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H.809

Introduced by Representatives LaLonde of South Burlington, Sheldon of Middlebury, Andrews of Westford, Anthony of Barre City, Arsenault of Williston, Austin of Colchester, Bartholomew of Hartland, Berbeco of Winooski, Black of Essex, Bluemle of Burlington, Bongartz of Manchester, Bos-Lun of Westminster, Brady of Williston, Brown of Richmond, Brumsted of Shelburne, Burke of Brattleboro, Burrows of West Windsor, Buss of Woodstock, Campbell of St. Johnsbury, Casey of Montpelier, Chapin of East Montpelier, Chase of Chester, Chase of Colchester, Chesnut-Tangerman of Middletown Springs, Christie of Hartford, Cina of Burlington, Coffey of Guilford, Cole of Hartford, Conlon of Cornwall, Dodge of Essex, Dolan of Essex Junction, Dolan of Waitsfield, Durfee of Shaftsbury, Elder of Starksboro, Farlice-Rubio of Barnet, Garofano of Essex, Goldman of Rockingham, Graning of Jericho, Headrick of Burlington, Holcombe of Norwich, Hooper of Randolph, Hooper of Burlington, Houghton of Essex Junction, Howard of Rutland City, Hyman of South Burlington, James of Manchester, Jerome of Brandon, Kornheiser of Brattleboro, Krasnow of South Burlington, LaBounty of

1 Lyndon, Lalley of Shelburne, LaMont of Morristown, Leavitt of
2 Grand Isle, Logan of Burlington, Long of Newfane, Masland of
3 Thetford, McCann of Montpelier, McCarthy of St. Albans City,
4 McGill of Bridport, Minier of South Burlington, Mrowicki of
5 Putney, Mulvaney-Stanak of Burlington, Nicoll of Ludlow,
6 Notte of Rutland City, Nugent of South Burlington, O'Brien of
7 Tunbridge, Ode of Burlington, Patt of Worcester, Pouech of
8 Hinesburg, Priestley of Bradford, Rachelson of Burlington, Rice
9 of Dorset, Roberts of Halifax, Satcowitz of Randolph, Scheu of
10 Middlebury, Sibia of Dover, Sims of Craftsbury, Small of
11 Winooski, Stebbins of Burlington, Stevens of Waterbury, Stone
12 of Burlington, Surprenant of Barnard, Templeman of
13 Brownington, Torre of Moretown, Troiano of Stannard,
14 Williams of Barre City, and Wood of Waterbury

15 Referred to Committee on

16 Date:

17 Subject: Judiciary; conservation and development; liability; greenhouse gas
18 emissions

19 Statement of purpose of bill as introduced: This bill proposes to establish the
20 Climate Superfund Cost Recovery Program at the Agency of Natural
21 Resources. Under the Program, an entity or a successor in interest to an entity

1 that was engaged in the trade or business of extracting fossil fuel or refining
2 crude oil between January 1, 2000 and December 31, 2019 would be assessed a
3 cost recovery demand for the entity's share of fossil fuel extraction or
4 refinement contributing to greenhouse gas-related costs in Vermont. An entity
5 would only be assessed a cost recovery demand if the Agency determined that
6 the entity's products were responsible for more than one billion metric tons of
7 covered greenhouse gas emissions. Any cost recovery payments received by
8 the Agency would be deposited into the Climate Superfund Cost Recovery
9 Program Fund to provide funding for climate change adaptive or resilience
10 infrastructure projects in the State.

11 An act relating to climate change cost recovery

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

13 Sec. 1. SHORT TITLE

14 This act may be cited as the "Climate Superfund Act."

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

16 CHAPTER 24A. CLIMATE SUPERFUND COST RECOVERY PROGRAM

17 § 596. DEFINITIONS

18 As used in this chapter:

19 (1) "Agency" means the Climate Action Office of the Agency of Natural
20 Resources.

1 (2) “Climate change adaptive infrastructure project” means an
2 infrastructure project designed to avoid, moderate, repair, or adapt to negative
3 impacts caused by climate change and to assist communities, households, and
4 businesses in preparing for future climate-change-driven disruptions. Climate
5 change adaptive infrastructure projects include implementing nature-based
6 solutions and flood protections; upgrading stormwater drainage systems;
7 making defensive upgrades to roads, bridges, railroads, and transit systems;
8 preparing for and recovering from extreme weather events; undertaking
9 preventive health care programs and providing medical care to treat illness or
10 injury caused by the effects of climate change; relocating, elevating, or
11 retrofitting sewage treatment plants and other infrastructure vulnerable to
12 flooding; installing energy efficient cooling systems and other weatherization
13 and energy efficiency upgrades and retrofits in public and private buildings,
14 including schools and public housing, designed to reduce the public health
15 effects of more frequent heat waves and forest fire smoke; upgrading parts of
16 the electrical grid to increase stability and resilience, including supporting the
17 creation of self-sufficient microgrids; and responding to toxic algae blooms,
18 loss of agricultural topsoil, and other climate-driven ecosystem threats to
19 forests, farms, fisheries, and food systems.

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

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

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

4 (i) 26 U.S.C. § 52(a) or (b), without regard to 26 U.S.C.
5 § 1563(b)(2)(C); or

6 (ii) 26 U.S.C. § 414(m) or (o).

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

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

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

18 (8) “Covered period” means the period that began on January 1, 2000
19 and ended on December 31, 2019.

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

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

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

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

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

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

14 (A) methane;

15 (B) natural gas;

16 (C) liquified natural gas; and

17 (D) manufactured fuel gases.

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

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

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

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

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

9 (A) synthetic or crude oil; or

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

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

13 (21) “Qualifying expenditure” means an authorized payment from the
14 Fund in support of a climate change adaptive infrastructure project, including
15 its operation and maintenance.

16 (22) “Responsible party” means any entity or a successor in interest to
17 an entity that during any part of the covered period was engaged in the trade or
18 business of extracting fossil fuel or refining crude oil and is determined by the
19 Agency attributable to for more than one billion metric tons of covered
20 greenhouse gas emissions. The term responsible party does not include any

1 person who lacks sufficient connection with the State to satisfy the nexus
2 requirements of the U.S. Constitution.

3 § 597. THE CLIMATE SUPERFUND COST RECOVERY PROGRAM

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

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

10 (2) to determine proportional liability of responsible parties;

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

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

14 (5) to identify climate change adaptive infrastructure projects; and

15 (6) to disperse funds to climate change adaptive infrastructure projects.

16 § 598. LIABILITY OF RESPONSIBLE PARTIES

17 (a)(1) A responsible party shall be strictly liable for a share of the costs of
18 climate change adaptive infrastructure projects supported by the Fund,
19 including project operation and maintenance.

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

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

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

5 (b) With respect to each responsible party, the cost recovery demand shall
6 be equal to an amount that bears the same ratio to the cost to Vermont from the
7 emission of covered greenhouse gases during the covered period as the
8 responsible party's applicable share of covered greenhouse gas emissions bears
9 to the aggregate applicable shares of covered greenhouse gas emissions
10 resulting from the use of fossil fuels extracted, produced, or refined during the
11 covered period.

12 (c) If a responsible party owns a minority interest of 10 percent or more in
13 another entity, the responsible party's applicable share of greenhouse gas
14 emissions shall be calculated as the applicable share of greenhouse gas
15 emissions for the entity in which the responsible party holds a minority interest
16 multiplied by the percentage of the minority interest held by the responsible
17 party.

18 (d) The Agency shall use the U.S. Environmental Protection Agency's
19 Emissions Factors for Greenhouse Gas Inventories for the purpose of
20 determining the amount of greenhouse gas emissions attributable to any entity
21 from the fossil fuels attributable to the entity.

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

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

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

10 (f)(1) Except as provided in subdivision (2) of this subsection, a
11 responsible party shall pay the cost recovery demand amount in full on or
12 before October 1, 2026.

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

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

17 (C) Each subsequent installment shall be paid on or before September
18 30 each subsequent year and shall be equal to 10 percent of the total cost
19 recovery demand amount. The Secretary, at the Secretary's discretion, may
20 adjust the amount of a subsequent installment payment to reflect increases or
21 decreases in the Consumer Price Index.

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

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

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

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

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

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

17 (h) A responsible party may request a hearing with the Agency to contest a
18 cost recovery demand made by the Agency under this section. The hearing
19 shall be conducted as a contested case under 3 V.S.A. chapter 25.

1 § 599. CLIMATE SUPERFUND COST RECOVERY PROGRAM FUND

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

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

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

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

13 (b) The Fund may be used only:

14 (1) to pay:

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

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

19 (2) to implement components of the Vermont Climate Action Plan
20 required under section 592 of this title that are related to adaptation or

1 resilience, as defined in section 590 of this title, with specific focus on
2 implementing provisions related to:

3 (A) pathways for adaptation and building resilience in communities
4 and the built environment; and

5 (B) pathways for adaptation and building resilience in natural and
6 working lands.

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

10 § 599a. RULEMAKING

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

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

16 (2) requirements for registering entities that are responsible parties
17 under the Program;

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

19 (A) how to inform responsible parties of the cost recovery demand
20 amount;

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

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

2 (D) information regarding the rights of a responsible party to contest

3 an assessment;

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

5 efforts against, and negotiating settlements with responsible parties; and

6 (5) procedures for identifying and selecting climate change adaptive

7 infrastructure projects eligible to receive qualifying expenditures, including:

8 (A) Issuance of requests for proposals from localities and not-for-

9 profit and community organizations.

10 (B) Grants to private individuals.

11 (C) Other methods as determined by the Agency for dispersing

12 monies from the Climate Superfund Cost Recovery Program Fund for

13 qualifying expenditures. When considering projects intended to stabilize

14 floodplains, riparian zones, lake shoreland, wetlands, and similar lands, the

15 Agency shall encourage the use of nature-based solutions.

16 § 599b. CLIMATE CHANGE ADAPTATION MASTER PLAN; AUDIT

17 (a) The Agency shall complete the statewide Climate Change Adaptation

18 Master Plan for the purpose of guiding the dispersal of funds under this chapter

19 in a timely, efficient, and equitable manner to all regions of the State. In

20 completing the Plan, the Agency shall:

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

1 (2) in consultation with other State agencies and departments, including
2 the Department of Public Safety’s Division of Vermont Emergency
3 Management, assess the adaptation needs and vulnerabilities of various areas
4 vital to the State’s economy, normal functioning, and the health and well-being
5 of Vermonters, including agriculture; biodiversity; ecosystem services;
6 education; finance; health care; manufacturing; housing and real estate; retail;
7 tourism, including State and municipal parks; transportation; and municipal
8 and local government;

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

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

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

16 (6) provide opportunities for public engagement in all regions of the
17 State.

18 (b) Once every five years, the State Auditor shall evaluate the operation
19 and effectiveness of the Climate Superfund Cost Recovery Program and audit
20 the Plan. The Auditor shall make recommendations to the Agency on ways to
21 increase program efficacy and cost-effectiveness. The Auditor shall submit the

1 results of the audit to the Senate Committees on Natural Resources and Energy
2 and on Judiciary and the House Committees on Environment and Energy and
3 on Judiciary.

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

6 On or before January 15, 2025, the State Treasurer, after consultation with
7 the Secretary of Administration; the Secretary of Natural Resources; the
8 Secretary of Transportation; the Secretary of Agriculture, Food and Markets;
9 the Commissioner of Health; the Commissioner of Taxes; and the Director of
10 the Division of Vermont Emergency Management, shall submit to the Senate
11 Committees on Appropriations, on Finance, on Agriculture, and on Natural
12 Resources and Energy and the House Committees on Appropriations; on Ways
13 and Means; on Agriculture, Food Resiliency, and Forestry; and on
14 Environment and Energy an assessment of the cost to the State of Vermont of
15 the emission of greenhouse gases for the period that began on January 1, 2000
16 and ended on December 31, 2019. The assessment shall include:

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

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

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

5 Sec. 4. IMPLEMENTATION

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

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

11 Sec. 5. EFFECTIVE DATE

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