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HOUSE BILL 1850

By Jones J

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 3, Part 5; Title 9; Title 60; Title 67 and Title 68, relative to the Climate Resiliency Fund Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, is amended by adding the following as a new chapter:

68-218-101. Short title.

This chapter is known and may be cited as the "Climate Resiliency Fund Act."

68-218-102. Chapter definitions.

As used in this chapter:

(1) "Climate change adaptation project":

(A) Means a project designed to respond to, avoid, moderate, repair, or adapt to negative impacts caused by climate change and to assist human and natural communities, households, and businesses in preparing for future climate-change-driven disruptions; and

(B) Includes implementing nature-based solutions and flood protections; home buyouts; upgrading stormwater drainage systems; making defensive upgrades to roads, bridges, railroads, and transit systems; preparing for and recovering from extreme weather events; undertaking preventive healthcare programs and providing medical care to treat illness or injury caused by the effects of climate change; relocating, elevating, or retrofitting sewage treatment plants and other infrastructure vulnerable to flooding; installing energy efficient cooling

systems and other weatherization and energy efficiency upgrades and retrofits in public and private buildings, including schools and public housing, designed to reduce the public health effects of more frequent heat waves and forest fire smoke; upgrading parts of the electrical grid to increase stability and resilience, including supporting the creation of self-sufficient microgrids; and responding to toxic algae blooms, loss of agricultural topsoil, crop loss, and other climate-driven ecosystem threats to forests, farms, fisheries, and food systems;

(2) "Coal" means bituminous coal, anthracite coal, and lignite;

(3) "Controlled group" means two (2) or more entities treated as a single employer under:

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

(B) 26 U.S.C. § 414(m) or (o);

(4) "Cost recovery demand" means a charge asserted against a responsible party for cost recovery payments under the program for payment to the fund;

(5) "Covered greenhouse gas emissions" means the total quantity of greenhouse gases released into the atmosphere during the covered period, expressed in metric tons of carbon dioxide equivalent, resulting from the use of fossil fuels extracted or refined by an entity;

(6) "Covered period" means the period from January 1, 1995, to December 31, 2026;

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

(8) "Department" means the department of environment and conservation;

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

(10) "Environmental justice" means all individuals are afforded equitable access to and distribution of environmental benefits; equitable distribution of environmental burdens; and fair and equitable treatment and meaningful participation in decision-making processes, including the development, implementation, and enforcement of environmental laws, regulations, and policies. Environmental justice recognizes the particular needs of individuals of every race, color, income, class, ability status, gender identity, sexual orientation, national origin, ethnicity or ancestry, religious belief, or English language proficiency level. Environmental justice redresses structural and institutional racism, colonialism, and other systems of oppression that result in the marginalization, degradation, disinvestment, and neglect of Black, indigenous, and persons of color. Environmental justice requires providing a proportional number of resources for community revitalization, ecological restoration, resilience planning, and a just recovery to communities most affected by environmental burdens and natural disasters;

(11) "Environmental justice focus population" means any census block group in which:

(A) The annual median household income is not more than eighty percent (80%) of the state median household income;

(B) Persons of color and indigenous peoples comprise at least six percent (6%) or more of the population; or

(C) At least one percent (1%) or more of households have limited English proficiency;

(12) "Fossil fuel" means coal, petroleum products, and fuel gases;

(13) "Fossil fuel business" means a business engaging in the extraction of fossil fuels or the refining of petroleum products;

(14) "Fuel gas" means:

(A) Methane;

(B) Natural gas;

(C) Liquified natural gas; and

(D) Manufactured fuel gases;

(15) "Fund" means the climate resiliency fund established by this chapter;

(16) "Greenhouse gas":

(A) Means any chemical or physical substance that is emitted into the air that may be reasonably anticipated to cause or contribute to climate change; and

(B) Includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride;

(17) "Limited English proficiency" means that a household does not have a member fourteen (14) years of age or older who speaks English "very well" as defined by the United States census bureau;

(18) "Nature-based solutions":

(A) Means projects that utilize or mimic nature or natural processes and functions and that may also offer environmental, economic, and social benefits while increasing resilience; and

(B) Includes both green and natural infrastructure;

(19) "Notice of cost recovery demand" means the written communication from the department informing a responsible party of the amount of the cost recovery demand payable to the fund;

(20) "Petroleum product" means any product refined or re-refined from:

(A) Synthetic or crude oil; or

(B) Crude oil extracted from natural gas liquids or other sources;

(21) "Program" means the climate resiliency fund program established by this chapter;

(22) "Qualifying expenditure" means an authorized payment from the fund to pay reasonable expenses associated with the administration of the fund and the program and to pay for a climate change adaptation project, including its operation, monitoring, and maintenance;

(23) "Responsible party":

(A) Means any entity or a successor in interest to an entity that during any part of the covered period was engaged in the trade or business of extracting fossil fuel or refining crude oil and is determined by the department to be attributable for more than one billion

(1,000,000,000) metric tons of covered greenhouse gas emissions during the covered period; and

(B) Does not include a person who lacks sufficient connection with this state to satisfy the nexus requirements of the United States Constitution; and

(24) "Strategy" means the resilience implementation strategy adopted by the department.

68-218-103. Climate resiliency fund program.

There is hereby established the climate resiliency fund program to be administered by the department. The purposes of the program are to:

(1) Secure compensatory payments from responsible parties based on a standard of strict liability to provide a source of revenue for climate change adaptation projects within this state;

(2) Determine proportional liability of responsible parties;

(3) Impose cost recovery demands on responsible parties and issue notices of cost recovery demands;

(4) Accept and collect payment from responsible parties;

(5) Develop, adopt, implement, and update the strategy that will identify and prioritize climate change adaptation projects; and

(6) Disperse funds to implement climate change adaptation projects identified in the strategy.

68-218-104. Liability of responsible parties.

(a)

(1) A responsible party is strictly liable for a share of the costs of climate change adaptation projects and all qualifying expenditures supported by the fund.

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

(A) Shall be treated by the department as a single entity for the purposes of identifying responsible parties; and

(B) Are jointly and severally liable for payment of cost recovery demands owed by an entity in the controlled group.

(b) With respect to each responsible party, the cost recovery demand must be equal to an amount that bears the same ratio to the cost to the state and its residents, as calculated by the state treasurer pursuant to § 68-218-108, from the emission of covered greenhouse gases as the responsible party's applicable share of covered greenhouse gas emissions bears to the aggregate applicable shares of covered greenhouse gas emissions resulting from the use of fossil fuels extracted or refined during the covered period.

(c) If a responsible party owns a minority interest of ten percent (10%) or more in another entity, then the responsible party's applicable share of covered greenhouse gas emissions must be increased by the applicable share of covered greenhouse gas emissions for the entity in which the responsible party holds a minority interest multiplied by the percentage of the minority interest held by the responsible party.

(d) The department shall use the United States environmental protection agency's emissions factors for greenhouse gas inventories as applied to the fossil fuel volume data for the purpose of determining the amount of covered greenhouse gas emissions attributable to an entity from the fossil fuels attributable to the entity.

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

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

(2) The crude oil extracted by the other responsible party was accounted for when the department determined the cost recovery demand amount for the other entity or a successor in interest of the other entity.

(f) The department shall issue the cost recovery demands required by this section no later than six (6) months after the adoption of the rules required by § 68-218-106(b)(2).

(g)

(1) Except as provided in subdivision (g)(2), a responsible party shall pay the cost recovery demand amount in full no later than six (6) months after the department issued the cost recovery demand.

(2)

(A) A responsible party may elect to pay the cost recovery demand amount in nine (9) annual installments in accordance with this subdivision (g)(2).

(B) The first installment must be paid no later than six (6) months after the department issued the cost recovery demand and must be equal to twenty percent (20%) of the total cost recovery demand.

(C) Each subsequent installment must be paid annually beginning one (1) year from the initial payment and equal ten percent (10%) of the total cost recovery demand. The department may charge reasonable interest on each installment payment or a payment delayed for any other reason and, at the commissioner of environment and conservation's discretion, may adjust the amount of a subsequent installment payment or

a payment delayed for any other reason to reflect increases or decreases in the consumer price index.

(D)

(i) The unpaid balance of all remaining installments become due immediately if:

(*a*) The responsible party fails to pay an installment in a timely manner, as specified in department rules;

(*b*) Except as provided in subdivision (g)(2)(D)(ii), there is a liquidation or sale of substantially all the assets of the responsible party; or

(*c*) The responsible party ceases to do business.

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

(h) The department shall deposit cost recovery payments collected under this chapter to the climate resiliency fund established by § 68-215-105.

(i) A responsible party aggrieved by the issuance of a notice of cost recovery demand shall exhaust administrative remedies by filing a request for reconsideration with the department within thirty (30) days following issuance of the notice of cost recovery demand. A request for reconsideration must state the grounds for the request and include supporting documentation. The department shall notify the responsible party of the final decision by issuing a subsequent notice of cost recovery demand. A

responsible party aggrieved by the issuance of a final notice of cost recovery demand may bring an action in Davidson County chancery court.

(j) This section does not supersede or diminish other remedies available to a person at common law or by statute.

68-218-105. Climate resiliency fund.

(a) There is created the climate resiliency fund to be administered by the department to provide funding for climate change adaptation projects in this state. The fund consists of:

(1) Cost recovery payments distributed to the fund pursuant to § 68-215-104;

(2) Monies from time to time appropriated to the fund by the general assembly; and

(3) Other gifts, donations, or monies received from a source, public or private, dedicated for deposit into the fund.

(b) The fund must be used only:

(1) To pay:

(A) Qualified expenditures for climate change adaptation projects identified by the department in the strategy; and

(B) Reasonable administrative expenses of the program, including the cost to the comptroller of the treasury associated with hiring technical expertise necessary to complete the audits required by § 68-215-107;

(2) To implement climate adaptation action identified in the strategy; and

(3) To implement community resilience and disaster mitigation efforts.

(c) Unexpended balances of the fund must be retained in the fund and do not revert to the general fund. Monies in the fund must be invested by the state treasurer pursuant to title 9, chapter 4, part 6, for the sole benefit of the fund, and interest accruing on investments of and deposits into the fund must be returned to the fund and remain part of the fund.

68-218-106. Reports – Rulemaking.

(a) On or before January 15, 2027, the department, in consultation with the state treasurer, shall submit a report to the general assembly detailing the feasibility and progress of carrying out the requirements of this chapter, including any recommendations for improving the administration of the program.

(b) The department shall adopt rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, that are necessary to implement this chapter, including:

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

(2) Requirements for registering entities that are responsible parties and issuing notices of cost recovery demands under the program; and

(3) Developing the resilience implementation strategy, which must include:

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

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

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

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

(E) Criteria and procedures for prioritizing climate change adaptation projects eligible to receive monies from the climate resiliency fund program.

(c) In adopting the strategy, the department shall:

(1) In consultation with other state departments and agencies, including the Tennessee emergency management agency, assess the adaptation needs and vulnerabilities of various areas vital to the state's economy, normal functioning, and the health and well-being of residents of this state;

(2) Identify major potential, proposed, and ongoing climate change adaptation projects throughout this state;

(3) Identify opportunities for alignment with existing federal, state, and local funding streams;

(4) Consult with stakeholders, including local governments, businesses, environmental advocates, relevant subject area experts, and representatives of environmental justice focus populations;

(5) Consider components of climate action plans that are related to adaptation or resilience; and

(6) Conduct public engagement in areas and communities that have the most significant exposure to the impacts of climate change, including disadvantaged, low-income, and rural communities and areas.

(d) This section does not limit the existing authority of a state department, agency, or entity to regulate greenhouse gas emissions or establish strategies or adopt rules to mitigate climate risk and build resilience to climate change.

68-218-107. Climate resiliency fund program audit.

Beginning on January 1, 2032, and every five (5) years thereafter, the comptroller of the treasury shall evaluate the operation and effectiveness of the program. The comptroller shall make recommendations to the department on ways to increase program efficacy and cost-effectiveness. The comptroller shall submit the results of the audit to the chief clerks of the senate and the house of representatives; the chair of the senate energy, agriculture and natural resources committee; the chair of the committee in the house of representatives with jurisdiction over environmental-related matters; the office of legislative budget analysis; and the legislative librarian. The comptroller must be reimbursed from the climate resiliency fund for any costs associated with hiring persons who possess the technical expertise necessary to complete the audits required by this section.

68-218-108. Report on the cost to this state of covered greenhouse gas emissions.

On or before January 15, 2028, the state treasurer, after consultation with the department and any other person or entity whom the state treasurer decides to consult for the purpose of obtaining and utilizing credible data or methodologies that the state treasurer determines may aid in making the assessments and estimates required by this section, shall submit to the chief clerks of the senate and the house of representatives; chair of the senate finance, ways and means committee; the chair of the committee in the house of representatives with jurisdiction over budget-related matters; the chair of the senate energy, agriculture and natural resources committee; the chair of the

committee in the house of representatives with jurisdiction over environmental-related matters; the office of legislative budget analysis; and the legislative librarian an assessment of the cost to the state and its residents of the emission of covered greenhouse gas emissions. The assessment must include:

(1) A summary of the various cost-driving effects of covered greenhouse gas emissions on this state, including effects on public health, natural resources, biodiversity, agriculture, economic development, flood preparedness and safety, housing, and any other effect that the state treasurer, in consultation with the department, determines is relevant;

(2) A categorized calculation of the costs that have been incurred and are projected to be incurred in the future within this state of each of the effects identified in subdivision (1); and

(3) A categorized calculation of the costs that have been incurred and are projected to be incurred in the future within this state to abate the effects of covered greenhouse gas emissions on this state and its residents.

SECTION 2. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3. This act takes effect upon becoming a law, the public welfare requiring it.