

MAINE STATE LEGISLATURE

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132nd MAINE LEGISLATURE

FIRST SPECIAL SESSION-2025

Legislative Document

No. 1870

S.P. 740

In Senate, May 5, 2025

An Act to Establish a Climate Superfund Cost Recovery Program to Impose Penalties on Climate Polluters

Received by the Secretary of the Senate on May 1, 2025. Referred to the Committee on Environment and Natural Resources pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator BRENNER of Cumberland.
Cosponsored by Representative DOUDERA of Camden and
Senators: BENNETT of Oxford, CARNEY of Cumberland, TALBOT ROSS of Cumberland,
Representatives: KUHN of Falmouth, SATO of Gorham.

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, 1995
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.** "Environmental justice" means the fair treatment and
15 meaningful involvement of all people regardless of race, color, national origin or income
16 with respect to the development, implementation and enforcement of environmental laws,
17 rules and policies.

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

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

21 **13. Fuel gases.** "Fuel gases" means methane, natural gas, liquified natural gas and
22 manufactured fuel gases.

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

25 **15. Greenhouse gas.** "Greenhouse gas" has the same meaning as in section 574,
26 subsection 1.

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

33 **17. Notice of cost recovery demand.** "Notice of cost recovery demand" means a
34 written communication from the department informing a responsible party of the amount
35 of the cost recovery demand.

36 **18. Petroleum product.** "Petroleum product" means any product refined or re-refined
37 from:

38 A. Synthetic or crude oil; or

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

40 **19. Qualifying expenditure.** "Qualifying expenditure" means an authorized payment
41 from the fund to pay reasonable expenses associated with the administration of the fund

1 and the program and to pay for a climate change adaptation project, including its operation,
2 monitoring and maintenance.

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

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

12 **§580-I. Climate Superfund Cost Recovery Program**

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

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

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

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

21 **4. Responsible party payments.** To accept and collect payment from responsible
22 parties;

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

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

27 **§580-J. Liability of responsible parties**

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

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

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

35 **2. Cost recovery demand.** With respect to each responsible party, the cost recovery
36 demand is equal to an amount that bears the same ratio to the cost to the State and its
37 residents, as calculated by the Treasurer of State, from the emission of covered greenhouse
38 gases during the covered period as the responsible party's applicable share of covered
39 greenhouse gas emissions bears to the aggregate applicable shares of covered greenhouse
40 gas emissions resulting from the use of fossil fuels extracted or refined during the covered
41 period.

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

6 **4. Greenhouse gas emissions.** The department shall use the best available
7 information, including but not limited to the United States Environmental Protection
8 Agency's emissions factors for greenhouse gas inventories as applied to the fossil fuel
9 volume data, for the purpose of determining the amount of covered greenhouse gas
10 emissions attributable to any entity from the fossil fuels attributable to the entity.

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

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

17 B. The crude oil extracted by the other entity was accounted for when the department
18 determined the cost recovery demand amount for the other entity or a successor in
19 interest to the other entity.

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

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

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

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

41 C. The responsible party ceases to do business.

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

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

10 **9. Construction.** This Act may not be construed to relieve any person from liability
11 at common law or under any state law. This Act may not be construed to preempt, displace,
12 restrict or limit in any way any other claim or remedy available to a person.

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;

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

29 D. To reimburse the General Fund for any costs to establish and implement the
30 program and the fund incurred by the department, the Treasurer of State and the Office
31 of the Attorney General.

32 At least 35% of funds expended from the fund must be used for climate change adaptation
33 projects that benefit persons with median household income and employment below the
34 statewide median household income and employment rate who have environmental justice
35 concerns.

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

38 **§580-L. Rulemaking**

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

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

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

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

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

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

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

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

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

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

19 **§580-M. Program audit**

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

29 **§580-N. Resilience implementation strategy**

30 In adopting the strategy, the department shall:

31 **1. Maine Climate Council.** Consult with the cochairs of the Maine Climate Council
32 established in section 577-A and within the Governor's Office of Policy Innovation and the
33 Future, as well as any relevant working groups;

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

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

4. Funding streams. Identify opportunities for alignment with existing federal, state and local funding streams:

5. Consultation. Consult with stakeholders, including local governments, businesses, environmental advocates, relevant subject area experts and representatives of low-income communities or communities with environmental justice concerns pursuant to section 580-K;

6. State climate action plan. Consider components of the state climate action plan 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.

This section may not be construed to limit the existing authority of a state agency to regulate greenhouse gas emissions or establish strategies or adopt rules to mitigate climate risk and build resilience to climate change.

Sec. 2. Treasurer of State report on cost to State of greenhouse gas emissions. On or before December 31, 2026, the Treasurer of State shall submit to the joint standing committees of the Legislature having jurisdiction over environment and natural resources matters, energy, utilities and technology matters and judiciary matters an assessment of the costs to the State of the emission of greenhouse gases for the period that began on January 1, 1995 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 by 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 by the State to abate the effects of greenhouse gas emissions from between January 1, 1995 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, 1995 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

1 the department are deposited into the Climate Superfund Cost Recovery Program Fund to
2 provide funding for recovery of the costs to develop and implement the program and fund
3 and for climate change adaptation projects in the State, which the department is directed to
4 prioritize through the adoption of a resilience implementation strategy and to ensure that at
5 least 35% of the funds are used for climate change adaptation projects that benefit
6 low-income persons with environmental justice concerns.