Act 122: Assessing Climate Damages
FY 26 Appropriations Request Explainer[1]

In 2024, Act 122 (the Climate Superfund Act) was enacted with strong panpartisan majorities in the House and Senate. Act 122 tasks the Treasurer's Office with assessing the historical and projected costs to the State of Vermont and its residents because of changes to the climate attributable to certain greenhouse gas emissions. Examples of costs the Treasurer is tasked with assessing include the financial fallout from increasingly frequent flood devastation and from record-setting increases in heat experienced within Vermont. The Treasurer's assessment will enable the State to get a clear understanding of the economic damages Vermont has sustained and will likely sustain as the climate continues to change. It will also provide a legally and scientifically defensible basis to recover a portion of those economic damages from the fossil fuel extractors and refiners bearing significant responsibility for the pollution that has caused and continues to cause climate damages well beyond the capacity of Vermont taxpayers to absorb.

During consideration of Act 122, legislative committees heard testimony from leading technical experts indicating that the scientific, engineering, and economic methodologies necessary to complete the Treasurer's critical task do exist, although additional expert analysis will be needed to tailor and apply the methodologies to the unique geophysical and economic circumstances of the State of Vermont. The Treasurer and ANR confirmed and deepened this understanding in the fall of 2024, through issuance of a nationwide Request for Information (RFI), whose encouraging results are summarized in their "Act 122 Climate Superfund Cost Recovery Program Report to the General Assembly January 15, 2025." (the "Report")

The Report (p.7) affirms that " '[e]vent attribution' has developed as a scientific field in the past two decades and includes scientific methods that can quantify the effects of climate change on changes in the probability or intensity of a wide variety of extreme weather events, including extreme precipitation. Recent scientific developments allow these methods to be extended to assess climate change impacts on economic losses and human health." The Report also notes, however, that "[w]hile attribution science is key to the development of the cost assessment, it will require further development to address the full scope of climate impacts contemplated by the Act." This additional work includes a specific focus on the type of extreme-precipitation river valley flooding that has been the costliest consequence of the changing climate in Vermont. Fortunately, Dartmouth Professor Justin Mankin, PhD, a key legislative witness during the Act 122 hearings, has recently confirmed that he and his colleagues are making solid progress on adapting their peer-reviewed methodology to this climate impact.

Similarly, the Report summarizes another RFI response from a group of experts that has completed "assessments of adaptation costs in other jurisdictions, due to flooding, erosion, heat, and other hazards. See, e.g., Confronting Wisconsin's Climate Costs, Center for Climate Integrity, June 2024 (available at https://climateintegrity.org/uploads/media/Wisconsin-ClimateCostStudy-2024.pdf)." Again, "[t]his part of the work entails jurisdiction-specific

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[1] Submitted to House Committee on Environment by Anthony Iarrapino, Esq. on behalf of Conservation Law Foundation & Ben Walsh, Vermont Public Interest Research Group.

analysis of which adaptations are needed, the scope and cost of those adaptations, and the funding sources available to pay for them."

Two of the complete RFI responses dealing with components of the Treasurer's climate cost assessment are attached to this memo to give the Committee a better sense of the complexity of the task and the credentials of those with whom the Treasurer may contract to accomplish it in a cost-effective manner.

While the Report from the Treasurer and ANR affirms that the Treasurer's critical task is feasible, it also makes clear that the expertise necessary to complete the rigorous and technical analysis in a manner specific to Vermont lies outside of state government. As stated in the Report (p. 8), "[t]he jurisdiction-specific and relatively nascent character of this particular area of climate science are primary drivers of the need for additional time and funds to ensure that the State is able to fully consider and select the most robust available methodologies and properly allocate costs." It is for this reason that the Treasurer's office has requested a $700k appropriation for contracted support along with a $125K appropriation for a limited-service position to oversee and coordinate the work of contracted experts.

Act 122 currently requires the Treasurer to complete the cost assessment and report on its findings to the General Assembly by January 15, 2026. For the reasons stated above, and because the Treasurer's Office has not yet issued RFPs because the Treasurer does not yet know whether and to what extent appropriations will be available to fund successful bidders, it is likely that the Treasurer will seek an extension of this statutory deadline later this session.

Act 122 also requires ANR to complete technical analysis to identify the world's largest fossil fuel refiners and extractors whose products and activities resulted in excess of 1 billion metric tons of $CO_2$ equivalent climate changing emissions during the covered period. From there, ANR will conduct a legal analysis to determine which of those corporations have a sufficient jurisdictional nexus to Vermont to qualify them as "responsible parties" under Act 122. The State will then seek proportional cost recovery from those "responsible parties" based on the total cost assessment completed by the Treasurer.

Fortunately, the Report (p.6) confirms that the existing, peer-reviewed "Carbon Majors" dataset is both suitable for and available to ANR to complete its technical analysis. Unlike the scientific and economic models the Treasurer's work will rely on, the Report provides no indication that the Carbon Majors dataset will require substantial refinement and state-specific tailoring by contracted experts. Nonetheless, ANR will likely also require an appropriation for contracted support to help it understand and "vet" the existing Carbon Majors database. It should be noted, however, that this technical task, while no less important, is both less complex than the work the Treasurer's office must complete and less time-sensitive.

Under the Act, ANR's work is due after the Treasurer's cost assessment, with draft ANR implementation rules required by July 1, 2026 and a final adoption by January 1, 2027. Considering the likelihood of a timeline extension for the Treasurer's work, it would also make sense to extend the deadline for ANR's Act 122 work, thereby allowing a phasing of an appropriate ANR appropriation into the next fiscal year.