

## SB 1541 -1 STAFF MEASURE SUMMARY

### Senate Committee On Natural Resources and Wildfire

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**Sub-Referral To:** Joint Committee On Ways and Means

**Meeting Dates:** 2/5

#### WHAT THE MEASURE DOES:

The measure establishes the Climate Superfund Cost Recovery Program Account and creates the Climate Superfund Cost Recovery Program to assess financial impacts of greenhouse gas emissions emitted between January 1, 1995 and December 21, 2024 and recover costs from responsible entities. The measure takes effect on the 91<sup>st</sup> day following adjournment sine die.

Fiscal impact: May have fiscal impact, but no statement yet issued.

Revenue impact: May have revenue impact, but no statement yet issued.

#### Detailed Summary:

- Defines terms including:
  - ‘Entity’ to mean any individual or entity, domestic or foreign, that owns or has owned a fossil fuel business between January 1, 1995, to December 31, 2024
  - ‘Responsible party’ to mean an entity that owned or succeeded a fossil fuel business, had sufficient ties to Oregon, and is deemed by the Department of Environmental Quality to be responsible for over one billion metric tons of global greenhouse gas emissions during the covered period

#### Climate Superfund Cost Recovery Program:

- Establishes the Climate Superfund Cost Recovery Program (Program) as an interagency response to climate change, led by the Department of Land Conservation and Development (DLCD), to adapt to and mitigate the effects of climate change and recovering climate-related costs caused by greenhouse gas emissions from responsible parties between January 1, 1995 and December 31, 2024
- Authorizes participating agencies to collaborate and enter into intergovernmental agreements to carry out the program’s duties and authorizes DLCD to disperse funds to implement projects
- Requires DLCD, in coordination with the interagency team and other specified agencies, to develop, adopt, implement, and periodically update a Resilience Implementation Strategy (Strategy) that identifies eligible climate change resilience projects and provides for the distribution of program funds.
- Requires the Strategy to include:
  - Practices that use nature-based solutions, infrastructure adaptation, early warning systems, and economic and environmental sustainability strategies to build resilience to climate-related risks
  - Criteria, prioritization standards, and funding procedures for climate resilience projects aligned with approved climate adaptation practices
- Requires DLCD to develop the Strategy through interagency consultation, vulnerability assessments, stakeholder engagement, project identification, community engagement, and alignment with existing funding sources.
- Specifies criteria that DLCD must follow to determine whether a climate change resilience project benefits an environmental justice community, including defining ‘community’ based on shared geographic conditions without reference to race or ethnicity.
- Requires DLCD and the Department of Environmental Quality (DEQ), in consultation with other relevant state agencies, to assess the costs of covered greenhouse gas emissions to Oregon, including a cost analysis of the impacts of covered greenhouse gas emissions, the resulting incurred and projected costs, and the costs of

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mitigating those impacts, and to submit a report to the Joint Committee on Ways and Means and specified legislative interim committees by January 1, 2029

- Requires the Secretary of State to audit the Program at least once every five years and provide recommendations to DLCD on program efficiency and cost-effectiveness
- Specifies that remedies outlined in the Act do not limit existing legal claims, state or local authority, or regulatory powers related to climate change, greenhouse gas emissions, or climate-related damages

### Climate Superfund Cost Recovery Account, Liability and Payment Structure

- Establishes the Climate Superfund Cost Recovery Program Account (Account) within the State Treasury, credits interest earnings to the Account, and appropriates account Moneys continuously to DLCD to support climate change resilience projects and related activities,
- Requires 30 percent of deposited funds to the Department of the Oregon State Fire Marshal for wildfire and resilience activities and 40 percent of all funds be used for climate change resilience projects that benefit environmental justice communities.
- Requires EQC to adopt rules establishing:
  - Methodologies to identify responsible parties and determine their share of covered greenhouse gas emissions
  - Procedures for registering entities that are responsible parties, issuing notices of cost recovery demands, and collecting payment
  - Rules for an appeals process that permits responsible parties to appeal to the Director of DEQ within 30 days after receiving notice of cost recovery demand and seeking judicial review if aggrieved by a final notice
- Clarifies that a responsible party shall be strictly liable for the costs of climate change caused by their emissions, equal to its proportionate cost share to the state. Directs DEQ to determine each entity's covered greenhouse gas emissions and specifies how entities in a controlled group and responsible parties owning a minority interest in another entity are treated for the purpose of cost recovery
- Provides for a payment structure:
  - In full within six months, or
  - In nine annual installments, consisting of:
    - 20% within six months of notice, and
    - 10% annually for eight years, adjusted for Consumer Price Index.
- Details unpaid balances provisions and deposit requirements.
- Authorizes DLCD to use cost recovery demand payments to pay for administration and enforcement
- Specifies reporting requirements
- Appropriates \$300,000 to DLCD for implementation
- Takes effect on the 91<sup>st</sup> day following adjournment sine die

### ISSUES DISCUSSED:

- Greenhouse gas emissions and liability standards
- Infrastructure costs
- Covered period of January 1, 1995 to December 21, 2024
- Vermont and New York superfund programs and ongoing litigation

### EFFECT OF AMENDMENT:

-1 amendment transfers authority from the Department of Land Conservation Development (DLCD) to the Land Conservation and Development Commission (LCDC) to provide grants or loans for projects, replacing DLCD's prior authority to disperse funds. It also shifts responsibility for developing, adopting, implementing, and periodically updating the Resilience Implementation Strategy from DLCD to LCDC, and updates project funding procedures from fund dispersal to the establishment of standards for grant and loan awards.

### BACKGROUND:

*This Summary has not been adopted or officially endorsed by action of the committee.*

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The Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) imposes liability on multiple parties for the cleanup of contaminated sites, including waste generators and other responsible entities.

In May 2024, Vermont became the first state to enact a Climate Superfund Cost Recovery Program (VT Act 122). The Act holds responsible parties liable for their share of the state's climate change costs resulting from covered greenhouse gas emissions during the period January 1, 1995, through December 31, 2024. New York enacted S.2129/A.3351, signed into law on December 26, 2024, establishing a Climate Change Adaptation Cost Recovery Program. The program requires companies that contributed to greenhouse gas emissions to bear a share of the costs of infrastructure investments needed to adapt to climate change.

**PRELIMINARY**