of the Program.
  - The State Auditor shall be reimbursed from the Climate Superfund Cost Recovery Program Fund for any costs associated with hiring technical expertise to complete the audits required.
- § 599c. State Treasurer Report on Cost to Vermont of Covered Greenhouse Gas Emissions. This section requires the State Treasurer to submit to the Legislature on or before January 15, 2026 an assessment of the cost to the State of Vermont and its residents of the emissions of covered greenhouse gases between Jan. 1, 1995 and Dec. 31, 2024. The report shall include:
  - A summary of the various cost driving effects of greenhouse gas emission on Vermont;
  - A categorized calculation of the costs incurred or to be incurred in the future; and
  - A categorized calculation of the costs in Vermont to abate the effects of greenhouse gas emissions during the covered period.

### Sec. 3. Implementation

- Sec. 3(a) Requires ANR to file the rules for the Resilience Implementation Strategy with ICAR on or before July 1, 2025. Final rules shall be adopted by January 1, 2026.
- Sec. 3(b) requires ANR to file the other administrative rules with ICAR by July 1, 2026 with final rules adopted by Jan. 1, 2027.

### Sec. 4. Appropriations

- Sec. 4(a) appropriates \$300,000 to ANR for a staff position to implement the Program and for other costs, including consultant and other experts.
- Sec. 4(b) appropriated \$300,000 to the State Treasure to hir third party consultants and services to complete the assessment of the costs to Vermont of covered greenhouse gas emissions.

### Sec. 5. ANR; Position

- Sec. 5 authorizes the creation of a position at ANR for the Program.

### Sec. 6. ANR Enforcement. 10 V.S.A. § 8003(a)

- Adds the Climate Superfund Cost Recovery Program to the list of programs ANR can enforce with its default enforcement authority.

### Sec. 7. Effective Date

- The act takes effect July 1, 2024, **but House E&E proposes to amend the effective dates to clarify the retroactive application of the bill.**
- **The proposed effective date would provide that, notwithstanding statutes requiring prospective application of laws, 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. .**