

From: O'Toole, Megan
Sent: Tuesday, March 12, 2024 2:35 PM
To: Anthony Iarrapino; Ben Edgerly Walsh
Cc: Lazorchak, Jane; Wolz, Marian
Subject: ANR edits to S.259
Attachments: GENERAL-#372287-v1-S.259 - 2024 - As Introduced - Dr 24-0052; ANR edits.docx

Good afternoon, Anthony and Ben,

Thanks again for the great discussion on S.259 last week; I learned a lot and appreciate you taking the time to clarify a few items. Secretary Moore sent the attached to Mike O'Grady this afternoon. Please let us know if you have any questions, and we look forward to working with you as this bill continues to move.

Megan



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Agency of Natural Resources

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BILL AS INTRODUCED – ANR Edits
2024

S.259
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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

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Referred to Committee on

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Date:

8

Subject: Judiciary; conservation and development; liability; greenhouse gas

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emissions

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Statement of purpose of bill as introduced: This bill proposes to establish the

11

Climate Superfund Cost Recovery Program at the Agency of Natural

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Resources. Under the Program, a responsible party that was engaged in the

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trade or business of extracting fossil fuel or refining crude oil between January

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1, 1995 and December 31, 2023 would be assessed a cost recovery demand for

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the entity's share of fossil fuel extraction or refinement contributing to

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greenhouse gas-related costs in Vermont. An entity would only be assessed a

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cost recovery demand if the Agency determined that the entity's products were

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responsible for more than one billion metric tons of covered greenhouse gas

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emissions. Any cost recovery payments received by the Agency would be

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deposited into the Climate Superfund Cost Recovery Program Fund to provide

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funding for climate change adaptive or resilience projects in the State.

1 An act relating to climate change cost recovery

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

3 Sec. 1. SHORT TITLE

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

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

6 CHAPTER 24A. CLIMATE SUPERFUND COST RECOVERY PROGRAM

7 § 596. DEFINITIONS

8 As used in this chapter:

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

10 (2) “Climate change adaptation project” means a project designed to
11 respond to, avoid, moderate, repair, or adapt to negative impacts caused by
12 climate change and to assist human and natural communities, households, and
13 businesses in preparing for future climate-change-driven disruptions. Climate
14 change adaptation projects include implementing nature-based solutions and
15 flood protections; upgrading stormwater drainage systems; making defensive
16 upgrades to roads, bridges, railroads, and transit systems; preparing for and
17 recovering from extreme weather events; undertaking preventive health care
18 programs and providing medical care to treat illness or injury caused by the
19 effects of climate change; relocating, elevating, or retrofitting sewage
20 treatment plants and other infrastructure vulnerable to flooding; installing
21 energy efficient cooling systems and other weatherization and energy

1 efficiency upgrades and retrofits in public and private buildings, including
2 schools and public housing, designed to reduce the public health effects of
3 more frequent heat waves and forest fire smoke; upgrading parts of the
4 electrical grid to increase stability and resilience, including supporting the
5 creation of self-sufficient microgrids; and responding to toxic algae blooms,
6 loss of agricultural topsoil, and other climate-driven ecosystem threats to
7 forests, farms, fisheries, and food systems.

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

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

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

13 (i) 26 U.S.C. § 52(a) or (b), without regard to 26 U.S.C.
14 § 1563(b)(2)(C); or

15 (ii) 26 U.S.C. § 414(m) or (o).

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

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

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

8 (8) “Covered period” means the period that began on January 1, 1995
9 and ended on December 31, 2023.

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

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

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

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

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

Commented [M01]: Preamble refers specifically to entities that extract and refine. Whatever the list of activities, it should be consistent in the bill as it will have bearing on the cost recovery demand calculus.

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

2 (A) methane;

3 (B) natural gas;

4 (C) liquified natural gas; and

5 (D) manufactured fuel gases.

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

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

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

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

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

18 (A) synthetic or crude oil; or

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

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

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

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

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

14 § 597. THE CLIMATE SUPERFUND COST RECOVERY PROGRAM

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

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

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

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

8 § 598. LIABILITY OF RESPONSIBLE PARTIES

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

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

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

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

17 (b) With respect to each responsible party, the cost recovery demand shall
18 be proportional to the responsible party's share of covered greenhouse gas
19 emissions as it bears to the aggregate shares of covered greenhouse gas
20 emissions resulting from the use of fossil fuels ~~extracted, produced, or refined~~
21 during the covered period.

Commented [MO2]: Again, the list of covered activities should be consistent.

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 as applied to the best
9 publicly available fossil fuel volume data for the purpose of determining the
10 amount of covered greenhouse gas emissions attributable to any entity from the
11 fossil fuels attributable to the entity.

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

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

18 (2) the crude oil extracted by the other entity was accounted for when
19 the Agency determined the cost recovery demand amount for the other entity
20 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 no later
3 than six months following the Secretary’s issuance of the cost recovery
4 demand.

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

7 (B) The first installment shall be paid no later than six months
8 following the Secretary’s issuance of the notice of cost recovery demand, and
9 shall be equal to 20 percent of the total cost recovery demand amount.

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

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

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

19 (II) except as provided in subdivision (ii) of this subdivision

20 (f)(2)(D), there is a liquidation or sale of substantially all the assets of the
21 responsible party; or

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

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

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

10 (h) A responsible party aggrieved by the issuance of a notice of cost
11 recovery demand must exhaust administrative remedies by filing a request for
12 reconsideration with the Secretary within fifteen (15) days of issuance of the
13 notice of cost recovery demand. A request for reconsideration must state the
14 grounds for the request and include supporting documentation. The Secretary
15 shall notify the responsible party of the final decision by issuing a subsequent
16 notice of cost recovery demand. A responsible party aggrieved by the issuance
17 of a final notice of cost recovery demand may bring an action pursuant to Rule
18 74 of the Vermont Rules of Civil Procedure in the Civil Division of the
19 Superior Court of Washington County.

20 § 599. CLIMATE SUPERFUND COST RECOVERY PROGRAM FUND

Commented [MO3]: @Stevens, Rachel informal process language

Commented [SR4R3]: @OToutle, Megan I've proposed some edits here based on some language in the APA, let me know if you have suggestions or edits.

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

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

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

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

11 (b) The Fund may be used only:

12 (1) to pay:

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

15 (B) reasonable administrative expenses of the Program;

16 _____
17 (2) to implement climate adaptation actions identified in the State Hazard
18 Mitigation Plan.

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

1 § 599a. REPORTS AND RULEMAKING

2 (a) On or before January 15, 2025, the Agency, in consultation with the
3 State Treasurer, shall submit a report to the General Assembly detailing the
4 feasibility and progress of carrying out the requirements of this chapter, a
5 recommended timeline for identifying responsible parties and developing the
6 cost recovery demand methodology and the Strategy, and a recommendation
7 for administering the Program.

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

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

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

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

16 —

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

19 (B) Practices to adapt infrastructure to the impacts of climate change,

20 (C) Practices needed to build out early warning mechanisms and

21 support fast, effective response to climate-related threats,

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

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

6 (b) In adopting the Strategy, the Agency shall:

7 (1) consult with the Environmental Justice Advisory Council;

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

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

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

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

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

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

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

11 § 599b. CLIMATE CHANGE COST RECOVERY PROGRAM AUDIT

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

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

3 No later than one year following the adoption of the Strategy, the State
4 Treasurer, after consultation with the Interagency Advisory Board to the
5 Climate Action Office, shall submit to the Senate Committees on
6 Appropriations, on Finance, on Agriculture, and on Natural Resources and
7 Energy and the House Committees on Appropriations; on Ways and Means; on
8 Agriculture, Food Resiliency, and Forestry; and on Environment and Energy
9 an assessment of the cost to the State of Vermont of the emission of
10 greenhouse gases for the period that began on January 1, 1995 and ended on
11 December 31, 2023. The assessment shall include:

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

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

19 (3) an estimate of the cost to Vermont of the effects of the emission of
20 greenhouse gases between January 1, 1995 and December 31, 2023.

21

1 *** Appropriation and Positions ***

2 Sec. 4. APPROPRIATION

3 The sum of \$XXX,XXX is appropriated from the General Fund to the Agency
4 of Natural Resources in fiscal year 2025 for the purpose of implementing the
5 requirements of this Act, including for personal services for the position
6 created pursuant to Sec. 5; costs associated with providing administrative,
7 technical, and legal support to in carrying out the requirements of this Act and
8 the Program; hiring consultants and experts; and for other necessary costs and
9 expenses.

Commented [MJ5]: ANR will require a total of \$600K to implement this bill as drafted: \$450k to support the LTS for 3 years and \$150K for contracted services. We anticipate the Treasurer's Office may also require an appropriation and therefore did not insert the dollar-figure directly into the text.

10 Sec. 5. AGENCY OF NATURAL RESOURCES; POSITIONS

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

13 *** Effective Date ***

14 Sec. 6. EFFECTIVE DATE

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