

# MAINE STATE LEGISLATURE

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# 132nd MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2025

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**Legislative Document**

**No. 1808**

H.P. 1209

House of Representatives, April 29, 2025

### **An Act to Enact the Maine Climate Superfund Act**

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Received by the Clerk of the House on April 25, 2025. Referred to the Committee on Environment and Natural Resources pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT

Clerk

Presented by Representative LOOKNER of Portland.  
Cosponsored by Senator GROHOSKI of Hancock and  
Representatives: ABDI of Lewiston, ANKELES of Brunswick, DANA of the Passamaquoddy  
Tribe, DEBRITO of Waterville, DHALAC of South Portland, GEIGER of Rockland, GOLEK  
of Harpswell, SKOLD of Portland.

1 Be it enacted by the People of the State of Maine as follows:

2 Sec. 1. 38 MRSA c. 3-C is enacted to read:

3 **CHAPTER 3-C**

4 **MAINE CLIMATE SUPERFUND**

5 **§580-G. Short title**

6 This Act may be known and cited as "the Maine Climate Superfund Act."

7 **§580-H. Definitions**

8 As used in this chapter, unless the context otherwise indicates, the following terms  
9 have the following meanings.

10 **1. Climate change adaptation project.** "Climate change adaptation project" means  
11 a project designed to respond to, avoid, moderate, repair or adapt to negative impacts  
12 caused by climate change and to assist human and natural communities, households and  
13 businesses in preparing for future disruptions driven by climate change. "Climate change  
14 adaptation project" includes implementing nature-based solutions and flood protections;  
15 upgrading storm water drainage systems; making defensive upgrades to roads, bridges,  
16 railroads and transportation systems; preparing for and recovering from extreme weather  
17 events; undertaking preventive health care programs and providing medical care to treat  
18 illness or injury caused by the effects of climate change; relocating, elevating or retrofitting  
19 sewage treatment plants and other infrastructure vulnerable to flooding; installing energy  
20 efficient cooling systems and other weatherization and energy efficiency upgrades and  
21 retrofits in public and private buildings, including schools and public housing, designed to  
22 reduce the public health effects of more frequent heat waves and forest fire smoke;  
23 upgrading parts of the electrical grid to increase stability and resilience, including  
24 supporting the creation of microgrids as defined in Title 35-A, section 10129, subsection  
25 1, paragraph H; and responding to toxic algae blooms, loss of agricultural topsoil, crop loss  
26 and other climate-driven ecosystem threats to forests, farms, fisheries and food systems.

27 **2. Climate Superfund Cost Recovery Program.** "Climate Superfund Cost Recovery  
28 Program" or "program" means the program established under section 580-I.

29 **3. Coal.** "Coal" means bituminous coal, anthracite coal and lignite coal.

30 **4. Controlled group.** "Controlled group" means 2 or more entities treated as a single  
31 employer:

32 A. Under 26 United States Code, Section 52(a) or (b), without regard to 26 United  
33 States Code, Section 1563(b)(2)(C); or

34 B. Under 26 United States Code, Section 414(m) or (o).

35 For purposes of this chapter, entities in a controlled group are treated as a single entity for  
36 purposes of subsection 20 and are jointly and severally liable for payment of any cost  
37 recovery demand owed by any entity in the controlled group.

38 **5. Cost recovery demand.** "Cost recovery demand" means a charge asserted against  
39 a responsible party for cost recovery payments under the program for payment to the fund.

1       **6. Covered greenhouse gas emissions.** "Covered greenhouse gas emissions" means  
2 the total quantity of greenhouse gases released into the atmosphere during the covered  
3 period, expressed in metric tons of carbon dioxide equivalent, resulting from the use of  
4 fossil fuels extracted, produced or refined by an entity.

5       **7. Covered period.** "Covered period" means the period that began January 1, 2000  
6 and ended December 31, 2024.

7       **8. Crude oil.** "Crude oil" means oil or petroleum of any kind and in any form,  
8 including bitumen, oil sands, heavy oil, conventional and unconventional oil, shale oil,  
9 natural gas liquids, condensates and related fossil fuels.

10       **9. Entity.** "Entity" means any individual, trustee, agent, partnership, association,  
11 corporation, company, municipality, political subdivision or other legal organization,  
12 including a foreign nation, that holds or held an ownership interest in a fossil fuel business  
13 during the covered period.

14       **10. Environmental justice focus population.** "Environmental justice focus  
15 population" means any census block group in which:

16           A. The annual median household income is not more than 80% of the state median  
17 household income;

18           B. Persons of color and indigenous peoples comprise at least 6% or more of the  
19 population; or

20           C. At least 1% or more of households have limited English proficiency.

21       **11. Fossil fuel.** "Fossil fuel" means coal, petroleum products and fuel gases.

22       **12. Fossil fuel business.** "Fossil fuel business" means a business engaging in the  
23 extraction of fossil fuels or the refining of petroleum products.

24       **13. Fuel gases.** "Fuel gases" means methane, natural gas, liquified natural gas and  
25 manufactured fuel gases.

26       **14. Fund.** "Fund" means the Climate Superfund Cost Recovery Program Fund  
27 established pursuant to section 580-K.

28       **15. Greenhouse gas.** "Greenhouse gas" means any chemical or physical substance  
29 that is emitted into the air and that the commissioner may reasonably anticipate to cause or  
30 contribute to climate change, including carbon dioxide, methane, nitrous oxide,  
31 hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride.

32       **16. Nature-based solution.** "Nature-based solution" means a project that uses or  
33 mimics nature or a natural process and function and that may also offer environmental,  
34 economic and social benefits while increasing resilience. "Nature-based solution" includes  
35 green infrastructure projects that use storm water management practices to preserve, restore  
36 or mimic natural hydrology and natural infrastructure projects that use existing or rebuilt  
37 natural landscapes to increase resilience.

38       **17. Notice of cost recovery demand.** "Notice of cost recovery demand" means a  
39 written communication from the department informing a responsible party of the amount  
40 of the cost recovery demand.

41       **18. Petroleum product.** "Petroleum product" means any product refined or re-refined  
42 from:

1           A. Synthetic or crude oil; or

2           B. Crude oil extracted from natural gas liquids or other sources.

3           **19. Qualifying expenditure.** "Qualifying expenditure" means an authorized payment  
4 from the fund to pay reasonable expenses associated with the administration of the fund  
5 and the program and to pay for a climate change adaptation project, including its operation,  
6 monitoring and maintenance.

7           **20. Responsible party.** "Responsible party" means an entity or a successor in interest  
8 to an entity that during any part of the covered period was engaged in the trade or business  
9 of extracting fossil fuel or refining crude oil and is determined by the department  
10 attributable for more than 1,000,000,000 metric tons of covered greenhouse gas emissions  
11 during the covered period. "Responsible party" does not include a person who lacks  
12 sufficient connection with the State to satisfy the nexus requirements of the United States  
13 Constitution.

14           **21. Strategy.** "Strategy" means the resilience implementation strategy adopted by the  
15 department under section 580-L, subsection 3.

16           **§580-I. Climate Superfund Cost Recovery Program**

17           The Climate Superfund Cost Recovery Program is established within and administered  
18 by the department. The purposes of the program are:

19           **1. Compensatory payments.** To secure compensatory payments from responsible  
20 parties based on a standard of strict liability to provide a source of revenue for climate  
21 change adaptation projects within the State;

22           **2. Proportional liabilities.** To determine proportional liability of responsible parties;

23           **3. Cost recovery demands.** To impose cost recovery demands on responsible parties  
24 and issue notices of cost recovery demands;

25           **4. Responsible party payments.** To accept and collect payment from responsible  
26 parties;

27           **5. Strategy.** To develop, adopt, implement and update the strategy in order to identify  
28 and prioritize climate change adaptation projects; and

29           **6. Funds dispersal.** To disperse funds to climate change adaptation projects identified  
30 in the strategy.

31           **§580-J. Liability of responsible parties**

32           **1. Responsible party liability.** A responsible party is strictly liable for a share of the  
33 costs of climate change adaptation projects and all qualifying expenditures from the fund.  
34 For purposes of this section, entities in a controlled group:

35           A. Must be treated by the department as a single entity for the purposes of identifying  
36 responsible parties; and

37           B. Are jointly and severally liable for payment of any cost recovery demand owed by  
38 any entity in the controlled group.

39           **2. Cost recovery demand.** With respect to each responsible party, the cost recovery  
40 demand is equal to an amount that bears the same ratio to the cost to the State and its  
41 residents, as calculated by the Treasurer of State, from the emission of covered greenhouse

1 gases during the covered period as the responsible party's applicable share of covered  
2 greenhouse gas emissions bears to the aggregate applicable shares of covered greenhouse  
3 gas emissions resulting from the use of fossil fuels extracted or refined during the covered  
4 period.

5 **3. Minority interest.** If a responsible party owns a minority interest of 10% or more  
6 in another entity, the responsible party's applicable share of covered greenhouse gas  
7 emissions is increased by the applicable share of covered greenhouse gas emissions for the  
8 entity in which the responsible party holds a minority interest multiplied by the percentage  
9 of the minority interest held by the responsible party.

10 **4. Greenhouse gas emissions.** The department shall use the United States  
11 Environmental Protection Agency's emissions factors for greenhouse gas inventories as  
12 applied to the fossil fuel volume data for the purpose of determining the amount of covered  
13 greenhouse gas emissions attributable to any entity from the fossil fuels attributable to the  
14 entity.

15 **5. Adjustments.** The department may adjust the cost recovery demand amount of a  
16 responsible party who refined petroleum products or who is a successor in interest to an  
17 entity that refines petroleum products if the responsible party establishes to the satisfaction  
18 of the department that:

19 A. A portion of the cost recovery demand amount was attributable to the refining of  
20 crude oil extracted by another responsible party; and

21 B. The crude oil extracted by the other entity was accounted for when the department  
22 determined the cost recovery demand amount for the other entity or a successor in  
23 interest or the other entity.

24 **6. Payments; installments.** A responsible party shall pay the cost recovery demand  
25 amount in full not later than 6 months following the department's issuance of the cost  
26 recovery demand, except that a responsible party may elect to pay the cost recovery demand  
27 amount in 9 annual installments in accordance with this subsection.

28 The first installment must be paid not later than 6 months following the department's  
29 issuance of the cost recovery demand and is equal to 20% of the total cost recovery demand  
30 amount. Each subsequent installment must be paid not later than one year from the initial  
31 payment and each subsequent year and must be equal to 10% of the total cost recovery  
32 demand amount. The commissioner may charge reasonable interest on each installment  
33 payment or a delayed payment and, at the commissioner's discretion, may adjust the amount  
34 of a subsequent installment payment or a delayed payment to reflect increases or decreases  
35 in the Consumer Price Index. The unpaid balance of all remaining installments becomes  
36 due immediately if:

37 A. The responsible party fails to pay any installment in a timely manner, as specified  
38 in department rules;

39 B. There is a liquidation or sale of substantially all the assets of the responsible party,  
40 except that, in the case of a sale of substantially all the assets of a responsible party,  
41 the remaining installments do not become due immediately if the buyer enters into an  
42 agreement with the department under which the buyer assumes liability for the  
43 remaining installments due under this subsection in the same manner as if the buyer  
44 were the responsible party; or

1           C. The responsible party ceases to do business.

2           **7. Fund deposits.** The department shall deposit cost recovery payments collected  
3 under this chapter into the fund.

4           **8. Reconsideration.** A responsible party aggrieved by the issuance of a notice of cost  
5 recovery demand may file a request for reconsideration with the department within 30 days  
6 following issuance of the notice of cost recovery demand. A request for reconsideration  
7 must state the grounds for the request and include supporting documentation. The  
8 department shall notify the responsible party of the final decision by issuing a subsequent  
9 notice of cost recovery demand. A responsible party aggrieved by the issuance of a final  
10 notice of cost recovery demand under this subsection may bring an action in the Superior  
11 Court of Kennebec County seeking an order annulling, altering or modifying the notice of  
12 cost recovery demand.

13 **§580-K. Climate Superfund Cost Recovery Program Fund**

14           **1. Fund established.** The Climate Superfund Cost Recovery Program Fund is  
15 established and is administered by the commissioner to provide funding for climate change  
16 adaptation projects in the State. The fund consists of:

17           A. Cost recovery payments deposited into the fund under section 580-J;

18           B. Funds from time to time appropriated to the fund by the Legislature; and

19           C. Gifts, donations or other funds received from any source, public or private,  
20 dedicated for deposit into the fund and approved by the commissioner.

21           **2. Use of fund.** The fund may be used only:

22           A. To pay qualified expenditures for climate change adaptation projects identified by  
23 the department in the strategy;

24           B. To pay reasonable administrative costs of the program, including the cost to the  
25 State Auditor associated with hiring technical expertise necessary to complete the  
26 audits required under section 580-M, subsection 5; and

27           C. To implement components of the state climate action plan required under section  
28 577 that are related to climate change adaptation projects.

29           **3. Unexpended balances and interest.** Unexpended balances and interest earned by  
30 the fund must be retained in the fund from year to year.

31 **§580-L. Rulemaking**

32           The department shall adopt rules necessary to implement the requirements of this  
33 chapter, including:

34           **1. Identification.** Adopting methodologies using the best available science and  
35 publicly available data to identify a responsible party and determine a responsible party's  
36 applicable share of covered greenhouse gas emissions;

37           **2. Registration requirements.** Requirements for registering an entity that is a  
38 responsible party and issuing a notice of cost recovery demand under the program; and

39           **3. Resilience implementation strategy.** Requirements for the adoption of the strategy  
40 under section 580-N, which must include:

1 A. Practices using nature-based solutions intended to stabilize flood plains, riparian  
2 zones, lake shoreland, wetlands and similar lands;

3 B. Practices to adapt infrastructure to the effects of climate change;

4 C. Practices needed to build early warning mechanisms and to support fast, effective  
5 response to climate-related threats;

6 D. Practices that support economic and environmental sustainability in the face of  
7 changing climate conditions; and

8 E. Criteria and procedures for prioritizing climate change adaptation projects eligible  
9 to receive funds under the program.

10 Rules adopted pursuant to this section are routine technical rules as defined in Title 5,  
11 chapter 375, subchapter 2-A.

12 **§580-M. Program audit**

13 Beginning January 1, 2031 and every 5 years thereafter, the State Auditor shall evaluate  
14 the operation and effectiveness of the program. The State Auditor shall make  
15 recommendations to the department on ways to increase program efficacy and cost-  
16 effectiveness. The State Auditor shall submit the results of the audit to the joint standing  
17 committees of the Legislature having jurisdiction over agriculture, conservation and  
18 forestry matters, environment and natural resources matters and energy, utilities and  
19 technology matters. The State Auditor must be reimbursed from the fund for any costs  
20 associated with hiring technical expertise necessary to complete the audits required under  
21 this section.

22 **§580-N. Resilience implementation strategy**

23 In adopting the strategy, the department shall:

24 **1. National Environmental Justice Advisory Council.** Consult with the United  
25 States Environmental Protection Agency, National Environmental Justice Advisory  
26 Council;

27 **2. Adaptation needs and vulnerabilities.** In consultation with other state agencies,  
28 including the Department of Defense, Veterans and Emergency Management, Maine  
29 Emergency Management Agency, assess the adaptation needs and vulnerabilities of various  
30 areas vital to the State's economy and normal functioning and the health and well-being of  
31 residents of the State;

32 **3. Climate change adaptation projects.** Identify major potential, proposed and  
33 ongoing climate change adaptation projects throughout the State;

34 **4. Funding streams.** Identify opportunities for alignment with existing federal, state  
35 and local funding streams;

36 **5. Consultation.** Consult with stakeholders, including local governments, businesses,  
37 environmental advocates, relevant subject area experts and representatives of  
38 environmental justice focus populations;

39 **6. State climate action plan.** Consider components of the state climate action plan  
40 under section 577 that are related to adaptation or resilience; and



**7. Public engagement.** Conduct public engagement in areas and communities that have the most significant exposure to the effects of climate change, including disadvantaged, low-income and rural communities and areas.

**Sec. 2. Treasurer of State report on cost to State of greenhouse gas emissions.** On or before January 15, 2026, the Treasurer of State, after consultation with the Commissioner of Administrative and Financial Services; the Commissioner of Environmental Protection; the Commissioner of Transportation; the Commissioner of Agriculture, Conservation and Forestry; the Commissioner of Health and Human Services; and the Commissioner of Defense, Veterans and Emergency Management, shall submit to the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs, agriculture, food and rural resources matters, environment and natural resources matters and energy, utilities and technology matters an assessment of the costs to the State of the emission of greenhouse gases for the period that began on January 1, 2000 and ended on December 31, 2024. The assessment must include:

1. A summary of the various cost-driving effects of greenhouse gas emissions on the State, including effects on public health, natural resources, biodiversity, agriculture, economic development, flood preparedness and safety, and any other effect that the Treasurer of State determines is relevant;

2. A categorized calculation of the costs that have been incurred and are projected to be incurred to the State of each of the effects identified under subsection 1; and

3. A categorized calculation of the costs that have been incurred and are projected to be incurred to the State to abate the effects of greenhouse gas emissions from between January 1, 2000 and December 31, 2024 on the State and residents of the State.

**Sec. 3. Cost recovery demands issued.** The Department of Environmental Protection shall issue the cost recovery demands pursuant to the Maine Revised Statutes, Title 38, chapter 3-C not later than 6 months following the adoption of rules pursuant to Title 38, section 580-L.

## SUMMARY

This bill establishes the Climate Superfund Cost Recovery Program within the Department of Environmental Protection. Under the program, an entity or a successor in interest to an entity that was engaged in the trade or business of extracting fossil fuel or refining crude oil between January 1, 2000 and December 31, 2024 is assessed a cost recovery demand for the entity's share of fossil fuel extraction or refinement contributing to greenhouse gas-related costs in the State. An entity is assessed a cost recovery demand only if the department determines that the entity's products were responsible for more than one billion metric tons of greenhouse gas emissions. Cost recovery payments received by the department are deposited into the Climate Superfund Cost Recovery Program Fund to provide funding for climate change adaptation projects in the State, which the department is directed to prioritize through the adoption of a resilience implementation strategy.