

From: Gendron, Maggie
Sent: Thursday, March 14, 2024 12:14 PM
To: Moore, Julie; O'Toole, Megan; Stevens, Rachel
Subject: Fwd: S.259 Redraft and Timelines
Attachments: GENERAL-#375320-v1-S.259 Senate Judiciary Committee Amendment.DOCX; GENERAL-#375325-v1-S.259 Timeline.DOCX

FYsA. Megan, I talked to Julie and she still harbors the same concerns and caution - but we don't want to get in the way of Sears right now. It will have to go to the House. Maggie

From: Michael O'Grady
Sent: Thursday, March 14, 2024 11:51:32 AM
To: Anthony Iarrapino ; O'Toole, Megan ; Gendron, Maggie ; Doyon, Ashlynn ; Ben Edgerly Walsh
Subject: S.259 Redraft and Timelines

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hello Everyone

Attached is the unedited redraft of S.259, including its formatting as a committee amendment. Please look over and let me know if you would like changes.

Also attached is a table of the timeline.

Thanks

Mike

(Draft No. 2.1 – S.259)
3/14/2024 - MOG - 11:00 AM

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1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. entitled
3 “An act relating to climate change cost recovery” respectfully reports that it
4 has considered the same and recommends that the bill be amended by striking
5 out all after the enacting clause and inserting in lieu thereof the following:

6 Sec. 1. SHORT TITLE

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

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

9 CHAPTER 24A. CLIMATE SUPERFUND COST RECOVERY PROGRAM

10 § 596. DEFINITIONS

11 As used in this chapter:

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

13 (2) “Climate change adaptation project” means a project designed to
14 respond to, avoid, moderate, repair, or adapt to negative impacts caused by
15 climate change and to assist human and natural communities, households, and
16 businesses in preparing for future climate-change-driven disruptions. Climate
17 change adaptation projects include implementing nature-based solutions and
18 flood protections; home buyouts; upgrading stormwater drainage systems;
19 making defensive upgrades to roads, bridges, railroads, and transit systems;
20 preparing for and recovering from extreme weather events; undertaking
21 preventive health care programs and providing medical care to treat illness or

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

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

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

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

16 (i) 26 U.S.C. § 52(a) or (b), without regard to 26 U.S.C.
17 § 1563(b)(2)(C); or

18 (ii) 26 U.S.C. § 414(m) or (o).

19 (B) For purposes of this chapter, entities in a controlled group are
20 treated as a single entity for purposes of meeting the definition of responsible

1 party and are jointly and severally liable for payment of any cost recovery
2 demand owed by any entity in the controlled group.

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

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

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

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

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

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

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

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

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

4 (A) methane;

5 (B) natural gas;

6 (C) liquified natural gas; and

7 (D) manufactured fuel gases.

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

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

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

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

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

20 (A) synthetic or crude oil; or

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

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

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

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

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

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

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

12 § 598. LIABILITY OF RESPONSIBLE PARTIES

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

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

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

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

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

9 (c) If a responsible party owns a minority interest of 10 percent or more in
10 another entity, the responsible party’s applicable share of covered greenhouse
11 gas emissions shall be increased by the applicable share of covered greenhouse
12 gas emissions for the entity in which the responsible party holds a minority
13 interest multiplied by the percentage of the minority interest held by the
14 responsible party.

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

20 (e) The Agency may adjust the cost recovery demand amount of a
21 responsible party who refined petroleum products or who is a successor in

1 interest to an entity that refines petroleum products if the responsible party
2 establishes to the satisfaction of the Agency that:

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

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

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

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

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

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

20 (C) Each subsequent installment shall be paid one year from the
21 initial payment each subsequent year and shall be equal to 10 percent of the

1 total cost recovery demand amount. The Secretary, at the Secretary's
2 discretion, may adjust the amount of a subsequent installment payment to
3 reflect increases or decreases in the Consumer Price Index.

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

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

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

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

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

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

20 (i) A responsible party aggrieved by the issuance of a notice of cost
21 recovery demand shall exhaust administrative remedies by filing a request for

1 reconsideration with the Secretary within 15 days following issuance of the
2 notice of cost recovery demand. A request for reconsideration shall state the
3 grounds for the request and include supporting documentation. The Secretary
4 shall notify the responsible party of the final decision by issuing a subsequent
5 notice of cost recovery demand. A responsible party aggrieved by the issuance
6 of a final notice of cost recovery demand may bring an action pursuant to Rule
7 74 of the Vermont Rules of Civil Procedure in the Civil Division of the
8 Superior Court of Washington County.

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

12 § 599. CLIMATE SUPERFUND COST RECOVERY PROGRAM FUND

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

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

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

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

4 (b) The Fund may be used only:

5 (1) to pay:

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

8 (B) reasonable administrative expenses of the Program; and

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

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

14 § 599a. REPORTS; RULEMAKING

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

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

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

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

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

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

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

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

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

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

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

18 (1) consult 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;

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

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

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

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

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

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

20 § 599b. CLIMATE CHANGE COST RECOVERY PROGRAM AUDIT

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

8 § 599c. STATE TREASURER REPORT ON THE COST TO VERMONT OF
9 COVERED GREENHOUSE GAS EMISSIONS

10 On or before January 15, 2026, the State Treasurer, after consultation with
11 the Interagency Advisory Board to the Climate Action Office, and with any
12 other person or entity whom the State Treasurer decides to consult for the
13 purpose of obtaining and utilizing credible data or methodologies that the State
14 Treasurer determines may aid the State Treasurer in making the assessments
15 and estimates required by this section, shall submit to the Senate Committees
16 on Appropriations, on Finance, on Agriculture, and on Natural Resources and
17 Energy and the House Committees on Appropriations; on Ways and Means; on
18 Agriculture, Food Resiliency, and Forestry; and on Environment and Energy
19 an assessment of the cost to the State of Vermont and its residents of the
20 emission of covered greenhouse gases for the period that began on January 1,
21 1995 and ended on December 31, 2024. The assessment shall include:

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

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

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

13 Sec. 3. IMPLEMENTATION

14 (a) On or before July 1, 2025, the Agency of Natural Resources pursuant to
15 3 V.S.A. § 837 shall file with the Interagency Committee on Administrative
16 Rules the proposed rule for the adoption of the Resilience Implementation
17 Strategy required pursuant to 10 V.S.A § 599a(b)(3). On or before January 1,
18 2026, the Agency of Natural Resources shall adopt the final rule establishing
19 the Resilience Implementation Strategy required pursuant to 10 V.S.A
20 § 599a(b)(3).

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

7 Sec. 4. APPROPRIATIONS

8 (a) The sum of \$300,000.00 is appropriated from the General Fund to the
9 Agency of Natural Resources in fiscal year 2025 for the purpose of
10 implementing the requirements of this act, including for personal services for
11 the position created pursuant to Sec. 5 of this act; costs associated with
12 providing administrative, technical, and legal support in carrying out the
13 requirements of this act and the Program; hiring consultants and experts; and
14 for other necessary costs and expenses.

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

1 Climate Superfund Cost Recovery Program Fund shall be used to reimburse
2 the General Fund for the funds appropriated to the Office of the State Treasurer
3 under this section.

4 Sec. 5. AGENCY OF NATURAL RESOURCES; POSITIONS

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

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

8 8003. APPLICABILITY

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

13 * * *

14 (31) 10 V.S.A. chapter 124, relating to the trade in covered animal parts
15 or products; ~~and~~

16 (32) 10 V.S.A. chapter 164B, relating to collection and management of
17 covered household hazardous products; and

18 (33) 10 V.S.A. chapter 24A relating to the Climate Superfund Cost
19 Recovery Program.

20 Sec. 7. EFFECTIVE DATE

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

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7 (Committee vote: _____)

8

9

Senator _____

10

FOR THE COMMITTEE

S.259 Timeline

Dates (on or before)	Section	Action
January 15, 2025	10 V.S.A. § 599a	ANR, in consultation with State Treasurer, submits a report to the General Assembly detailing the feasibility and progress of carrying out the Climate Superfund Cost Recovery Program.
July 1, 2025	10 V.S.A § 599a(b)(3) Sec. 3(a)	ANR files with ICAR the proposed rule for the adoption of the Resilience Implementation Strategy.
January 1, 2026,	10 V.S.A § 599a(b)(3) Sec. 3(a)	ANR shall adopt the final rule establishing the Resilience Implementation Strategy.
January 15, 2026	10 V.S.A. § 599c	The State Treasurer, after consultation with the Interagency Advisory Board to the Climate Action Office and others submits to the General Assembly 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.
July 1, 2026	10 V.S.A. § 599a(b)(1) and (b)(2). Sec. 3(b)	ANR files with ICAR the proposed rules adopting methodologies to identify responsible parties, determine their share of covered greenhouse gas emissions, register responsible parties, and issuing notices of cost recovery demands.
January 1, 2027	10 V.S.A. § 599a(b)(1) and (b)(2).	ANR shall adopt the final rules adopting methodologies to identify responsible parties, determine their share of covered greenhouse gas emissions, register responsible parties, and issuing notices of cost recovery demands.
6 months after final ANR rulemaking under § 599a(b)(2)	10 V.S.A. § 598(f)	ANR issues the cost recovery demands
6 months after cost recovery demand issued	10 V.S.A. § 598(g)	Cost Recovery Payments Due